

SCHMITTHOFF'S EXPORT TRADE

The Law & Practice
of International Trade

BY
CLIVE M. SCHMITTHOFF

EIGHTH EDITION



STEVENS

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EXPORT TRADE
THE LAW AND PRACTICE OF
INTERNATIONAL TRADE

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with assistance from
JOHN ADAMS

EIGHTH EDITION

What would this island be without foreign trade, but a place of confinement to the inhabitants, who (without it) could be but a kind of Hermites, as being separated from the rest of the world; it is foreign trade that renders us rich, honourable and great, that gives us a name and esteem in the world.

Charles Molloy,
De Jure Maritimo et Navale, 1676

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PREFACE

THE aim of this book is to give, as concisely as possible, an account of the law and practice of international trade. We are told by economists and politicians that the promotion of exports is vital to the well-being of this country; this book endeavours to explain how modern export is transacted.

The book is intended for the use of businessmen and their professional advisers, and the growing number of students who study the law of international trade as part of their syllabuses in legal and business studies. The fact that this book is written for lawyers and laymen alike has not presented a serious difficulty. In my experience businessmen engaged in the promotion of foreign trade are able to appreciate the meaning of legal principles, if explained to them without undue stress on legal terms of art; they talk the same language as commercial lawyers, dealing with the same subject from a different angle. I have endeavoured to give guidance to the newcomer and the expert by describing the elements of legal institutions with which I have to deal, before treating their special functions in the practice of international trade.

Export trade law or, as some prefer to call it, the law of international trade covers an unusually wide field of business activity. This is reflected in the arrangement of this work. Its eight parts deal with The International Sale of Goods; Marketing Organisation Abroad; Finance of Exports; Insurance of Exports; Transportation of Exports; Matters incidental to Exports (comprising the Protection of Patents and Trade Marks Abroad, Licensing and Franchising; and Arbitration and Litigation); Construction and Long Term Contracts; and Customs Law.

In many of the topics treated in this work changes have occurred which can only be described as revolutionary. New trading practices have developed which exist side by side with the traditional methods of trading or have taken their place. To give only a few examples, telecommunications and electronic data processing are widely used. In the international sale of goods the parties agree frequently on container terms for the delivery of goods and consequently the critical point, where delivery takes place, is often no longer the ship's rail but a place inland at which the carrier takes charge of the goods; moreover, the growing use of countertrade has altered the traditional pattern of trade. In the finance of exports the conventional methods of collection arrangements, letters of credit and bank guarantees are supplemented by an increasing use of other methods, such as factoring and forfaiting. In insurance, the introduction of Lloyd's Marine Policy and of the Institute Cargo Clauses A, B and C has done away with time-honoured but antiquated phraseology. In the transportation of exports the

world-wide expansion of containerisation, the growth of multimodal transport and the special problems of the oil trade have placed a new dimension on the carriage of goods by sea, air and land. In dispute settlement, conciliation and arbitration have gained further significance. In addition, there has been a flood of international conventions and other arrangements aimed at the unification of international trade law. They are promoted by numerous organisations, among them the United Nations Commission on International Trade Law (UNCITRAL), the International Chamber of Commerce (ICC), the International Institute for the Unification of Private Law (Unidroit), the EEC, and the Council for Mutual Economic Assistance (CMEA). These tendencies are also noted in the 1983 Revision of the *Uniform Customs and Practice for Documentary Credits (UCP)*. In his Foreword to this formulation, which has achieved global acceptance, Mr. Bernard S. Wheble, C.B.E., then Chairman of the ICC Commission on Banking Technique and Practice, refers to the need to adapt the UCP to the continuing revolution in transport technology, the increasing influence of trade facilitation activities, the communications revolution, and the development of new types of documentary credits, such as the deferred payment credit and the standby credit.

To assist the businessman, his legal adviser and the student to find their way through this bewildering maze of material, I had to rewrite large sections of this work completely. I have also added two new chapters, one on Countertrade (Chapter 11) and the other on Container Transport (Chapter 30). My task was not only the obvious one of bringing the work up to date by giving an account of the many new statutes and international arrangements and by noting the new case law which comprises about 100 cases decided by the English, Commonwealth and American courts and the EEC Court of Justice in Luxembourg. The real challenge was to ensure that this edition reflects the new climate and atmosphere in which international trade is nowadays conducted. The characteristic feature of this development is a sophistication and refinement of international trade law. If this feature is ignore the complex and multiform nature of modern trade cannot be understood. I have tried to meet this challenge by reorganising this work and by presenting the subject-matter in a manner which makes its easily accessible. I am aware that this sophistication and refinement of law provides also a challenge to those engaged in the conduct of international trade transactions. But it is necessary that the businessman who wants to succeed in the competitive conditions of modern export trade and the lawyer who wants to be of assistance to his client in this endeavour should be acquainted with the great variety of legal possibilities which modern practice places at their disposal and which, after all, are the tools of their trade.

It is my pleasant duty to record sincere thanks to the many persons and organisations who helped me in the preparation of this edition by willingly giving information, advice and help. My special thanks are due to Mr. John Adams, barrister, Senior Lecturer in Law at the University of Kent at

Canterbury. He prepared the drafts of the chapters on Restrictive Trade Practices in the United Kingdom and the Competition Law of the European Community, as well as that on intellectual property, in which he included sections on Licensing and Franchising. He also read the proofs and made valuable suggestions for the improvement of other parts of the work. My thanks are also due to Mr. Arnold W. G. Kean, C.B.E., the retired Legal Adviser to the Civil Aviation Authority; he assisted in the revision of the chapter on Carriage of Goods by Air. Mr. Michael Morris, Barrister, helped in the preparation of the section on Marine Insurance, and Mr. Harold Caplan, Barrister, in that on Aviation Insurance. Of the many others who gave me information and assistance I will only mention Mr. Peter Crowley, Barrister; Mr. David Dunk, Barrister; Mr. David Royce, F.I.Ex., Former Director General of the Institute of Export; Dr. Gerold Herrmann, of UNCITRAL; Dr. Leah Hertz, Senior Visiting Fellow of the City University Business School; and Mr. R. A. Pilcher, Chief Executive of the Export Finance Company Ltd. (EXFINCO). The Export Credit Guarantees Department very kindly assisted in bringing the chapter on Export Credit Guarantees up to date. I am grateful to Mr. Robert Spicer, barrister, for having provided a comprehensive index to this work. I wish also to express sincere thanks to the readers and reviewers who drew my attention to changing trade practices and shortcomings of previous editions.

The law of the export trade is, as already observed, the most active branch of commercial law and changes and new developments occur constantly. It is, therefore, important that the reader should be in possession of the latest information as soon as possible. The present edition will be kept up to date by articles on the subject and by notes in the section on the Export Trade in the *Journal of Business Law* which is published by Messrs. Stevens & Sons Ltd. in London.

The law is stated as on April 1, 1986 unless another date is given.

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