FOREIGN TRADE UNIVERSITY FACULTY OF BANKING AND FINANCE

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GRADUATION THESIS

Major: Banking and Finance

TYPICAL DISPUTES IN INTERNATIONAL PAYMENT IN VIETNAM

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LIST OF ABBREVIATIONS

ADR Alternative Dispute Resolution

B/L Bill of Lading

CFR Cost and Freight

CIF Cost, Insurance and Freight

CIP Carriage and Insurance Paid to

D/A Document against acceptance

D/P Document against payment

eUCP The Supplement to the Uniform Customs and Practice for

Documentary Credits for Electronic Presentation

FCL Full Container Loaded

FOB Free On Board

ICC International Commerce Chamber

ISBP International Standard Banking Practices

L/C Letter of Credit

TTR Telegraphic Transfer Remittance

URC Uniform Rules for Collection

URR Uniform Rules for Bank - to - Bank Reimbursement under

Documentary Credit

VIAC Vietnam International Arbitration Centre

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PREFACE

❖ Motivation of the study

Along with the economic integration and globalization, hardly can any country exist and develop without participating in international trade which becomes a challenge as well as an opportunity for nations to penetrate dynamic and strong markets. Under the impact of the features of the market economy, Vietnam has been integrating into the international economy and attracting mounting foreign investments. Therefore, potential sources can be discovered by promoting the home advantages in order to minimize expenses, strengthen the competition, and increase profit for businesses, especially export – import businesses for the significant augmentation of GDP, the development of the economy and an impregnable position in international market.

International payment which is a crucial factor of international trade has been upgraded and improved with various payment methods. In Vietnam, along with international economic integration, strong export – import activities have intensified international payment; however, this also means tight regulations of custom or general rules in international payment must be properly implemented. In fact, disputes usually occur in the process of international payment performance, which has a considerable impact on the integration and the interests of parties involved.

Vietnam has gradually united in the international economy with the effort in export – import activities so the performance of international payment should be noticed and effectively changed in order to keep pace with the general development. Since this concept is quite new in Vietnam and mistakes stills exist, the toll and level of disputes in international payment have been rising widely.

Practically, businesses and commercial banks have been taking constant effort so as to minimize disputes, improve and enhance the effectiveness of international payment system in order to affirm their reputation and importance. Be aware of the imperativeness of payment methods improvement, I made a final decision to study this subject as my graduation thesis "Typical disputes in international payment in Vietnam".

❖ Object of the study

The thesis aims at fully understanding the typical disputes in international payment in Vietnam, which obtains following objectives:

- o To generalize knowledge of methods of international payment and learn about dispute in methods of international payment.
- To make a research on the situation of international payment in Vietnam and analyze several typical disputes resolved by specified forms of resolution, accordingly discover the reasons for such disputes.
- To give some suggestion for minimizing and preventing dispute in international payment in Vietnam.

Scope of the study

- The thesis mainly covers the disputes which arise from the performance of international payment method in Vietnam.
- o The period of the study is 5 years from 2007 to 2011.

❖ Method of the study

The main methods that are used in the thesis are analysis, statistic, collection, comparison and illustration.

Structure of the study

The thesis is divided into 3 main chapters:

- **Let Chapter 1:** Theoretical background
- **Chapter 2:** Typical disputes in international payment in Vietnam
- **♣ Chapter 3:** Proposals for the prevention and minimization of disputes in international payment in Vietnam

CHAPTER 1: THEORETICAL BACKGROUND ABOUT INTERNATIONAL PAYMENT AND DISPUTES IN INTERNATIONAL PAYMENT

1.1. An overview of international payment

1.1.1. Definition of international payment

In the evolution of the advanced humane society, a country which is inclined to be prosperous cannot isolate the economy but enters into transactions and relation with other countries due to the difference of natural or geographical conditions. On the other hand, based on the discovery of potentials and advantages, the economy not only satisfies domestic demand but also creates surplus for exports, which contributes the augmentation of foreign currency in order to compensate imports and pay debts.

Thanks to the development of the economy, demand of international transactions occurs, which requires the evolvement of international payment. International payment developed considerably in the end of the 20th century when the rocketing rate of trade, international investment and remittance has intensified the volume of payment transactions by banks and other organizations. International payment plays an essential factor in economic activities in nations.

International payment is defined from several opinions. However, this quoted definition is preferable. "International payment includes the factors which create payment system among nations such as regulations on parties involved in payment, monetary choice, instruments and methods of payment" (Prof. Dinh Xuan Trinh, 2009, p.11).

1.1.2. Parties involved

1.1.2.1. The Central Bank

The Central Bank, on behalf of the Government, engages in international payment in order to sign and implement agreements on currency and international credit and is considered the Bank of banks in monetary operation and international payment. The first function of the Central Bank is establishing and monitoring the implementation of international balance of payment. Secondly, the Central Bank, on

behalf of the Government, signs international treaties, international law on currency and credit. It also represents the Government in monetary institutions and international banks. Moreover, payment system via banks and payment services in and out of the country are conducted by the Central Bank. Tools for credit circulation in international and domestic payment are also managed and provided by the Central Bank. It implements international cooperation in finance and banking.

1.1.2.2. Commercial banks

Commercial banks are the main parties of financial intermediaries which are involved in international payment. Commercial bank, a financial intermediary, owns an extensive network throughout the country and holds almost entire fortune of the society in form of cash and obtains globally a dealer network in most of country partners. Activities of commercial banks primarily consist of 3 major functions: credit intermediary, payment intermediary, creation of tools for credit circulation, which replace for cash to conduct effectively the function of currency circulation. The functions of banks have intimate and complementary relation, in which credit intermediary function is the basis for the others. The function of creating tools for credit circulation, which replaces for cash to conduct effectively the function of means of currency circulation, can be promoted based on the function of credit intermediary and thanks for this function, the function of payment intermediary can be facilitated to expand the scale and save effectively expense of cash circulation.

1.1.2.3. Other parties

Other parties include legal entities, individuals who work in non-banking fields such as commodity export and import, professionals and labour export and import, tourism, transportation, delivery, insurance, investment and diplomacy, military, cultural exchange, art, science, technology and society. These entities are involved in international payment as a trustee for the bank to collect receivables and order the bank to pay foreign countries payables.

1.1.3. Characteristics of international payment

1.1.3.1. Foreign factor

Foreign factor of a payment activity, which is considered the main difference between international payment and domestic payment, is described in the following elements:

- Participants are residents and non residents regardless of identical or different nationality among them. Foreign Exchange Management Act defines the resident and non resident in each nation.
- Money for payment is transferred from non resident's account to resident's account or between accounts of two non residents regardless of the account opened at one or two banks in the same country or two different countries.
- Currency used in international payment is foreign exchange in one of two countries or domestic currency which originates from foreign exchange.

1.1.3.2. A kind of service which commercial banks provide customers

International payment service contains traditional features the same as other services. Firstly, the service is invisible. Since it does not exist in the form of material, its quality cannot be directly measured by specifications. Secondly, the process of providing and consuming service occurs simultaneously. Production and consumption of goods are often two separate and independent steps. The longer this separation is, the worse the commodity market shows. In the other hand, the process of providing services is associated with service consumption and when service provision ends, services are finished consuming. Finally, the services cannot be stored. The invisibility of the services and simultaneity of service production and consumption cause the impossibility of service mass production and store.

However, international payment service obtains special features differentiating from domestic service and affecting considerably the quality and effect of service economy. Firstly, the services are delivered across the border but service provider does not move. Service provider doesn't appear in the territory of service consumption. Secondly, the beneficiary is not in the same territory with service provider. Finally, banks often establish relation with agent banks, or

branches, representative offices in service consuming countries in order to complete effectively international payment services.

1.1.3.3. Potential risk containing

Scale and duration of international payment are extensive and long, material facilities and science and technology that relate to international payment are unequal. International legal milieu is inadequate and not uniform, lack of international law; international customs issued by ICC relatively complete but are inadequate in practice. There is a considerable difference in the qualification of human resources involving in international payment. Those factors can be considered reasons for risks in international payment.

1.1.3.4. A mounting development

Electronic international payment will develop significantly in the end of this century and gradually replace international payment with traditional documents. International payment system turning from payment with silver or gold to payment with documents such as checks, commercial papers, travel credit, etc opens a broad market under the process of capitalism of free competition to capitalism of manipulation.

The advent of electronic, especially digital information technology has navigated international payment system to electronic payment such as International Electronic Funds Transfer System – IEFTS, Clearing House Interbank Payment System – CHIPS, etc.

1.2. Main international payment methods

The beneficiaries owning receivables from bill of exchange, invoice, checks, etc, cannot themselves collect money from foreigners, so the bank, their trustee, will implements this work. The persons who obligate to remit or pay money cannot themselves remit or pay for the foreign beneficiaries, so they will entrust to the bank to conduct this. That banks and parties entrusted must agree about the method, content and condition in order to collect and remit or pay money is called international payment method. "Method of payment" represents the defined form of how the payment will be made and can be categorized in different ways, depend on the purpose. In the scope of my thesis, popular payment terms used in international

payment should be mentioned. They are Remittance, Open account, Collection, and Documentary Credit.

1.2.1. Remittance and Open account

1.2.1.1. Remittance

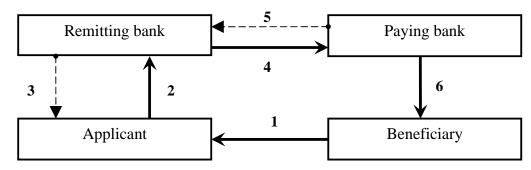
♣ Definition

Remittance is the method that the applicant orders his bank to transfer a specific amount to a beneficiary at a specified place through the term regulated by the applicant.

Parties involved:

- Applicant who asks for remittance
- o Payer: importers, drawees, ones who pay for service fee, dividends, coupons, interest on bank loans, fine, compensation, etc.
- o Remitter: investors, nationals transferring money to home countries, individuals who sponsor for activities of government and non government organizations in foreign countries, etc.
 - Beneficiary who receives money assigned by the applicant.
 - Remitting bank which is in the country the applicant assigned.
- Intermediary bank or paying bank which is the agent bank of remitting bank in the country where the beneficiary lives.





(Textbook of International Payment)

Figure 1.1: Process of Remittance

- (1) The beneficiary conducts the obligation which is assigned in the agreement, contract or negotiation.
 - (2) The applicant orders remittance to the remitting bank.

- (3) Remitting bank records debit in foreign currency account of the applicant.
- (4) Remitting bank issues a payment order to the paying bank in the beneficiary's country.
 - (5) Paying bank records debit in the account of the remitting bank.
 - (6) Paying bank records credit in the account of the beneficiary.

Remittance procedure is quite simple, prompt and convenient. The bank plays an intermediary role; the speed of remittance depends on the capacity or goodwill of the applicant or the importer in transactional relation. Therefore, this term does not guarantee the interest of the beneficiary or the exporter because the speed of payment is often slow.

♣ *Applicable situations*

In remittance, the level of security in payment is quite low, so it should be used in trustable relation or in small scale. Remittance is applicable in non – commercial payment such as foreign service supply, overseas national currency exchange, foreign investments, government and non-government organizations, non – refundable aid, interest payment on bank loan, dividend, coupon, compensation, etc.

♣ Requirements

Legal documents for remittance requirement must be presented to the bank for checking. Payment order must be filled with the content regulated by the bank: type of remitting currency, name and address or account number of the beneficiary, intermediary bank, details of payment, charge in Vietnam or outside Vietnam and the one who is responsible for the fee or commitment.

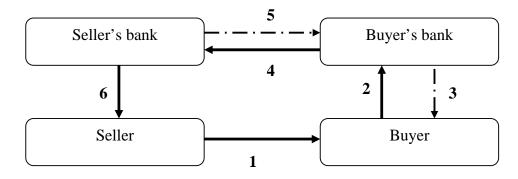
1.2.1.2. Open account

♣ Definition

Open account is the method of payment in which the seller after delivery will open an account in the form of book to record the liabilities of the buyer. Payment will be made periodically (monthly, quarterly, yearly) based on recording per book.

This is a method of payment without bank participation as an account opener and receiving money for the seller. There are only two parties taking part in this method of payment: the seller and the buyer. Under this method, unilateral account is acceptable but bilateral account.

♣ Process



(Textbook of International Payment)

Figure 1.2: Process of Open Account

- (1) The seller supplies the services and opens a ledger to record the liabilities of the buyer.
 - (2) The buyer orders his bank to remit to make a periodical payment.
 - (3) The buyer's bank records debit in the account of the buyer.
 - (4) The buyer's bank issues payment order to the seller's bank.
 - (5) The seller's bank records debit in the account of the buyer's bank.
 - (6) The seller's bank records credit in the account of the seller's bank.
 - **4** Applicable situations

Obviously, in the term of open account, the seller receives no additional security for the buyer's payment obligations, thus, the buyer is the most advantageous and the seller burdens the highest risk. Therefore, this term should be applied when the seller is confident that the buyer will accept shipment and pay at the agreed time (usually in 30 days or 90 days). Open account method should be applied in non-commercial payment such as freight shipping charges, insurance premiums, and commissions in brokerage, trust, loan interest, and income from investments. Besides, it is applicable in method of barter, consignment, dealer business and many times a specified period

4 Requirements

There has been no international law or custom and practice ICC which adjusts method of open account. When applying, national law of the seller's country should be applied or the agreement between the two banks and the agent bank should be followed, if any.

Moreover, the difference between the price recorded in the ledger and the price at sight payment is the profit in the periodical payment under the agreed interest. The difference between the price recorded in the ledger and the amount of real payment should be noticed in order to give a satisfactory solution.

1.2.2. Collection

Collection is a method of payment in which the seller after delivering goods or services will entrust the related documents to his bank to collect money from the buyer under the term of the contract.

According to Article 2, URC 522, "Collection" means the handling by banks of documents as defined in Sub – article 2 in accordance with instruction received, in order to obtain payment and/or acceptance; or deliver documents against payment and/or against acceptance; or deliver documents on other terms and conditions.

URC 522 1995 is the latest version of the legal document which adjusts the collection method.

According to Article 3, URC 522, parties involved in the collection term include:

- The principal who is the party entrusting the handling of a collection to a bank;
- The remitting bank which is the bank to which the principal has entrusted the handling of a collection
- The collecting bank which is any bank, other than the remitting bank, involved in processing the collection
- The presenting bank which is the collecting bank making presentation to the drawee

• The drawee is the one to whom presentation is to be made in accordance with the collection instruction

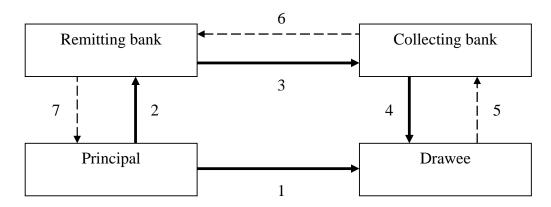
Based on documentary aspect, this term is divided into two main groups: clean collection and documentary collection.

1.2.2.1. Clean collection

♣ Definition

According to Sub – article 2c, URC 522, clean collection means collection of financial documents not accompanied by commercial documents (often bill of exchange, promissory note, international check and financial invoice).

♣ Process



(Textbook of International Payment)

Figure 1.3: Process of Clean Collection

- (1) The principal supplies the goods or services and directly sends documents to the importer
- (2) The principal signs a draft or an invoice to the importer and write collection instruction to entrust his bank to collect money from the importer
- (3) Remitting bank sends the entrustment to the collecting bank by collection letter and encloses the draft or invoice required by this bank and collected from the importer
- (4) Collecting bank presents the draft or invoice to the importer in order to require the payment
 - (5) The importer presents the payment which is remitted to remitting bank
 - (6) Collecting bank records credit in the account of remitting bank
 - (7) Remitting bank records credit in the account of the principal

♣ *Applicable situations*

Since the possibility of payment depends on the goodwill of the drawee, the principal and the drawee should have a well-established relationship. The bank only plays an intermediary role to collect money for the customer, however, it is not the bank's responsibility if the payment is not full or due. Therefore, this method of payment contains potential risks to the exporter or the principal. Clean collection is not preferred in commercial payment because it does not ensure the interest of the exporter and the importer can receive the goods or services and does not make payment or delay payment.

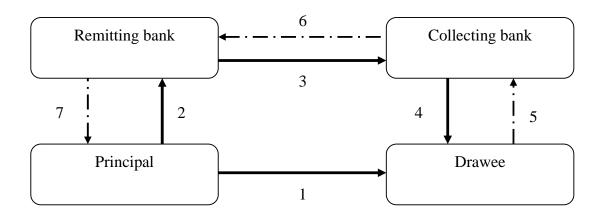
1.2.2.2. Documentary collection

♣ Definition

Documentary collection is an instruction from an exporter (seller or supplier) to a remitting bank (usually the exporter's local bank) to collect payment immediately or at a future date from an importer (buyer) against delivery of the relevant commercial document.

Documentary collections involve using a draft that requires the importer to pay the face amount either at sight (D/P) or on a specified date (D/A). The draft gives instructions that specify the documents required for the transfer of title to the goods.

Process



(Textbook of International Payment)

Figure 1.4: Process of Documentary Collection

- (1) Shipment
- (2) The principal prepares the documents which are sent to remitting bank together with their instructions.
- (3) Remitting bank checks the seller's instructions whether they conform to enclosed documents or not. They are sent to the collection bank chosen by the drawee, together with instructions.
- (4) The drawee is advised about the collection and required to present collection terms: payment or acceptance or other terms and conditions. The drawee has the right to inspect the document whether they are all included as agreed with the seller and appear to conform to the agreed terms or not.
 - (5) The drawee accepts or refuses payment.
 - (6) Acceptance or refusal is noticed by collecting bank.
 - (7) Acceptance or refusal is noticed by remitting bank.
 - **♣** *Notes in using Documentary collection*

The general advantage with this method of payment is that the importer knows that the goods have been shipped and can examine the related documents before payment or acceptance. The exporter retains the titles of the goods until the importer either presents the payment at sight or accepts the draft to incur a legal obligation in order to pay at a specified later date. Although the banks control the flow of documents, they neither verify the documents nor take any risks. The collection contains no guarantee on behalf of the banks which act only upon the instruction of the seller, compared to trading on remittance or open account payment term.

In the procedure of documentary collection preparation, the exporter prepares commercial documents stipulated in the commercial contract in types, volume of each type and each documentary requirement. The exporter signs the bill of exchange or invoice which does not require money from the importer. The beneficiary is either the remitting bank or the signee of the bill of exchange, in this case, endorsement of the signee for collection is required, which is the legal basis the remitting bank can collect money.

1.2.3. Documentary credit

1.2.3.1. Definition

A Documentary Credit, or a Letter of Credit (L/C), is a commitment by a bank on behalf of the buyer that payment will be made to the exporter provided that the terms and conditions have been met, as verified through the presentation of all required documents(Trade Finance Guide released in 2007 by the U.S. Department of Commerce)

Credit means any agreement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honor a complying presentation (Article 2, UCP600)

Letter of credit is subjected by the Uniform Customs and Practice for Documentary Credits (UCP) issued by International Chamber of Commerce (ICC). Besides, other international regulations such as eUCP, ISBP 681, URR525 and ISP98 along with international treaties related to international trade and other legal documents concerning international trade have a considerable influence on governing L/C.

- *The UCP* (Uniform Customs and Practice for Documentary Credit), which is the set of rules on the issuance and use of letter of credit, is utilized by bankers and commercial parties in trade finance. The current version is the UCP600, formally commenced on July 1st, 2007.
- *eUCP* (The Supplement to the UCP for Documentary Credits for Electronic Presentation) *supplements The UCP in order to accommodate* presentation of electronic records alone or in combination with paper documents. (Article e1, eUCP). The latest version eUCP 1.1, which consists 12 articles, came into effect on July 1st, 2007 in order to support the commencement of UCP 600.
- *ISBP* is International Standard Banking Practice approved by the ICC Banking Commission in 2002. ISBP 681 was repaired to give detailed explanation to UCP 600 in practice.
- *ISP* (International Standby L/C practice) offers a precise and detailed framework to deal with standby L/C.

• *URR* (Uniform Rules for Bank-to-Bank Reimbursement under Documentary Credits) regulates the reimbursement between banks regarding letter of credit. The latest version URR 725 came into effect on October 1st, 2008.

Parties involved in Letter of Credit (L/C) transaction:

L/C applicant: Applicant means the party on whose request the credit is issued (Article 2 UCP 600)

L/C beneficiary: Beneficiary means the party in whose favor a credit is issued. (Article 2 UCP 600).

Issuing bank: Issuing Bank means the bank that issues a credit at the request of an applicant or on its own behalf. (Article 2 UCP 600).

Advising bank: Advising Bank means the bank that advises the credit at the request of the Issuing Bank. (Article 2 UCP 600)

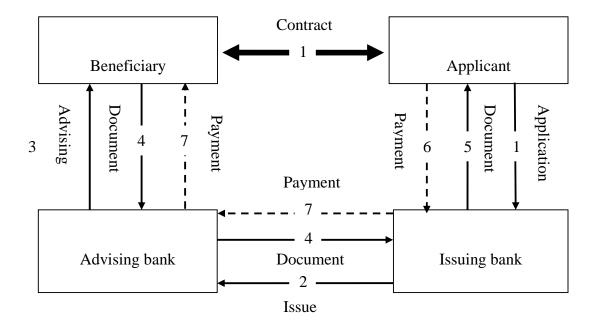
Confirming bank: Confirmation means a definite undertaking of the Confirming bank, in addition to that of the Issuing bank, to honor or negotiate a complying presentation. Confirming Bank is the bank adding its confirmation to a credit upon the issuing bank's authorization or request (Article 2 UCP 600)

Nominated bank: Nominated Bank means the bank with which the credit is available or any bank in the case of a credit available with any bank. (Article 2 UCP 600)

Negotiating bank: the bank examines the drafts and/or documents presented by the L/C beneficiary and gives values to such drafts and/or documents. Negotiation could be in the form of purchasing or agreeing to purchase the drafts and/or documents presented.

Reimbursing bank: the paying agent assigned by the Issuing Bank to honour claims submitted by the nominated or negotiating bank

1.2.3.2. Process



(The Text book of International Payment)

Figure 1.5: Process of Documentary Credit

- (1) Contract is signed. Importer applies to a bank for issuance of letter of credit.
- (2) Issuing bank issues L/C, sending it to the advising bank by letter, fax or mostly nowadays as SWIFT message. The advising bank assesses the L/C contents and determines where it should be made payable (honored).
- (3) The advising bank advises L/C and transfers the original L/C to the seller. Seller checks the terms of the L/C against the agreed terms of payment to make sure that all the details can be met at a later stage when the documents are to be produced and delivered.
- (4) After shipment, the seller presents documents for payment to the issuing bank. The documents are forwarded through the advising bank to check their conformity with the terms of the L/C.
- (5) The issuing bank will also check the documents and advise the buyer the result.
- (6) The buyer has to consider any discrepancies and decides whether to accept or not.
 - (7) The issuing bank advises the document acceptance or refusal.

1.2.3.3. Types of L/C

In general, L/C is often divided into two main types:

- ♣ Stand-by Letter of Credit: standby L/Cs is often issued by banks instead of guarantees in some countries, especially in United States where banks are prohibited from issuing guarantees. It is designed to protect the beneficiary in the event of a non-performance or not proper performance of the other party to the underlying contract.
- **♣ Commercial L/C**: Commercial L/C are often referred to "documentary credit" and accepted by banks upon required documents. These are several types of commercial L/C frequently used in international payment:
- o **Irrevocable L/C** may not be changed or cancelled unless both buyer and seller agree.
- Confirmed Letter of Credit is guaranteed by another bank, confirms to agree to pay or accept drafts against the requirement of the issuing bank.

If an L/C is not confirmed, the exporter is subject to the payment risk of the foreign bank and the political risk of the importing country.

- o **Revolving Letter of Credit** is a single L/C that covers multiple-shipments over a long period.
- o **Transferable Letter of Credit** is an irrevocable L/C with only two successive beneficiaries. In this arrangement, the first beneficiary can assign part or whole of the L/C amount to a second beneficiary through the advising bank.
- Back-to-back Letter of Credit: In an arrangement, a L/C is served as the collateral for another to require another L/C issuance for another beneficiary.
 The latter L/C issued is called back – to – back L/C.
- o **Red Clause Letter of Credit** is a L/C for advance payment before shipment. This advance is given to the beneficiary for purchase of raw material or processing or packing of the goods to be exported.
- o **Reciprocal L/C** is a L/C effective only when its reciprocal L/C was opened.
- o **Deferred payment** is an irrevocable L/C which guarantees payment performance at a specified time regulated in the L/C.

1.2.3.4. Notes in using Documentary credits

L/C is the method of payment which is relatively safe for the exporter and importer. The importer should prepare and hand in L/C order which is under the form of international standard. L/C must be complied with the basic contract and its content. L/C is subjected by UCP600, ISBP 681, eUCP1.1 and URR 525. In short, L/C with sufficient content comparing with basic contract and applied rule will secure the interest of both importer and exporter.

1.3. Disputes in international payment

1.3.1. Concept of disputes in international payment

International methods of payment can be considered as a part of international trade, so disputes in international trade should be explained in order to understand disputes in methods of international payment. Trading dispute is the conflict or disagreement about right and obligation between parties in process of commercial activities.

Payment plays a decisive factor in a specified commercial activity; therefore disputes in international payment are trading disputes of which factors relate to international payment. As mentioned before, methods of international payment are taken in concern, so disputes in international payment will be thoroughly researched.

1.3.2. Typical disputes in international payment

1.3.2.1. Typical disputes related to obligation of the parties involving in international payment

♣ The buyer violates the obligation

In remittance and open account method, as the seller deliver the goods before payment, the buyer often does not make payment or payment are not fulfilled, which violates the contract.

In application of collection term, since the buyer also received the documents for goods reception, late payment or unfulfilled payment can be happened.

In L/C term, the buyer often does not open L/C, open L/C late or with wrong terms or conditions, or intervene in the payment between issuing bank and the seller, which is considered violating the contract. If the buyer does not open L/C, the seller

will not deliver the goods, thus, the buyer is considered not to conduct to the contract.

If the contract does not regulate clearly about the maturity of payment or opening L/C, the buyer may make late payment or L/C may be opened after maturity, therefore, dispute will arise. It is possible that opening L/C late does not violate this term as the contract only regulates responsibility of not conducting the terms of the contract.

In the case of the form of opening L/C not complied with the terms in L/C, the buyer violated the regulation of the contract, so the seller has the right to sue the buyer. Once the contract assigns payment by L/C, time of opening L/C, validity of L/C, required documents, banks involved, etc will be regulated. If the buyer add several terms that are not specified in the contract in L/C, the buyer does not violate the contract and the seller only considers to agree with that new terms or not and requires the buyer to amend if he does not agree. If the buyer does not make amendment, he will be considered to violate the contract.

Moreover, disputes can arise when the buyer requires the bank to suspend the payment. If the seller does not deliver goods or deliver false goods but prepares adequate documents which persuade the bank make payment, the buyer will require the bank to suspend the payment in order to protect his interest. The buyer must obtain the evidence of the fraud to require the Court to order the bank to suspend the payment or to sue the bank to stop the payment.

♣ The seller violates the obligation

When participating in the contract, terms and conditions regulates required documents for the buyer to receive the goods, therefore, once the seller presents adequate documents, he is entitled for reception. However, the documents which are faked or provide inaccurate information of the goods in the contract will make a loss for the buyer. Documents for reception must be documents to prove the scheduled delivery of the seller as well as the ownership of the goods to the carrier. Disputes of presentation of required documents can arise from insufficient set of documents or impossibility of document preparation.

If documents are adequate for L/C but faked, it means that the seller did not deliver or deliver false goods but prepared the documents for payment. In reality, the buyer does not acknowledge the information of the partner which is a fraudulent company. When documents for L/C are sufficient, the bank will make payment, the only solution to prevent the payment is the suspending order of the Court. However, this will work if the bank has not made payment yet; otherwise, the buyer has the right to complain or bring to the Court or Arbitration Tribunal. The buyer had better not accept any L/C of which presentation depends on the buyer otherwise the seller will suffer a loss.

In another case, the seller is not able to prepare sufficient documents due to the acceptance of the L/C of which terms are controlled by the buyer. In fact, the inexperienced profession or market impact may force the seller to accept the L/C in which require documents are issued or controlled by the buyer. If the buyer does not cooperate or not provide the documents or not receive the goods, the seller will not prepare adequate documents for L/C and not receive money. Disputes will arise if the buyer does not negotiate with the seller about this requirement.

♣ Commercial banks violate the obligation

The bank plays a crucial role in international payment in order to ensure the process of payment to take place as agreed. The bank may fail to fulfil its obligation in methods of payment, which affects the process of contract performance.

Mistakes in remitting money can be made because *remittance method* is used in trustable business, mistakes which may not be thoroughly checked lead to disputes.

In collection and L/C method, responsibility of the bank is checking the documents presented by the buyer for good reception. In case of insufficient documents, the bank refuses payment and holds documents for determination of the presenter. If those documents are lost or refused but the bank still delivers to the buyer, the bank will lose the right for suing. If the bank does not fully inform or discover discrepancies compared to L/C, the buyer will accept the payment and the buyer will have to suffer a loss if inadequate goods or defective goods are provided.

Regarding specific banks in L/C method:

Issuing bank violates the obligation if opening L/C at the date different from regulated in L/C opening order or not recognizing discrepancies of the documents or not fully informing all the discrepancies, or not holding the documents for payment or violating the maturity date of checking documents.

If L/C without certificates of quantity or volume, etc is issued, the buyer cannot receive the goods in full or defective goods and he can sue the seller in the contract or the bank for lack of documents. If the lack of documents prevents the entrance of the goods, the bank must compensate the buyer for the lost. If the bank is late for opening L/C, which affects the seller, the seller can sue the buyer for compensation and the buyer will sue the bank who takes responsibility.

Advising bank can enter in the disputes if L/C is advised inaccurately or issuing bank's order is not properly implemented. If the bank receives an L/C but cannot understand and still informs L/C to the exporter, the seller cannot learn clearly the L/C and believes the bank, then goods are still delivered. Since the seller cannot receive money from the issuing bank, he can sue the bank for not performing the obligation.

Disputes can arise between exporter and advising bank when the bank advises an amendment of L/C received from the importer, which should have been received from the issuing bank. Since the exporter still delivers the goods, he and cannot receive money due to the discrepancy of the documents. This kind of case is often caused by the importer and advising bank which defrauded but the issuing bank is involved in responsibility of the seller's loss.

In another case, issuing bank assigns advising bank to make payment, confirm L/C or discount the set of document of the exporter if adequate. Issuing bank will reimburse to the advising bank after the reception of sufficient documents or reimbursement order through TTR provided that advising bank confirms documents to be complied with. The different opinions of adequate set of documents between issuing bank and advising bank cause disputes. The event of defining if the discrepancies are serious is challenging. The banks should check the

appearance of the documents under L/C regulation and if not appropriate, payment or discount should be considered.

1.3.2.2. Disputes related to documents for presentation

Disputes related to documents for presentation often occur in *documentary* collection and documentary credit.

4 *Due to the conflict of documents*

In documentary collection, the seller fails to prepare documents regulated in the contract about types, volume and other requirements. If the documents for presentation to the bank are insufficient or there are discrepancies in documents prepared, the buyer will not make payment.

In documentary credit, issuing bank must make a decision to accept or refuse documents of the importer within 7 banking days from the next day of document reception. All kinds of documents which are prepared under the requirement of L/C must comply with terms and conditions of L/C and not contrast to other documents. However, such mistakes often occur.

♣ *Due to the misunderstanding of non-document terms*

Non-document terms are conditions which are not required and are not obligated to be checked by the bank. However, the event of defining a term whether is non-documentary or not leads to disputes between parties. Beneficiary indicates that the presentation of documents which are not mentioned in the L/C depends on the beneficiary and the bank has no right to refuse payment. In the other hand, L/C applicant argues that payment by L/C term requires the presentation of documents which are checked by banks. Sometimes, parties take advantage of the vagueness between "non-document" and "documents which are not uniformed" to be the excuse of refusal of payment.

Due to Bill of Lading

Bill of lading is required to present under L/C should be clean, and discharged. In accordance with ICC, most of disputes related to bill of lading are the inappropriate performance of the capacity of the signee. Bill of lading must specify "shipped on board", which is complied with the shipment with FOB, CIF; therefore this is the reason for the misunderstanding in the form of multimodal B/L usage.

B/L must specify the shipment by the vessel assigned by L/C. This requirement makes difficulty in partial shipment because B/L does not obtain this option. In practice of international payment by L/C, disputes arise from the conflict between B/L and L/C about loading and unloading, transportation or form of transportation.

Due to commercial invoice

Commercial invoice lists clearly the goods delivered to the importer along with the quality, quantity, unit, weight, and price. In practice, value of invoice and description of the goods in the invoice are the situations arising disputes. The amount of money can be 100% of value of the invoice or more.

If the amount written in the invoice exceeds the value of L/C, the bank has the right to refuse; otherwise, the exceeding amount will be transferred to collection term. In contrast, if the bank refuses to make payment and the buyer does not cooperate, disputes will occur due to the exceeding amount. Description of the goods must be complied with the one in L/C. A little difference between them can cause the bank refuse to pay, which leads to dispute. If the description of the goods mentions temporary invoice, commercial invoice must mentions it, too and the bank does not need to check this because that kind of invoice is not allowed to enclose to L/C.

♣ Due to insurance document

L/C requires presentation of insurance if the buyer is responsible for the purchase of exports such as trading with CIF condition or CIP condition. Cover notices which are prepared by insurance brokers are not accepted by banks since these papers are not contract or certificate of insurance. Value of insurance includes at least CIF or CIP price of goods plus 10% when specified in CIF or CIP price. Practical international payment in Vietnam has shown that disputes related to insurance document arise because insurance documents do not include the risk regulated in L/C; type of currency in other insurance documents is different from the one in L/C; insurance is effective after the date written in B/L or other documents of transportation. Recently, Vietnamese businesses have become intermediaries to purchase in a country and export to another country. The

inexperience in insurance made them lost in international payment due to mistaken insurance when presenting L/C

1.3.3. Resolution of disputes in methods of international payment

1.3.3.1. Meaning of dispute resolution in international payment

The mounting development of international commerce has facilitated international payment not only in returns but also scale and quality. Credit institutions in Vietnam have coped with the challenge of choosing and applying effectively methods of payment of international trade transactions. According to recent statistics, in 2009, 17 of 30 suitcases have foreign factors and most of the plaintiffs are Vietnamese businesses. The analysis of VIAC shows that our businesses are inexperienced in performing contracts which are almost related to international payment. Most of disputes arise as L/Cs are not opened at maturity, the goods are not delivered or delivered with low quality or unclear origin or false related to technological profession of foreign trade. Therefore, the dispute resolution is a decisive step that supports businesses to acknowledge the legal system as well as gain experience in international transaction. Legal framework of Vietnam can be enhanced to keep pace with the development of the world as well as meet the demand of the mounting complexity of foreign trade in general and international payment in particular.

1.3.3.2. Resolution of disputes in international payment

There are four popular methods of dispute resolution: negotiation, conciliation, arbitration and litigation that are categorized in two types: *resolution with jurisdiction and without jurisdiction*. Businesses, especially commercial banks, choose negotiation or conciliation for the security of their reputation. Arbitration has been preferred by the business for the outstanding advantages compared with the Court.

♣ Resolution of disputes in methods of international payment without jurisdiction

Negotiation

Negotiation is the form of resolution of disputes which parties themselves discuss, settle and handle disagreements in order to solve the dispute without any

support or sentence of the third party. Negotiation which occurs the earliest, the most common and popular form is widely applied by parties so as to resolve any disputes arisen in society, especially in commercial activities. The implementation of negotiation consequence entirely depends on the voluntary action of parties and is not secured by any legal system.

Negotiation for resolution of disputes is conducted in two main kinds: direct negotiation, indirect negotiation or their combination. *Direct negotiation* is the form that two parties directly see each other to discuss and suggest solutions in order to avoid disputes. *Indirect negotiation* is the form that parties send transactional documents presenting the opinion and requirement so as to minimize disputes.

The advantage of direct negotiation is that through direct meetings, parities quickly learn opinions or goodwill of each other, which facilitates the speed of the negotiation so that the most satisfactory solution can be settled to solve the disputes.

Negotiation offers the convenience, simplicity, rapidity, flexibility, efficiency with low cost. Besides, negotiation protects the reputation and secret for parities involved in disputes. Negotiating skill and behaviour are crucial factors to decide the success of negotiation. If business can harmonize and sympathy to each other, the success of negotiation may avoid damages and strengthen the business relation, otherwise, the consequence of this form will land into an impasse.

Conciliation

Conciliation is the form of resolution of disputes that includes the third party as a mediatory who is chosen by both parties and supports and convinces parties to come to a solution in order to eliminate disputes. In the process of conciliation, the conciliator takes his effort to present the most beautiful perspectives in order to reconcile different points of view and turn the dispute into conciliation and conciliator will assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute. The conciliator has no capacity to impose a settlement but proposes solutions to the parties.

There are two basic types of conciliation: ad hoc conciliation and institution conciliation. *Ad hoc conciliation* is the form that the organization and supervision are decided by the two parties without any support of organizations. *The United*

Nations Commission on International Trade Law Conciliation Rules – UNCITRAL approved in 1980 and Modal Law on International Commercial Arbitration of UNCITRAL in 1976 are the basic regulations of ad hoc conciliation. Institution conciliation is the form that an organization or a professional centre of arbitration will supervise and carry out. The procedure of institution conciliation is stipulated by International Chamber of Commerce Alternative Dispute Resolution 2001 (ICC ADR 2001) and Conciliation Rules of Vietnam International Arbitration Centre (Sep 10th, 2007).

The advantage of conciliation is that the parties are free to choose the conciliators recommended by the Centre or others. Conciliators must be complied with the rules of independence, objectiveness, justice and respect the agreement of the parties as well as the uniform custom or practice of each party, the publicity between the conciliator and the parties, the obligation of confidentiality between the conciliator and the parties and between the parties and other organizations or individuals. The parties and conciliator actively propose resolutions for the disputes; the parties commit not to conduct any action of arbitration or Court for the dispute in the process of conciliation.

After the completion of the conciliation, the parties finishing the dispute and are bound by the agreement of conciliation signed by the provision of Civil Law. In the other hand, the success of conciliation depends on the goodwill and cooperation of the parties. The unwilling party can take advantage of the conciliation to delay the performance of the obligation. Moreover, in the process of conciliation, the supply of business information can affect the reputation as well as business strategy and conciliation fee is much more expensive than negotiation.

♣ Resolution of disputes in methods of international payment with jurisdiction

> Arbitration

Arbitration is a private dispute resolution process based on the agreement of both parties to refer their dispute to a neutral party for hearing and decision. The arbitration is conducted outside the formality and publicity of law of the Court and generally binds upon the parties with limited right of appeal or review. Arbitration can be conducted under either self-administered ad hoc or institutional procedures.

Ad hoc arbitration is a proceeding that is not administered by others and requires the parties to make their own arrangements for selection of arbitrators and for designation of rules, applicable law, procedures and administrative support. Provided that the parties approach the arbitration in a spirit of cooperation, ad hoc proceedings can be more flexible, cheaper and faster than an administered proceeding. The primary advantage of ad hoc arbitration is flexibility, which enables the parties to decide upon the dispute resolution procedure. This necessarily requires a greater degree of effort, co-operation and expertise of the parties in determination of the arbitration rules. It is also less expensive than *institutional arbitration*. In ad hoc arbitration, parties negotiate and settle fees with the arbitrators directly, while in institutional arbitration, the parties pay arbitrators' fees as stipulated by the institution.

On the other hand, parties ask an arbitration centre to monitor the process of arbitration and solve certain difficulties as arbitration administration. The decision of the arbitration tribunal is ensured about arrangement or noticed at some points by arbitration administration. The advice of arbitration tribunal or arbitration fee is also monitored by this group of arbitrators.

Litigation

In litigation, national Court is required to judge and make a decision on the basis of the content of the lawsuit. However, the Court also provide extremely useful services such as ordering interim measures, assigning technological experts in certain jurisdictions, conducting conciliation, which is considered a first step for an official proceeding.

Court proceeding is applicable in disputes which relates to parties with similar nationality. Disputes will be resolved in the Court of the nation where the parties are its residents. However, if neither of parties does not inhabit in the same place, the local Court will be the first issue to be agreed and the same thing with the regulation of international disputes but the competence of the Court. Generally, the

resolution of dispute by the third nation is not preferred due to the different law system, difficulty of translation, the publicity of litigation.

Interim and urgent measure can be issued by the national Court for the following purposes: ensure the subject of the dispute not to change before the promulgation and implementation of the final decision of the case; regulate the behaviour of parties and their relation in proceeding; preserve and manage the evidence. Arbitrator has no entity to apply interim measure such as seizure the property or order the third party to attend the hearing. Therefore, the national Court co-operates the arbitration tribunal and the parties involved in arbitration through the application of the interim measure.

Technical inspection is one of the urgent measures applied by the Court. The expert appointment before Court or arbitration proceeding is beneficiary for parties because the mission of an expert is the advice of technology, condition of the subject of the dispute, etc.

Several law systems allow the judge to *reconcile* the dispute, however, in other law system, conciliation is required before litigation and in case the conciliation is successful, the agreement of the case will be record as a binding legal text.

This is a table which compare the pros and cons between arbitration and litigation:

| Criteria | Litigation | Arbitration |
|---------------------|-----------------------------|------------------------------------|
| Final jurisdiction | The decision of the Court | The decision of the arbitrators is |
| r mai jui isuiction | can be appealed | final jurisdiction |
| Profession of | The judge is not as | Arbitrators are professors who |
| international trade | professional as arbitrators | acknowledge about the profession |
| international trade | | and law on international trade |
| | Low and bounded by | High and the parities can choose |
| Elovibility | national regulation; the | the arbitrator |
| Flexibility | parties can not choose the | |
| | judge | |
| Trial time | Can be lengthened | Quick |
| Enforcement | Ensured | Enforce to implement through the |
| Emorcement | | judge |
| Security | Public trial | Closed trial |
| | Difficult (through | Highly probable thank to |
| International | bilateral or multilateral | international conventions, |
| recognition | legal assistance | especially, New York Convention |
| | agreements or strict rules) | 1958 (120 members) |
| | The judge can be | Completely neutral |
| Neutrality | governed by politics and | |
| | uses native language, etc. | |
| Fees | Low | High |

(Arbitration and ADR methods, p.79)

Table 1.1: Comparison between Arbitration and Litigation

CHAPTER 2: SITUATION OF DISPUTES IN INTERNATIONAL PAYMENT IN VIETNAM

2.1. Situation of international payment in Vietnam

2.1.1. Shortcomings in system of international payment in Vietnam

The variety of methods of payment causes specified risk to export and import businesses or banks in conducting payment of international transactions. Recent statistics show 60% - 70% of documents presented under L/C were refused by the bank at the first issuance due to mistakes which caused damages of time and money for businesses and each time they spent USD50-100 repairing an L/C. Businesses in Vietnam are inexperienced in carefully checking documents in international payment. "The weakness of Vietnamese businesses is not concentrating on professional factors during the negotiation of the contract with the foreign partner" said Mrs. Bui Tuong Minh Anh, International payment Director of HSBC Bank.

Another adversity in international payment is transportation. Most of L/C crimes are related to transportation (the event of delivery or reception). When chartering ships for export or import, almost companies do not acknowledge the coordinate and information of the cargo. In many cases, invoice presented is refused by the carrier with the reason of the invoice not issued by the shipping company while the cargo was shipped to another vessel due to technical problems. In another case between VIB and an experienced company, the business issued purchasing L/C and presented document perfectly but was refused when receiving the cargo which shipped by the carrier's agent in the B/L.

In the opening market, export and import activities depend on brokerage in which banks play an important role. Low rate of deception in international payment, lack of trading opportunities do not facilitate the methods of international payment. However, in the process of global economic integration, the volume of international trade has been augmenting in both directions; therefore, businesses can directly negotiate with the supplier in the host country. This is a great advantage for Vietnamese enterprises to reduce cost and improve business efficiency. However, recently the export and import enterprises have encountered plenty of fraud in

international payment and the complexity of the situations is mounting, nevertheless, almost businesses are not aware of this danger.

According to Mrs. Dang Thi Phuong Diem, Trade Financing Director of VIB, trading through well-known intermediaries or brokers brings less risks but in fact, a great deal of companies have engaged trade with small suppliers or intermediaries who are able to trade as come-and-go customers; therefore, businesses are easy to incur trading risks. Regarding the case that an export and import company opened L/C for payment at Vietcombank Haiphong, payment obligation was completed with fulfilled documents from both sides; however, after the effort of contacting the shipping company, the business paid USD2.5million due to the disappearance of the shipping company.

2.1.2. Innovation in international payment in Vietnam

Globalization has made international payment between sellers and buyers who live in long distance faster, more convenient and safer. However, Vietnamese citizens have not changed the habit of visible consumption. Rate of cash payment accounts 14% in Vietnam while it is 5-7% in the world. Recently, commercial banks have offered variety of products and service of non-cash payment such as Internet banking, mobile banking, POS payment, e-wallet, etc. Since 2009, the State Bank of Vietnam has allowed six businesses which are not credit institutions to experimentally conduct payment term, "e-wallet": M-service Corporation, Mobivi Corporation, VNPAY Corporation, Vietnam Union Online Service Corporation, Smartlink card joint stock company, VinaPay Corporation. According to the statistics of Payment Department, State Bank of Vietnam, there have been 70,000 ewallets opened till 2009. Transactional value of e-wallet accounts 5 billion in the fourth quarter of 2009 which 33% as much as the second quarter of 2009. Till the end of 2009, there are 9 commercial banks conducting e-wallet, 110 organizations accepting payment by e-wallet which is 1.5 folded than the end of June in 2009. Electronic payment in general and e-wallet in particular have started to develop in Vietnam but still not commensurate with the potential. There are several shortcomings in performing e-payment, especially e-wallet such as lack of policies which are incentive to promote the development of e-wallet, the inconsistence of technical infrastructure, incomplete customer services, the limited knowledge of consumers of e-payment, risk of e-payment, consumers' habit of cash payment usage, etc.

BIDV Export Pack 2011 is a package of products supplying services to customers in the process of export payment with the incentives of cost of international payment, discount rate, trade of foreign exchange, insurance, and consultancy services. With export payment service by L/C, collection, remittance (TTR), businesses can ensure the solvency; reduce conflicts between exporters and importers. They are also offered variety of incentives such as free of remittance fee, fee of notice of L/C, fee of L/C amendment as well as 50% discount of export document payment. In addition, businesses are supported on preparation of export document, checking documents via email, fax in order to shorten the time for making documents for payment. In particular, the service also provides information of foreign partners in order to support enterprises in the selection of business partner and the most suitable method of payment. BIDV Export Pack 2011 helps export businesses strictly limit risk of exchange rate and interest rate through service "Trading foreign currencies and derivative products"

2.1.3. Situation of dispute resolution in international payment in Vietnam

There are several methods of dispute resolution in international payment such as negotiation, conciliation, arbitration or litigation. Businesses take more concern about trading reputation more than the aggressiveness, so they prefer negotiation or mediation to arbitration or litigation. Nevertheless, the two methods in peace crucially depend on the goodwill of the partners, which are not usually frequent. In the other hand, since Vietnamese businesses have not concentrated on dispute resolution and possibility of disputes in international payment, they do not negotiate on the form or organizations for dispute resolution. As a result, when disputes arise, they are not able to choose arbitration because arbitrators will not have the competence of dispute resolution unless this was previously negotiated in the contract while the Court absolutely acquire the competence of dispute resolution but in public, which conflicts with the prerequisite objectives of businesses, reputation and creditworthiness.

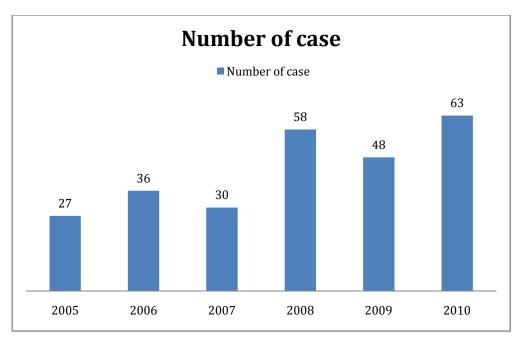


(Lecture note – Lecturer Tran Thanh Tam)

Figure 2.1: Priority of selections of dispute resolutions in Vietnam

In the process of integration, Vietnamese businesses have to cope with a great deal of commercial disputes with increasingly complex content and they spend money, time and effort solving conflicts but several businesses suffer a loss due to inexperience and lack of knowledge of international law. In accordance with Professor Nguyen Minh Chi, President of VIAC, commercial arbitration will be their most effective solution with three reasons: time and expense saving due to the neutrality of the arbitrator's decision without appeal; the security of the terms in the contract or issues in process of resolution which ensures the reputation of businesses and international recognition of arbitrator's decision which benefits disputes that have foreign factors. However, it is acknowledge that this new field of activity reveal limitation in resolution of disputes such as incomplete legal system of dispute resolution, the vagueness of economic, intellectual property, resource law, grudging application of administrative method in long-running disputes which cannot be completely solved, etc. Professor Nguyen Minh Chi admitted that a few businesses solved the disputes by arbitration because they have not realized the importance of arbitration and not had strong belief in non-governmental organizations. However, in the future, enterprises will use arbitration to handle

trading disputes because in deep integration, foreign partners are in habit of choosing arbitration as an organization of dispute resolution. Planning and Investment vice Minister indicates that Vietnam has completed several legal documents which are sufficient for settlement of disputes involving foreign factors in order to create an attractive investment environment and ensure the interests of investors. The following chart will prove the mounting influence of arbitration in businesses' belief in dispute resolution:



(Statistics from VIAC)

Figure 2.2: Number of disputes in VIAC over 5-year-period from 2005 to 2010

2.2. Typical disputes in international payment in Vietnam

Note: Names of the parties involving the disputes are not revealed and denoted "..." or letters due to the security of businesses' reputation.

2.2.1. Dispute in loan contract in remittance method (case supplier required to be kept in secret)

2.2.1.1. *Case summary*

On July 26th, 2011, JICA specialized credit Management – Yen Son district signed a JPY loan contract No 25/HD – XD with company A at bank X based on the Loan Agreement No. VNXIII – 8 signed dated March 31st, 2006 for specialized

credit program No. 5 between Vietnamese government and Japanese International Cooperation Agency – JICA.

Based on Circular No. 132/2008/TT-BTC of Ministry of Finance guiding the mechanism for managing JICA loan for specialized credit program;

Based on the dispatch No. 708/SKH-BQL dated September 26th, 2011 of Department of Planning and Investment – Tuyen Quang province on the payment request for JICA fund under specialized credit program No. 5 under the loan agreement No. VNXIII – 8;

Based on other enclosed documents, on October 7th, 2011, Ministry of Finance advised to accept payment of specialized credit program borrowing JICA for Tuyen Quang province's project. Total value of payment accepted is VND 2,091,555,000.

On October 13th, 2011, Ministry of Finance released a dispatch to assign Bank Y to use special account A of JICA Loan Agreement No VNXIII – 8 in order to conduct remittance to the contractor under the account number assigned. The collection and accounting the transfer fee are implemented under Circular No. 132/2008/TT-BTC issued by Ministry of Finance dated December 29th, 2008. After remittance, Bank Y transfer Remittance Advice to Ministry of Finance (Department of Debt Administration and External Finance).

JICA – Yen Son opened a JYP account at Bank Y and ordered remittance to Bank Y. Bank Y recorded debit in JYP account of JICA – Yen Son and issued a payment order with VND 2,090,455,000 to Bank X. Bank X recorded debit in the account of Bank Y and recorded credit in the account of company A.

On October 31st, 2011, Ministry of Finance released an identical dispatch dated October 13th, 2011 to Bank Y. Therefore, on November 1st, 2011, the procedure of remittance was conducted twice.

2.2.1.2. Analysis and Resolution

Bank Y advised to JICA – Yen Son and Ministry of Finance so that they can intervene to facilitate the resolution.

On November 28th, 2011, Bank Y sent a SWIFT in order to require Bank X to remove payment order dated on November 1st, 2011 with total value of VND

2,090,455,000 and transfer back this amount of money to the intermediary bank due to the fault of Ministry of Finance.

On December 5th, 2011, Bank X sent a credit advice with total value of VND 2,088,895,100 to Bank Y and kept the rest as its fee. However, Bank X was allowed to have non – term interest in a week by Ministry of Finance, thus, Bank X must incur interbank fee to Bank Y.

Bank X was advised a message requiring the rest, VND 1,559,900, to Bank Y. On December 9th, 2011, Bank X sent a credit advice with total value of VND 1,559,900 to Bank Y.

Since company A enjoyed the interest from a great deal of money remitted, company A must incur remittance fee to Bank Y. Receiving VND, Bank Y must buy JPY and incur exchange fee and paid back to JICA – Yen Son in JPY.

2.2.2. Dispute in sale contract of cashew nuts by collection term (case provided by VIAC)

2.2.2.1. *Case summary*

On July 18^{th} , 2011, the plaintiff and defendant signed a sale contract ..., which the defendant agreed to sell and the plaintiff agreed to buy the defendant $10x20^{\circ}$ FCL =180 tons white Indian nuts at the price of USD1,615 per ton, CIF Haiphong, Vietnam. Total contract value is 180 tons x \$1,615/ton = \$290,700.

Maturity of shipment from the port to India is specified on July 30th, 2011 and the unloading port is Haiphong harbour in Vietnam.

Payment is made by method of collection (D/P) by telegraphic transfer through the bank and divided into 2 parts:

- (i) The first amount of \$29,070 on July 19th, 2011
- (ii) The second amount of \$261,630 paid within 3 working days after shipment to Haiphong port and the buyer's bank (the plaintiff's bank) received all required documents.

On August 22nd, 2011, in the process of reception at Haiphong port, the cargo was discovered the phenomenon of mould and smell, therefore, the reception was postponed until the result of goods assessment.

On August 23rd, 2011, the plaintiff and defendant signed an additional agreement No.1 of the sale contract July 18th, 2011. Accordingly:

All 8 nut containers of the Invoice number ... and Invoice number... must be check by inspection of ... Company appointed by the defendant at plaintiff's cost. The cargo is divided into 03 types with different pricing as follows:

- (i) Cashew nuts which met technical standards of goods specified in the contract will be priced as \$ 1,615.00 / ton
- (ii) Cashew nuts insufficient for technical standards of goods specified in the contract but not completely broken and can be used for other purposes is valued \$700 / ton, and
- (iii) Cashew nuts insufficient for technical standards goods specified in the contract, completely broken and cannot be used for other purposes, be valued as \$0.00 / ton.

Based on the assessment results of the 8 containers, the cargo will be priced under the above classification to determine the value of the Invoice number ... and Invoice number ... ("true value"). The defendant will have to request their bank to SWIFT clearly the true value to the plaintiff's bank within 02 days after completing the assessment.

On August 25th, 2011, the plaintiff and defendant signed an additional agreement No.2 for the sale contract July 18th, 2011. Accordingly:

The plaintiff and defendant agreed an overall reduction of the value of the 02FCL 20 feet goods of the Invoice No. ... of \$14,420.00, therefore, the total value of the Invoice after deduction is \$40,480.00.

The assessment of 8 containers was conducted by Company... on 24th and 25th of August, 2011. Inspection results showed: 2180 bags/54.500kg nut rot, heavily mouldy, colourless, odour; 1983 bags/49.575kg nut mould, slightly discoloured, and cashew nuts in 1597 bags/39.925kg normal.

On August 30th, 2011 and September 1st, 2011, by email, the parties agreed to change the price of the nut completely damaged and slightly damaged and parties also agreed on the total deducted amount of \$ 105,429.88 as the whole 10 nut containers did not satisfy the requirement specified in the contract.

Based on the agreement, the defendant allowed the plaintiff to take the goods from the port and agreed to guide his bank to SWIFT to the plaintiff's.

As not receiving the agreed SWIFT and failing to contact the defendant, on September 6th, 2011, the plaintiff sued the defendant for the requirements as follow:

- Applying the interim urgent measures to blockade the account of the plaintiff in SHB bank, Langson Branch and delay payment for the defendant's bank under the contract until resolution.
- Announcing that the payment term of the contract No. ...were adjusted under the two additional agreements signed on 23rd and 25th of August, 2011.
- Announcing that the plaintiff only pays for the defendant total amount of \$156,200.13;
- Forcing the defendant to compensate the plaintiff the amount of \$ 105,429.88 for breaching the goods quality
- Forcing the defendant to pay arbitration fees, compensation, attorneys' fees and other fees incurred in the process of arbitration.

2.2.2.2. Analysis and Decisions of Arbitration Tribunal

• Regarding the requirement of the adjustment of the payment terms in the two additional agreements of the contract No. ...on 23rd and 25th of August, 2011.

Not only the payment terms but more exactly the regulations of the price, the amount payable and the implementation of import goods payment were adjusted by the two additional agreements No.1 and No.2 signed on 23rd and 25th of August, 2011.

The final agreement related to the adjustment of the sale contract on July 18th, 2011 was amended by the additional agreement of August 1st, 2011 and the additional agreement No.2 of August 25th, 2011 and the agreement through email of August 30th, 2011 and September 1st, 2011 about the price changes for the completely damaged and negligibly damaged cashew nuts as well as the total deducted amount of the plaintiff for the whole 10 imported nut containers under the contract.

• Regarding the request of the total amount payable of the plaintiff at \$ 156,200.13

On July 20th, 2011, the plaintiff made the first payment obligation with the amount of \$29,070 to the defendant in the sale contract on July 18th, 2011.

As the parties agreed that the total amount of deduction for the plaintiff was \$105,429.88, the total amount that the plaintiff must make payment to the defendant for the 10 imported nut containers at:

Total value of contract – [The first payment + the deducted amount of the plaintiff for the unqualified goods under the contract]

$$= $290,700 - [$29,070 + $105,429.88] = $156,200.12$$

Therefore, the Arbitration Tribunal accepts the request of the plaintiff.

• Regarding the requirement of the compensation of the defendant with the amount of \$105,429.88

The Arbitration Tribunal clarified the amount of \$105,429.88 in the meeting of dispute resolution and the representative of the plaintiff admitted that was the total amount of deduction of the plaintiff for the unqualified goods under the contract.

Due to the above amount of \$105,429.88 was deducted since determining the total payable amount of the plaintiff for the whole 10 imported goods containers under the contract, the damage no longer exists as the plaintiff required. Therefore, the claims for compensation of the plaintiff fail to comply with Article 303 of Commercial Law 2005 of Vietnam.

Thus, the Arbitration Tribunal has no basis to accept the claim for damage of the plaintiff.

• Regarding the payment of Arbitration fee by the defendant

According to Article 7 of the sale contract on July 18th, 2011, the parties agreed that "Arbitration fee ... will be charged by the loser unless the arbitration tribunal makes another decision." This agreement is complied with the provision of Clause 3, Article 34 of Law on Commercial Arbitration 2010 in Vietnam.

Therefore, the Arbitration Tribunal accepts the request of the plaintiff to enforce the defendant to pay the Arbitration fee.

2.2.3. Disputes in sale contract of cashew by Letter of Credit (provided by VIAC)

2.2.3.1. *Case summary*

Parties:

➤ Plaintiff: Buyer (Vietnam)

Defendant: Seller (Singapore)

The plaintiff and defendant signed a sale contract of dry, unshelled cashew from Ivory Coast. The parties agreed to ship before April 30th, 2009 by irrevocable L/C.

On March 13th, 2009, the plaintiff opened L/C with payment term: "98% pct of invoice value will be payable at 90 days after sight against the presentation of documents stipulated on field 46A" (8 types of document specified in the contract). Expiry date of L/C is May 5th, 2009.

On April 27th, 2009, at the request of the defendant, the plaintiff required the issuing bank to make the first amendment to the L/C with payment term: "...90 days after Bill of Lading date".

On May 5th, 2009, the defendant loaded 484.737 MT on board and asked the plaintiff to amend the delivery date in the L/C. Accordingly, the delivery date of the first 500 MT is on May 25th, 2009 and the delivery date of the second 500 MT is on June 10th, 2009.

On June 2nd, 2009, the plaintiff made the second amendment of L/C with delivery date at the request of the defendant and the expiry date of the L/C is on August 10th, 2009. In addition, the plaintiff noticed several required documents presented for the defendant is paid in field 46A as follow:

- Item 9: 01 original certificate of quality and quantity at unloading port by company....
- Item 10: 01 original letter of the beneficiary certifying the actual price, the actual amount owed based on the certificate of company...was required to open the letter of credit sealed and signed.

The defendant continuously requested the plaintiff to amend the L/C as defined in the contract that removes item 9 and item 10 in the 46A then all the rest

of the goods under the contract will be deliver to the plaintiff, otherwise, the defendant will offer other buyers.

After negotiation, since the plaintiff failed to amend the L/C as required, on July 7th, 2009, the defendant sold the goods to other buyers.

On August 11th, 2009, the plaintiff sued the defendant to the Arbitration for violating the contract with requirements:

- Continue to deliver the remaining 500 MT goods of the contract; otherwise, the defendant will pay the difference for lack of delivery.
- Compensate the amount that plaintiff had compensated for his partner, K Co., Ltd. Is \$2.44 billion.

In self-defence report, the defendant said that the plaintiff had violated payment conditions in the contract and the defendant was entitled to unilaterally suspend the contract and had no obligation to continue delivery the remaining to the plaintiff. As the defendant did not violate the contract, the defendant has no liability for damaging to the plaintiff.

2.2.3.2. Analysis and Decisions of the Arbitration Tribunal

• Regarding the implantation of the payment provisions in the contract

As soon as opening the L/C on March 13th, 2009, the plaintiff made an amendment that "98% pct of invoice value will be payable at 90 days after sight against the presentation of documents stipulated on field 46A" instead of "...90 days after Bill of Lading date". At the request of the defendant, the plaintiff made the first amendment of L/C on April 27th, 2009.

Later, the plaintiff unilaterally made the second amendment of the content of L/C without the approval of the defendant, namely item 9 and 10 in the 46A. Since not accepting the previous two items, the defendant did not attach the documents imposed in item 9 and 10 by the plaintiff. Therefore, the Arbitration Tribunal decides that the plaintiff violated the payment terms in the contract.

• Regarding the request of continuous performance of 500MT goods

The defendant's bank, at the request of the defendant, consistently convinced the plaintiff's bank; the defendant repeatedly asked the plaintiff to remove the changes in the payment conditions which the plaintiffs amended the L/C, otherwise

the contract will be cancelled. After the plaintiff responded clearly and definitely did not remove the payment terms amended in the L/C, on July 7th, 2009, the defendant sold the remaining lot (probably shipped to the plaintiff unless the plaintiff unilaterally modifies the condition of payment in L/C) to other buyer.

The Arbitration tribunal indicated that the plaintiff's second amendment in payment condition in the L/C and the acceptance of proportional amendment of the defendant inclined the amendment invalid in accordance with Article 10, UCP 600. However, July 7th, 2009 is the expiry date of the original L/C and the first amendment of the L/C. In this case, the defendant is entitled to not assign the remainder of the contract to the plaintiff as the payment conditions are different from the contract and shall not be accepted by the defendant.

• Regarding the request of compensation for the plaintiff who made compensation for K Co., Ltd.

The plaintiff said that the defendant had violated the contract, so the plaintiff had no goods for delivery to K Co., Ltd. under the contract signed by the plaintiff and K Co., Ltd. The plaintiff was sued to the Court for damages. At trial, the plaintiff and K Co., Ltd. reached an agreement of mediation and the Court B issued a decision to approve the successful conciliation. Accordingly, the plaintiff agreed to compensate the amount of K Co., Ltd. of VND5.4 billion.

The Arbitration Tribunal recognized the defendant's innocence to fail to deliver the remaining 500MT goods of the contract as the L/C is no longer valid. Therefore, the plaintiff has no legal grounds to attribute responsibility for the defendant to compensate the amount that the plaintiff claimed to damage to the third party.

Based on the previous analysis, the Arbitration Tribunal rejects all the requests of the plaintiff.

2.2.4. Dispute in sale contract of hot roll steel, which includes the intervene of the Court (provided by VIAC)

2.2.4.1. *Case summary*

On November 15th, 2008, the plaintiff and defendant signed a purchasing contract No. LMS1877. Accordingly:

- Contract target: hot roll steel
- Quantity: 1877 tons (+/-10%)
- Price: USD375 per MT, CFR Haiphong, Vietnam (INCOTERMS 2000)
- Total value: \$703,875.00 (+/-10%)
- Method of payment: payment at sight by irrevocable L/C. L/C will be issued within 07 working days after signing date and expires in Vietnam.

On November 21st, 2008, the plaintiff opened L/C No. 003337100800509 at Vietcombank, Haiphong Branch for shipment as regulated in the contract.

Previously, on November 20th, 2008, the plaintiff purchased deposit foreign currency to open L/C at the Bank of Foreign Trade of Vietnam, Haiphong Branch, with the amount of \$38,800.00 (equivalent to VND658, 668,800).

On December 4th, 2008, the Company ... issued B/L number KR-051ILEX081200115 in the order of Vietcombank, Haiphong Brach and informed the plaintiff as follow:

- Date of loading and date of issuing B/L: December 4th, 2008
- The consignor: ...
- Goods: hot roll steel, invoice number: ...081126, L/C No.0003337100800509 on November 21st, 2008
 - Quantity: 88 rolls
 - Total weight: 1877.75 tons

On December 12th, 2008, the plaintiff received the B/L No.KWLo81208HAP001 of shipping company... for the same shipment with detail content which has two different points from one issued by ... company. Specifically, the date of loading is on December 8th, 2008 and quantity is 75 rolls.

On suspicion of insufficient goods, the plaintiff sent an official dispatch number 16/12/08 MB/CV to Vietcombank, Haiphong Branch to suspend the payment for the shipment.

On December 12th, 2008, the plaintiff received a notice of arrival which is informed by the receiver and shipping agent in Vietnam - Company...:

• Goods were shipped at the port on December 12th, 2008 under the B/L No.KWL081208HAP001 and sub-B/L No.ILEX081200115

- Quantity: 75 rolls; weight: 1877.75 tons
- Require the plaintiff to receive documents and bring the following documents: Notice of arrival, letter of recommendation, and the original bill of lading endorsed by Vietcombank.

On December 27th, 2008, the shipments have arrived at Haiphong port on VF ship.

On suspicion of lack of quantity of goods based on the above notice, on 28th and 29th of December, 2008, the plaintiff requested the independent assessment of VINACONTROL Assessment Company about the true quantity and weight of the cargo at Haiphong port.

Assessment result reported that total actual weight of the cargo received at Haiphong port is 1,595,420 kg, quantity of 75 rolls, the value calculated by total weight: 1595.42 tons x USD375 per ton = \$598,282.50.

The plaintiffs indicated that the actual weight and number of shipment are different from the document presented for payment at Vietcombank, Haiphong Branch, ... knowingly colluded ... to tamper with the documents for payment under L/C compared with the reality as follow:

- Number of missing goods: 13 rolls; lack of weight: 282,330 kg
- The value of the cargo at Haiphong port reduces \$105,873.75 compared with the commercial invoice ... No. 080126 26/11/2008
- Total amount due to lack of goods and other items incurred is \$158,564.27

On December 30th, 2008, the plaintiff presented a petition ... which settles the following requirements:

- The plaintiff pays the defendant USD545, 565.73 and retrieves the document for custom procedure and cargo reception.
- Blockade requirement and the defendant is required to compensate \$158,564.27, in which:
- o The value of the cargo at Haiphong port reduced \$ 105,873.75 compared to the commercial invoice No. ...080126 26/11/2008

- o Damage caused by the difference of exchange rate of USD between due date of document payment (December 16th, 2008 exchange rate USD/VND = 16,987) and the present time (December 31st, 2008 USD/VND = 17,173) made the total value of the cargo be \$17,173.
- o Damage caused by cost of loading and unloading, lifting, transporting, weighing, storage at Haiphong port till December 31st, 2008 is 98million equivalent to USD5,603.52
- o Damage caused by delay release of the goods after December 31^{st} , 2008 due to the increase of VAT for steel products from 5% to 10% applicable from January 1^{st} , 2009: 1595.42 tons x USD375 x 5% = USD29, 914.

On December 31st, 2008, the plaintiff submitted a petition and the People's Court of Hanoi accepted the Decision applying the interim urgent measure that requires Vietcombank – Haiphong Branch to stop making payment \$158,564.27 of \$703,875 under L/C No.00333710080059 issued on November 21st, 2008.

Implementing Decision applying the interim urgent measures of the People's Court of Hanoi, on January 1st, 2009, Vietcombank Haiphong Branch remitted the beneficiary the amount of \$545,565.73 and delivered the B/L to the plaintiff. On January 13th, 2009, inspector from Custom Department of Haiphong signed to check the quantity and weight of the goods as the assessment results of 75 rolls with 1,595,420kg.

At trial which resolved the dispute on June 5th, 2009, the representative of the plaintiff presented and provided copies of several documents to prove his perspective, and required not to pay for the missing goods of \$105,873.75 and asked the claim for damages of \$52,690.52 as the petition.

The defendant argued that the plaintiff had violated the payment terms of UCP600. The plaintiff should have paid for the beneficiary within 5 working days or returned the documents. Regarding the missing goods, the defendant did not admit the above text despite the acknowledgement in the email dated January 8th, 2009. Regarding the amount of \$52,690.52, the defendant would share 30% (approximately \$15,807) if the plaintiff repaid the unpaid amount of \$158,561.27.

2.2.4.2. *Analysis*

♣ Regarding the violation of the contract

The arbitration tribunal realizes that the defendant did not fulfil delivery obligation to the plaintiff under the provisions of the contract No. ... (Lack of 13 rolls with weight of 282,330kg)

The plaintiff discovering the missing goods complained the defendant to reach solutions. The defendant also feed backed via email with the content:

"... We agreed about the deficit of weight when checked by VINACONTROL. Therefore, we need you send the payment of the actual weight of 1,595.42MT $(1,595.42 \times USD375 = \$598,282.50)$ " and

"Regarding the damages (\$52,690.52) you referred, we may consider sharing 30% (\$15,800) of the total..."

(Email dated January 8^{th} , 2009 by Mr. ... – Representative of the defendant sent to the plaintiff)

Therefore, the lack of goods for delivery was detected by the plaintiff and admitted by the defendant. Furthermore, the deficit is consistent with the evidence such as bill of lading No.KWL081208HAP001 of shipping company..., Notice of arrival informed by the recipient and the shipping agent in Vietnam – company..., especially, the assessment certificate No. ...dated December 29th, 2008 issued by VINACONTROL company – Haiphong and the custom declaration No. 161 checked and signed in the ticket of paper document checking results by Department of Custom KV III of Haiphong port.

♣ Regarding the requirement of the plaintiff

In the petition and enclosed explanatory materials, as well as in the arbitration meeting, the plaintiff proposed the Arbitration tribunal to accept for the plaintiff not to pay for the defendant \$105,873.75, which is the amount of missing goods and force the defendant to compensate the incurred losses by the plaintiff's calculation, including:

➤ Damage caused by the difference of exchange rate of USD between due date of document payment (December 16th, 2008 exchange rate USD/VND =

16,987) and the present time (December 31^{st} , 2008 USD/VND = 17,173) made the total value of the cargo be \$17,173.

- ➤ Damage caused by cost of loading and unloading, lifting, transporting, weighing, storage at Haiphong port till December 31st, 2008 is 98million equivalent to USD5,603.52
- \triangleright Damage caused by delay release of the goods after December 31st, 2008 due to the increase of VAT for steel products from 5% to 10% applicable from January 1st, 2009: 1595.42 tons x USD375 x 5% = USD29, 914.
- Regarding the request of the Arbitration tribunal's acceptance for the plaintiff not to pay to the defendant the amount of \$105,873.75 for the deficit

The Arbitration Tribunal realized that the defendant failed to deliver the agreed quantity with the value of \$105,873.75.

Therefore, the arbitration tribunal accepts for the plaintiff not to pay for the defendant this amount of money.

Regarding the claims for compensation for damage caused by exchange rate differences

In order to make payment to the defendant, the plaintiff used three terms: deposit of \$38,800.00; loan of \$463,665.73 from Vietcombank Haiphong Branch and usage of ... VND to buy \$43,100 million. The plaintiff cannot be considered loss of exchange rate difference for deposit and foreign currency. For the amount of ... VND, the plaintiff suffered from the damage due to the difference of exchange rate. Losses can be calculated as follow:

Damage caused by exchange rate difference (USD) = [exchange rate at actual payment time on 11/08/2009 – exchange rate at payment time under the document on 12/16/2008] x Amount (USD) transferred for payment from VND

- = [VND17, 479 VND16, 986] x USD43.100
- =VND21, 248,300, equivalent to \$1,215.65 (at rate of 17,479)

Therefore, the Arbitration tribunal accepts the losses that the defendant must compensate to the plaintiff is \$1,215.65

Regarding the claims for compensation arising from the cost of loading and unloading, lifting, transporting, weighing and storage at Haiphong port till December 31st, 2008

For demonstration, the plaintiff presented the contract of stevedoring, forwarding, preserving steel and iron at Haiphong port with the weight of 1,877.75 tons in B/L with the value of 98million and the liquidation of the contract of stevedoring, forwarding, preserving steel and iron with actual weight of 1,595.42 tons valued VND92,209,700 (Invoice No.008864 and No.008863 issued by ... company on January 16th, 2009), equivalent to \$5,275.46 (exchange rate of 17,479)

The event of loading and unloading, weighing delivery is considered arising damage due to the violation of the defendant.

Therefore, the Arbitration Tribunal accepts this request of the plaintiff.

Regarding the request of compensation for delaying release of the goods after December 31st, 2008 due to the VAT policy adjustment of the government to the price of steel product increasing from 5% to 10% effective from January 1st, 2009:1,595.42 tons x USD375 x 5% = \$29,914

Article 7 of the contract No. LM1877 on November 15th, 2008 stipulates on loading: "within 30 days after the date of opening L/C which is November 21st, 2008; the latest loading date will be December 30th, 2008". Under this agreement, the defendant is entitled to deliver the goods till the latest day which is December 30th, 2008. Provided that on December 30th, 2008 the defendant delivered the goods, the cargo would be on board of Haiphong port after January 1st, 2009, so the plaintiff would suffer 10% tax rate as prescribed in Circular No. 129/2009/TT-BTC dated December 26th, 2009 of the Ministry of Finance guiding the implementation of several articles of Law on VAT (the Circular takes effect from January 1sth, 2009) even if the defendant failed to deliver missing goods. Therefore, the event of insufficient delivery of the goods of the defendant is not the reason for the damage of the plaintiff due to the VAT policy adjustment of the government to the price of steel product increasing from 5% to 10%.

Thus, the Arbitration tribunal decides to reject this request of compensation of \$29,914 due to the adjustment of VAT policy.

2.3. Reasons for disputes in methods of international payment in Vietnam

Firstly, international legal documents and national law system which subject methods of international payment conflict to each other. Several terms of UCP600 are not strong, clear enough to completely deal with disputes in letter of credit term. Basically, UCP600 was enhanced with clearly defined terms and solving conflicts in international payment which cannot be done in UCP500. However, UCP600 has coped with complex problems, which requires ICC to research and make amendment to meet the variety of international payment. Several definitions of terms are not exactly translated a conflict with other documents.

For instance, the terms "one copy of" and "in one copy" in section d, e – Article 17 are differentiated in contrast with ones in ISBP. In UCP600, "copy of" and "in one copy" mean a copy while in ISBP, "one copy of" means a copy and "in one copy" means in an original. Regulations of document checking are subjected unclearly in Article 14 that "Data in a document, when read in context with the credit, the document itself and international standard banking practice, need not be identical to but must not conflict with, data in that document, any other stipulated document or credit." This rule has been making people in charge difficult to recognize whether documents are conflict or not and sometimes this depends on the sensitivities of the person who checks the documents.

Secondly, the parties involved in payment transaction do not acknowledge about law or other legislations related to international payment. Conception of right and obligation in conducting contracts and the agreements are still simple and subjective. The difference of transactional relation in each contract leads to the difference of applied law so it is crucial to prepare carefully and understand thoroughly legal factors related to the performance of contract.

Yet, the behaviour of law application is low and the interest of the own business which is taken more concern than that of the nation causes losses of the country. Since laws are incomplete, businesses take advantage of "vacancies" to breach the contract in order to benefit themselves.

Thirdly, businesses are often not carefully learned about the partners, lack of information and depend on the banks. As a result, they do not consciously realize

the swindle and cause heavy losses to the country. In the contract with trustable partners, businesses are so subjective and have an absolute belief that they neglect to check documents carefully and strictly monitor the process of the contract. The negligence and subjectivity is possible to cause disputes which damage the close business relation and the fortune of both parties.

Businesses often depend on commercial bank to acknowledge the legislations related to international payment, or do not monitor the process of transaction performance. Disputes possibly arise when documents for presentation are insufficient or not complied with the contract or L/C is opened after maturity, etc.

Moreover, low level of profession and translation causes the composition of contract terms unclear, weak and insufficient, therefore, disputes are easily occur. Commercial banks have not acknowledged the procedure of methods of payment, especially complicated methods such as L/C. Only one small mistake in the process can lead to the damage or considerable loss to parties involved. Since international payment has been recently popular but quite new in Vietnam, international payment department is lack of skill, basic knowledge and not expert in usage of foreign language for transactions.

Finally, the weakness and deficiency exist in the education and training system as well as introduction and law consultancy about profession of foreign trade, international payment or dispute resolution. Skills of transaction, negotiation, signing and conducting the contract are not enhanced

The number of disputes in international payment in Vietnam has a tendency of mounting increase. Once disputes arise, no matter what methods of resolution, the reputation and property of the business are affected or lost.

CHAPTER 3: PROPOSALS FOR THE PREVENTION AND MINIMIZATION OF DISPUTES IN INTERNATIONAL

3.1. Orientation of the development of international payment activities

3.1.1. Tendency to use documentary credit in international payment in Asian countries

PAYMENT IN VIETNAM

Globalization has been facilitating international trade to develop with the most considerable speed and scale therefore business relations are significantly expanded and forms of transactions are increasingly various. As a result, there is a dramatic increase in sale contracts of goods or services which are signed between countries and areas and in the risk of contract performance. In America and Europe where enterprises own a stable and transparent financial condition, they use other methods of payments such as open account or documentary collection. Documentary credit has been preferred by parties whose partner does not have transparent financial situation. However, apart from countries which own high creditability such as Japan, Singapore, Korea, and Hong Kong, Taiwan, the others including Vietnam, the transparency of finance is low; therefore, documentary credit has played an important role in international payment of Asian trade. Besides, Vietnam has been conducting opening economy policy with the involvement of various types of economy. In fact, the scale of most of Vietnamese businesses is small and medium, so documental credit is one of the most popular methods because it beneficiary the interest of both parties.

3.1.2. The impact of e-commerce and e-banking

The significant expedition of e-commerce leads to the adaptability of methods of international payment. This method makes the process of preparing, presenting and checking document faster and more convenient. E-banking facilitates banks to provide services and products. E-banking offers faster and cheaper transmission of document in security to both parties. E-commerce forces business to standardize their process of transaction and helps businesses dynamic to introduce the images, products to the world, connects customers to the businesses and saves cost, time and effort of market research, etc. In the world, e-commerce

accounts for 90% of total value of global e-commercial transactions, in particular, North America and Europe account for 80% whereas this is a new conception in Vietnam for the last decade. Recently, several considerable e-commercial exchanges have occurred such as chodientu.vn, ebay.vn, 123mua, etc or activities of services, tourism, restaurant, hotels such as vietnambooking.vn, saigonopentour.com, fiditour.com, etc. However, businesses and commercial banks should realize fraud webs which have no legal basis and delude customer for money.

Lately, there has been an issue in which several e-commercial businesses create kiosks to invite people to participate with a certain price per kiosk with the purpose to trade goods in order to expand the e-commerce in Vietnam. E-commerce is advertised to be the most rapid method with the least risk to be rich and the most innovative one in the world of business. Several are conducting as the previous purpose but some takes advantages of mass media, conferences, or several well-known businessmen that are successful in this field to delude individuals for money. Therefore, businesses should realize the meaning of these activities of those businesses through researching and learning thoroughly about e-commerce. Commercial banks in Vietnam should develop the new payment methods to support transactions with foreign factors.

3.2. Proposals for the prevention and minimization in international payment disputes in Vietnam

3.2.1. Proposals in macro scale

3.2.1.1. The knowledge of international payment should be widespread

Recently, using services of banks, businesses have had tendency of depending on the bank for studying legal system of international payment, which causes disputes between businesses. Knowledge and experiences of applying methods of international payment in Vietnamese enterprises are inadequate with the requirement of the mounting complexity of international transactions. For instance, in the process of sale contract of cashews, which was mentioned in section 2.2.3, the parties should not unilaterally change the terms without additional agreement in written. The event of the buyer's unilateral amendment of L/C without the approval

of the seller has no effect under Article 10 of UCP 600 and the buyer violated this payment term of the contract.

Moreover, commercial banks have not fully equipped knowledge and experiences of using methods of international payment. Therefore, knowledge of international payment profession should be widespread to businesses and commercial banks. This job will be implemented by campuses of Ministry of Trade such as Foreign Trade University, Vietnam Chamber of Commerce and Industry, Institute of Banking, etc. Generalization of export-import activities, Vietnamese law on international payment: Commercial Law, Institution Law, etc. Language of contracts, documents in international almost is English so English learning combined with the profession of international payment is necessary.

Besides, key figures of international payment departments should research on trade finance for CDCS certificate (Certified Documentary Credit Specialist) issued by IFS (Institute of Financial Services and the International Financial Services Association). This examination which is organized in America, Mexico, Canada, Singapore, Hong Kong, Taiwan, Malaysia, etc issues international certificates to documentary credit professors in order to prove their capacity in international payment.

Last but not least, popular international payment magazines such as Documentary Credit World, DC Focus which provide useful contents of reports of dispute resolution of international payment, UCP discussion of eminent professors, orientation of the development of international payment, etc should be purchased. Thanks to these magazines, readers can update the latest news or information of international payment in order to enhance their capacity of international payment at work and contribute creative ideas in the process of UCP improvement.

3.2.1.2. The legal system should be improved.

Legislations subject international payment field are deficit and weak, which facilitates criminal acts or makes resolution difficult to implement. Vietnamese businesses often confront difficulties because they do not know judicial system and procedure, applicable law as well as distinguishable legal culture and linguistic barrier. Therefore, the construction of a unified stable legal framework to adjust

international trade relation is important and determines the success of investment attraction.

Since UCP 600 which subjects L/C method is widely used from July 1st, 2007, the acknowledgement and effective appliance are challenging. Therefore, the government should improve the legal framework of international payment operations, clearly stipulate obligations and interests of parties. In case of the conflict between UCP600 and treaties or international agreement between Vietnamese enterprises and foreign partners, Vietnamese law should support the enterprises to gain the advantages over the partners. In the process of performing international payment obligation, enterprises should scrutinize and compare with the provisions of UCP600. In addition, businesses should specify in documents in order to avoid risks from the inadequacies of UCP600.

Legal system of dispute resolution should be improved to support international payment offices to solve disputes in the most proper and economical manner. The mechanism of dispute settlement of current international payment is mainly conducted by litigation and arbitration beside other forms such as negotiation, conciliation or mediators. Businesses should come to arbitration due to the profession, neutrality, rapidness and security.

A group of legal and technical experts should be established to provide legal consultancy and support Vietnamese businesses and individuals in performing international payment properly. Recently, professional legal and technical experts have been dispersed in offices or organizations and had no connection or coordination in profession of international payment. This is considerably wasteful and adverse. Therefore, gathering this "grey matter" will facilitate professions of foreign transactions in general and international payment in particular.

Moreover, businesses should be responsible and active in dispute resolution with foreign partners to maintain the business relation and the government should protect the interest of businesses in the process of dispute resolution. Specifically, the government should intervene when disputes are directly or indirectly related to the government such as foreign organizations do not respect national law and have a negative influence on legal right and interest of Vietnamese businesses.

Besides, authorities must update and learn from foreign legal system in order to complete domestic legal system so that international payment activities are legally fulfilled without disputes. System of policies, legal documents should be completed; information should be regularly updated in order to adjust to conform to international customs and practice. Regulations on sanction for agencies which have jurisdiction to resolve disputes should be supplemented and clearly define the mechanism of coordination in resolving disputes between parties.

On the other hand, businesses and commercial banks must be propagated and understand adequately the conditions and terms which regulate the performance of international payment. The improvement of law on intellectual property, resource laws will facilitate the process of international payment activities, reduce disputes and support dispute resolutions completely.

3.2.2. Proposals in micro scale

3.2.2.1. Proposals for parties who are involved in international payment

Business ethics and prestige are crucial in trading transactions in order to prevent potential risks. Three basic elements are considered to be essential for a successful contract: creditworthy, properly structured and documented contract and ability to affect claims. The parties should learn about the reputation of business, financial conditions, etc of each other. This study which can be conducted through banks, transportation companies, consultancy companies, chamber of commerce and industries in the country, etc is necessary and effective to avoid disputes due to the reputation of the partners.

In the process of globalization and technology innovation, imperfect factors or comparison advantage are decreasing, international payment are increasingly complex, therefore FED warns the parties to be conscious when abnormally high or unrealistic interest rate, abnormal trading such as standby L/C trading, exceedingly complex transaction, grudging appearance of popular organizations such as FED, IMF, World Bank, etc, inadequate evidences from ICC. The parties should continue to learn and gain experience to discover anomalies.

4 As for the buyer

The buyer should study about his bank so as to evaluate the possibility of payment. The reputation and profession of international payment performance should be appreciated.

The seller should be researched thoroughly about the reputation, financial condition, quality of goods or relations with other business, etc. Vietnamese businesses are often subjective and negligent in this step; as a result, fraudulent companies can take advantage to commit crimes or supply goods with low quality or even faked. This mistake not only brings financial burden to the buyer but also makes loss to the property of the nation.

Content of contracts should be sufficient, closed to the profession of legal or technological aspects. Legislations assigning methods of international payment such as UCP600, URC522, etc should be efficiently applied. For example, in the previous case of cashew contract mentioned in section 3.2.2, although the seller violated the obligation of delivery before the buyer violated the terms of payment, the buyer would have had the right to enforce to continue the contract if the seller had made the amendment complied with the contract because the obligation of opening L/C of the buyer is supposed to be made before the obligation of delivery of the seller. In this case, the buyer lost the right to request the seller continue the performance without proper amendment of L/C under the contract.

The buyer should negotiate consciously the contract before signing. Businesses are likely to carelessly sign the contract, typically, in L/C term, if the contract is not benefit, they will open L/C late or not open for renegotiation of the contract and the seller can easily to blame the buyer for breaching the contract.

In remittance and open account, although the interest of the buyer is ensured compared with the seller, the buyer should own good behaviour in applying legislation related to international payment. Delaying payment or any action that fails to implement the obligation should be eliminated in order to minimize disputes.

In collection and documentary credit, the bank makes payment based on sufficient documents for presentation not the goods satisfying the contract. Therefore, in order to receive the goods as agreed, terms and conditions of the

contract should be carefully prepared for receiving documents for goods reception or opening L/C. The buyer should base on the content of the international transaction to fulfil the application in order to secure the accuracy of the application and the letter of credit after that. Before issuing bank transfers L/C to advising bank, L/C should be checked for the uniformity with the contract and L/C opening order.

Since the purpose of the buyer is the goods, although he has goodwill to conduct the contract, the risk can occur if the seller does not perform delivery. Buyers should take advantage of punishment terms in case of deferred delivery. Yet, buyers should check the reimbursement exemption regulated in L/C opening order and signed by the buyer and the bank in case the issuing bank does not fulfil the obligation.

4 As for the seller

The seller should understand financial condition, reputation, relation with other businesses of the partner to decide whether signing contract or not. The contract must be thoroughly considered, appropriate with related legislations. Terms of punishment should be clear to enforce the buyer to conduct his obligation properly.

In remittance term, although goods are delivered, payment is not performed or late by the buyer. Therefore, seller should negotiate clearly procedure of remittance such as the amount and time of advance payment and time of payment for the rest. Place of goods delivery and payment should be identical and payment instruments should be regulated as telegraphic or mail transfer. Buyer benefits from method of open account and remittance and seller often endure the risk. As a result, it is crucial for seller to choose trustable partner and small-scale contracts when performing the 2 methods of payment.

Moreover, there are two types of time of remittance which the seller must clarify in the agreement or contract. *Remittance before* the beneficiary conducts the obligation in the contract or agreement such as deposit which guarantees import – export contract, project or construction contract, partial advance payment for exporter before delivery, partial advance payment for samples or trial production, etc. *Remittance after* the beneficiary conducts the obligation in the contract or

agreement. Remittance should be made by telegraphic transfer or mail transfer. This section must be clear in the contract. Besides, guarantee, standby L/C or mortgage may be utilized to ensure the interest of seller.

In open account method, the seller also thoroughly examines the political, economic, and commercial risks as well as cultural influences to ensure that payment will be received in full and punctually. Besides, several requirements should be noticed such as the uniformity of the debit currency in the ledger, invoices which are the base of the liability records, the value of shipping or delivery document which is the base of payment, the uniformity of term of payment which is made by mail transfer or telegraphic transfer, how the event of late payment is solved and the level of punishment.

In clean collection term, the seller delivers and directly transfers documents to the buyer before payment, which is a disadvantage for the seller. The buyer who has not made payment holds documents for good reception from the carrier so that payment may be late or refused. Thus, this method should be applied in trustable relationship as well as in the contract punishments of which are clearly regulated such as payment which is late or unfulfilled or not in full must be assigned penalty or decided the methods of dispute resolution.

In documentary collection or documentary method, it is important that documents for presentation must be carefully prepared and thoroughly checked or the content of L/C should be carefully checked for preparing documents as the regulation of L/C because the disagreement between L/C and the contract can prevent the delivery or invoice from the importer. In documentary credit, as L/C is not opened or late opened is considered a serious risk to the seller, the contract should be regulated specific punishment term in these cases. Basis for checking L/C is the international commercial contract (basic contract). Conditions which are adverse for the seller, especially, issued by the buyer should be required to make amendment. Adequate preparation of document under UCP such as presentation on time, sufficient documents, etc.

Some parts of content of L/C should be carefully checked such as credit amount, expiry date, place of presentation, type of L/C (often irrevocable L/C),

maturity, transportation, invoice, bill of lading, insurance, etc. Once the disagreement between the content of L/C and basic contract or the applied law or unavailability occurs, the seller must require the importer to make amendment to the L/C. If the mistake is not so serious, the seller can associate with the bank to amend such as composing guarantee security or through the representative of the importer, accepting payment and ordering the bank to issue L/C.

♣ As for commercial banks

Commercial banks' performance is considered a crucial factor to determine the success of the contract through international payment service which is conducted by international payment staff. According to a recent survey of Vietnam Chamber of Commerce and Industry, more than 74% of associations have no department of law profession; 81% have a few basic content of the Bilateral Trade Agreement U.S – Vietnam (BTA). This result is a concerning situation of enterprises in Vietnam while international trade has been rapidly developed.

The mounting complexity of the contracts requires not only foreign language basis but also the improvement of responsibility and business ethics. Managers should be selective and professional in order to monitor and develop the standard of the operation of the bank in general and international payment department in particular. Regular training should be also organized so that the employees are fully equipped to meet basic and advanced requirements of international payment. The policy for reward and punishment should be implemented to encourage employees to work efficiently. Staff of international payment department must acknowledge international customs and practices or other regulations related international payment such as URC 522, UCP 600, ISBP 681, etc and acquire professional skills in order to conduct international payment profession properly and support customers with helpful advices. In the process of integration, innovation of global banking system and new legislations should be updated to amend and improve the domestic banking operation. The bank should establish firm relationship with foreign banks and expand their network to access information of financial and political situation of the partner countries.

Commercial banks should learn thoroughly about their clients' financial condition, financial statement or their relation with other businesses in order to avoid default risk or evaluate the ability of contract performance and research the other bank to assess the capacity and experience of international transaction performance. Although remittance method and open account method are quite simple and performed base on trust and prestige, commercial bank should be conscious in the process of conducting the contract and understand adequately the conditions and terms regulated in the contract. For instance, in the previous case of remittance mentioned in section 2.2.1, since Bank X was subjective and believed in the Ministry of Finance, the dispatch was not discovered to be released twice. This fault caused the procedure of remittance was conducted twice and made a loss to parties involved.

Regarding specific banks for L/C term:

> As for the issuing bank

Conflict occurs to the issuing bank when the buyer refuses to reimburse money as the goods do not satisfy with the contract or there is falsity in documents. Therefore, the issuing bank should specify reimbursement obligation in the L/C opening order. L/C should be opened as agreed in L/C opening order otherwise the issuing bank ought to renegotiate and officially open L/C after agreement. Documents should be fully presented for requirement of reimbursement. Several banks allow the seller to present two thirds of the set of B/L so the buyer can receive the goods and do not reimburse money to the bank. The issuing bank should cooperate with the buyer to check the documents within 7 days of document checking in order to avoid the falsity of reimbursement or the risk of fake documents. Capacity of fake document discovery should be enhanced in order to support the buyer and disputes will be minimized. Source of foreign exchange for payment should be anticipated because there has been a tendency of imbalance of payment which affects the balance of exchange in commercial banks.

> As for the advising bank

L/C after transferred from the issuing bank should be confirmed before advising to the seller. Although the issuing bank has no obligation of document checking, support and consultancy should be provided to the seller for the adequate

L/C preparation. In Vietnam, advising banks have conducting discount of document payment for Vietnamese sellers in order to support them rapidly collect the capital. If L/C regulates "available with any bank by negotiation", discount at bank goes with recourse, which is also called "negotiation under reserve". However, in the intensive competition of all kinds of banks, "negotiation without recourse" has been widely used although the risk can increase because the reimbursement may refuse perform the obligation. Therefore, the advising bank should consciously evaluate the set of documents to decide whether "negotiation under reserve" or "negotiation without recourse".

4 Organizations

➤ Vietnam International Arbitration Centre (VIAC)

In Vietnam, arbitration is considered a new method to resolve disputes in international payment. System of dispute resolution at VIAC should be rapid, flexible in order to support parties to save time and money. Law on Arbitration which obtains limitation should be researched and made an amendment in order to receive the creditability from foreign and domestic businesses. Leading cadres and arbitrators should be selective, experienced and professional in handling with mounting complex disputes in international payment. Arbitrator must be conscious in the proceeding and applying relevant law in order not to affect reputation of VIAC and encourage businesses and individuals to come to VIAC.

Conference on professional arbitration should be organized not only to discuss to improve and complete dispute resolution system but also to support arbitrators and staff to obtain basic knowledge and essential skills to deal with disputes professionally and update innovation of law in solving international payment in order to for disputes to be rapidly and fairly resolved. Arbitration should obtain two levels of resolutions: once ADR methods, in which parties try to solve the dispute friendly, are not successful, arbitration can be applied in order to remain long and good relationship after dispute resolution.

> The Court

According to statistics of VIAC, in 2008, the Court of Economy judged over 30 lawsuits in average whereas each of arbitrators at VIAC solved 0.25 issues of disputes. This figure shows the creditability and popularity of the Court in public

view therefore, the Court must maintain the fairness, responsibility and strictness. Besides, conciliation should be effectively conducted in order to avoid public proceeding which affects significantly the reputation and business relation between parties involved.

The judge must be experienced and acquire firmly knowledge and analytic skills about international payment so as to resolve the lawsuit in fairness and rapidness. This is the adversity of litigation because the judge is not as professional in international payment as Arbitration. It is essential to train the judges who are professional in resolving international payment and research deeply on laws related to international payment in order to avoid appealing from parties.

All the contracts and letters related the disputes must be translated in formal languages of the judge as well as discussions related to the disputes, which obstructs the parties in the proceeding. Thus, documents enclosed should be simplified and easy to understand in order to speed up the resolution. The Court should cooperate firmly with arbitrator tribunals through applying interim and urgent measure so as to process the case appropriately and rapidly. Professors assigned by the Court to examine technically the condition of dispute objects must be experienced, professional, acknowledge related regulations such as the Rules for Documentary credit Dispute Expertise and give the exact judgment as rapidly as possible in order to support the process of litigation.

CONCLUSION

Vietnam has gradually developed and improved the system of international economy in general and international trade in particular. Profession of international payment plays a decisive step in the process of international trade performance. This new concept has just come to Vietnam for a few years so Vietnamese businesses have to spend much more time concentrating on studying and training the knowledge as well as the profession of international payment.

Recently, Vietnamese enterprises have made progress in conducting profession of international payment although disputes in this field have a tendency of increasing. The period of crisis has just come into recovery but the level of competition is getting more and more intensive, the government should support enterprises in enhancing legal system related to international payment and create more opportunities for enterprises to integrate the global economy.

System of dispute resolution is considerably improved to meet the complexity of international trade, especially international payment. Negotiation and Conciliation should be the applied for the creditworthy and reputation of businesses. Besides, Arbitration should be considered the cheapest, the most convenient and trustable methods of dispute resolution.

I hope to some extent, this study and previous suggestion will contribute the process of enhancing the system of international payment performance in order to avoid or minimize the possibility of disputes and improving the opinion about dispute resolution.

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