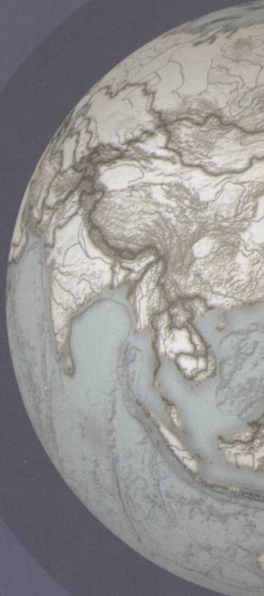
全国高等院校经管专业双语教材
全国高等院校商务英语专业规划教材（本科）

国际贸易法（英文版）

International Trade Law



韩永红 编著

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前　　言

本书的编著遵循“方便使用者”（user-friendly）的指导思想，从体例安排到语言风格均旨在满足使用者（包括教授者与学习者）的实际需求。为帮助使用者快速了解本书，现将其主要特点简要介绍如下：

一、在体例设计上，本书兼采中外同类著作的优点，从方便教学，方便学习者使用的角度设计。全书正文共设十章：国际贸易的法律环境、国际货物买卖法（I）、国际货物买卖法（II）、国际货物运输法律制度、国际贸易支付法律制度、国际技术转让法律制度、国际电子商务法律制度、世界贸易组织法律制度、各国管理贸易的法律制度、国际商事争议解决法律制度。每章包括“内容大纲”、“热身问题”、“正文”、“小结”和“练习”五个组成部分。“内容大纲”（Chapter outline）可帮助使用者宏观了解本章的内容结构和主要问题，课前对“热身问题”（Warm-up questions）的讨论则可以帮助学习者积累必要的背景知识，激发其学习本章内容的兴趣和探索的热情。“小结”（Chapter summary）是对本章所讨论的主要理论、规则、观点的简要归纳，以帮助学习者回顾本章的主要内容。“练习”（Chapter questions）部分安排了“正误辨析”、“问答题”、“案例题”，个别章节还安排有“选择题”和“开放式讨论题”等多种练习形式，使用者可根据个人情况选择逐一完成或只选做其中部分题目。除上述内容外，全书还包括“前言”、“目录”、“附录”、“法律术语表”、“参考书目”其他五个组成部分。

二、在内容安排上，本书紧扣国际贸易法的法律渊源，既注重对重要国际条约（公约）或示范法的阐释，也看重当今世界主要贸易国家国内法的影响，尤其是相应中国法律的立法状况与立法内容的介绍。从而使学习者认识到国际贸易法不仅是国际法更是国内法，在学习国际贸易法的过程中，既要有国际视野，也要关注本土法律资源。针对中国学习者的整体水平，在具体的内容论述中本书对不同问题所费笔墨有所区别。对分歧较大的观点，着重阐述通说，对其他观点只做一般性提及，以免对学习者造成不必要的观点混乱性困扰。而对重要内容，本书采用黑体字予以突出，以提醒使用者重点掌握和理解这些内容。同时借鉴英美国家案例教学的优点，在对重要内容进行阐述时，穿插了一些中外经典案例以帮助学习者更好地理解和应用相关的法律规则。

三、在写作语言上，编著者努力使语言既严谨、流畅同时又不失活泼。本书的编著者认为，在以英语为媒介学习法律的过程中，应致力于实现三个目标：法律知识的获

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Chapter 1

The Legal Environment of International Trade

Chapter Outline

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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 hermits, as being separated from the rest of the world; it is foreign trade that renders us as rich, honorable and great, that gives us a name and esteem in the world.

Charles Molloy

Warm-up Questions

1) How do you understand the importance of international trade?

2) What are the differences between international trade and domestic trade?

3) In your opinion, where can you find the rules and norms governing international trade?

4) Do you know some theories the economists have created to justify and explain international trade?

5) Can you name some international organizations, which play a role in regulating international trade?

1.1 Globalization and International Trade

Trade consists of the import and export of goods, services and technologies. It is as old as the oldest civilization. Throughout the history of mankind, countries traded to obtain needed items ranging from textiles to spices that were not readily available in their own countries. Asia, Middle East, Africa and Europe have been the major marketplaces of trade for hundreds of years. There were famous "silk road", which linked the market of ancient China with Middle East and Europe, and the first international sea trade route established by the Europeans in the sixteenth century. With the advent of great naval power, Portugal and Spain opened the Americas, India, and the Pacific to trade. For more than three hundreds of years, trade in cotton, corn, horses, weapons and even slaves thrived among Europe, America and Africa.

The world today is more economically interdependent than at any time of the history. It is said the twentieth century was the century of emerging globalization. "Globalization" has been one of the most frequently used catch phrases in economic and legal literatures. In effect, globalization is rather a western economic concept with significant legal connotations. It is foremost an economic process. It is also a political event, as evidenced by the spread of rule of law among nations. ① Although globalization of markets is a process, it appears to be unstoppable. Undoubtedly, with the increasing globalization of economy, we will experience more cross-border activities. Many economists and business experts believe that no trade can be purely domestic in such a globalization process. The reality of the increasing economic

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① See Jost Delbruck. "Globalization of Law, Politics and Markets-Implications for Domestic Law: A European Perspective". 1 *Ind. J. Global Legal Study*. Fall 1993.

interdependence among countries makes all trade international. No longer can an economic or policy change in one country occur without causing reverberations throughout the world's markets. For example, the deterioration in trade relations between the United States and China can affect the manufacturing plants in Canada or Mexico. The Mad Cow disease affected far more than the English cattle but the trade in beef worldwide.

Globalization can be attributed to many factors. Natural resources and raw materials are unevenly located around the world. Technology advances in communications has brought people closer than ever and turn the world, to some extent, into a single village on the earth. Most nations have moved away from pure protectionism of trade and increasingly towards free trade. Recent decades have seen a steady and robust movement towards regional integration, for example, EU and the development of free trade areas such as APEC and NAFTA. Technologies of patents, copyrights, trademarks and know-how are transferred through licensing agreements around the world, as freely as goods and services are sold. Greater political stability in newly emerged economically powerful countries has led to the increasing of trade volumes around the world.

Such greater economic interdependence has required countries to reach an agreement on important legal issues. The global economy has been affected by the development of widely accepted international conventions and practices, which provide a reliable and consistent legal environment for international trade. Meanwhile, national laws are required to be harmonized and adjusted to the new development in international trade.

1.2 Economic Theories Underlying International Trade

It is true that economics has had a strong influence on the shape and development of international trade and the law governing international trade. Indeed international trade has been based on the perception that it is beneficial, that is, the gains to a country from trade outweigh the losses to the country, and the value is created through specialization and exchange in open markets. In the following section a brief review of economic theories underlying the international trade will be made, not with a view to making contribution to the literature of economics, but as an introduction for readers to a better understanding of international trade and international trade law.

Theory of Absolute Advantage

The core of absolute advantage states that **nations should concentrate their efforts on**

producing those goods that they can make most efficiently, with a minimum of effort and waste. Any surplus of goods left over after domestic consumption is then traded for goods that another nation has produced under the same circumstances. Such theory was created by **Adam Smith**. In justifying the theory, he compared a state to a household. Adam Smith wrote:

It is the maxim of every prudent master of a family, never to attempt to make at home what it will cost him more to make than to buy. The tailor does not attempt to make his own shoes, but buy them from the shoemaker. The shoemaker does not attempt to make his own clothes, but employs a tailor. The farmer attempts to make neither the one nor the other, but employs those different artificers. All of them find it for their interest to employ their whole industry in a way in which they have some advantages over their neighbors and to purchase with a part of its produce, or what is the same thing, with the price of a part of it, whatever else they have occasion for.

What is prudence in the conduct of every private family can scarce be folly in that of a great kingdom. If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better it of them with some part of the produce of our own industry, employed in a way in which we have some advantage. The general industry of the country, being always in proportion to the capital which employs it, will not thereby be diminished, no more than that of the above mentioned artificers; but only left to find out the way in which it can be employed with the greatest advantage, when it is thus directed towards an object which it can buy cheaper than it can make. ①

The theory makes it clear that if Country A is more efficient or productive (whether measured in unit of labor cost, or dollars, or any other relevant commitment of resources) in a given industry, say steel, than Country B, and Country B is more efficient or productive in another industry, say textiles, and both Countries have need of the product of both industries. Country A should specialize in one and Country B in the other. Trade between the two Countries in two products will be beneficial (i. e. will conserve resources and create value) for both.

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① Adam Smith. The Wealth of Nations. 1776. Book IV. Chapter 2. reproduced by Modern Library Education. P414. 1937.

Theory of Comparative Advantage①

The theory of absolute advantage retained its validity for almost two centuries as the starting point for analysis of the gains from trade. The theory of absolute advantage was developed by **David Ricardo**, a nineteenth century British economist, in the theory of comparative advantage. He stated that a country could gain from trading goods even though it may not have an absolute advantage in producing those goods. Ricardo observed that in cases as follows:

Assume two countries and two commodities. If each country can produce one good cheaper (i. e., with less labor) than it can be produced in the other, as in the case of domestic trade, each will have an advantage in the production of one commodity and a disadvantage in the production of the other. Each country will then be anxious to export the commodity in which it has an advantage and import the commodity in which it has a disadvantage. The position is suggested in the following table, where wheat can be produced more cheaply in the United States and cloth more cheaply in Britain. The United States has an absolute advantage in wheat and an absolute disadvantage in cloth. It will export wheat and import cloth, which, with the numerical values given, may be assumed to exchange one for the other at something like the rate of one yard of cloth for one bushel of wheat:

Production of One Man in One Week

Products	Product in United States	Product in United Kingdom
Wheat	6 bushels	2 bushels
Cloth	2 yards	6 yards

But suppose that the labor content of both wheat and cloth is less in the United States than in Britain. Suppose that instead of merely 2 yards of cloth per week a man in the United States can produce 10. The position is then as follows:

① For comparative advantage, see Charles P. Kindleberger, *International Economics* (5^{th} ed.). P 17 - 21, 27, 33. 1973.

Production of One Man in One Week

Products	Product in United States	Product in United Kingdom
Wheat	6 bushels	2 bushels
Cloth	10 yards	6 yards

It is evident that labor is more efficient in the United States than in the United Kingdom, and wages in the United States will be higher on that account. By assumption, however, migration will not take place to equalize wage rates.

Trade cannot now follow the theory of absolute advantage and a new principle is needed to take its place. In the above case, the United States had an absolute advantage over Britain in both wheat and cloth, and it had a greater advantage in wheat than in cloth. Ricardo concluded that **a country would export the product in which it had the greater advantage, or a comparative advantage, and import the commodity in which its advantage was less, or in which it had a comparative disadvantage.** In the above case the United States would export wheat and import cloth, even though it could produce cloth more efficiently than Britain.

For effective comparison, the prices should be quoted the same way. At any price for cloth cheaper than 10 yards (of cloth) for 6 bushels (of wheat), that is, for any more than 10 yards for 6 bushels, the United States will gain by shifting resources out of cloth into wheat and importing cloth. Similarly, at a price of cloth, which would involve Britain giving up less than 18 yards for 6 bushels (equal to 6 yards for 2 bushels), it will pay Britain to move its labor out of wheat into cloth and import wheat in exchange for cloth rather than grow grain itself. Trade raises the price of wheat and lowers the price of cloth in the United States; it raises the price of cloth and lowers the price of wheat in Britain. Even when one country can produce both commodities more efficiently than another country, both can gain from specialization and exchange, provided that the efficiency advantage is greater in some commodity or commodities than in others.

On the basis of this type of demonstration, the classical economists concluded that international trade does not require offsetting absolute advantages but is possible where a comparative advantage exists. It goes without saying but must be said, as it is frequently forgotten, that a comparative advantage is always (and by definition) accompanied by a comparative disadvantage.

Theory of Factor Endowments: Hekscher-Ohlin Model

However, Ricardo's illustration is a great simplification. It assumes on homogeneous level of input (hours of labor) and perfect ability and willingness on the part of the units of input to shift from creating one product to creating another. Numerous economists in the twentieth century have made efforts to refine and build on Ricardo's model. The best-known model, developed by two Swedish economists **Eli Herscher and Bertil Ohlin**, focused on differences in endowment among countries in the several factors of production. The Hekscher-Ohlin Model also works with two countries, two products and assumes a perfect competitive economy, but looks at two factors of production — capital and labor. **The Hekscher-Ohlin Model predicts that each country will export the product that uses its relatively abundant factor more intensively**.

Thus if Country A is comparatively better endowed with capital, it will export capital-intensive products and will import products that call for a greater proportion for input of labor, in which Country A is comparatively less endowed than Country B. Factor-intensive product means a product whose costs in the country in question of the factor focused on are a greater share of its value than they are of the value of other products. Thus cloth, for example, would be labor-intensive and wheat land-intensive. A country such as the United States with relatively larger land supply compared with the rest of the world than labor supply, ought to export land-intensive products such as wheat, and import labor-intensive products such as cloth. In conditions of trade, the land-intensive country has a comparative advantage in wheat, the land-intensive country has a comparative advantage in cloth, and trade benefits both.

The preceding theories have substantially explained the reasons for trade and the obtainable benefits from trade. However, these theories are not wholly satisfying. One major shortcoming is that they would lead to the expectation that countries with similar levels of economic development would trade little with each other. In fact, these countries trade in great volume with one another, often in the same sector and products. Also in the majority of cases countries do not engage in trade, companies do, and companies differ from one another, not only in the classical factors — labor, land and capital, but also in such factors as marketing, management, innovation, as well as economies of scale. Another matter of concern is the extent to which the factor endowments that make up comparative advantage can be altered by government intervention. For instance, if technology is important factor in a