**Chapter 33: International Business Transactions**

**Foreign Trade** – the buying and selling of goods and services between parties from different countries

**Foreign Presence** – placing representatives of a business in foreign markets

**Foreign Investment** – conducting operations in a foreign market

**Private Law** – the law that governs transactions between private parties, such as a seller and buyer of goods

**Public Law** – the law governing the relationship between private individuals and the state

**Public International Law** – law involving relations between states

**Non-Governmental Organizations** – voluntary, non-profit associations of private entities working to influence policy, raise awareness, and affect change, such as the International Chamber of Commerce

**Super-Governmental Organizations** – non-profit associations of governments from around the world working to find common solutions to international issues

Export/Import Contracts  
a) contracts for the international sale of good  
b) contracts for the supply of services abroad

Goods or services may be supplied in the following ways:  
- the supplier may deliver directly to the customer in the other country  
- delivery may be made through the supplier’s own marketing organization established in the other country  
- the customer may accept delivery in the supplier’s home country and himself arrange to ship the goods home

Usually the international sale of goods involves a number of parties and consists of several distinct though related contracts. In addition to the basic agreement for the sale of goods, the parties normally arrange for the transportation of the goods, for their insurance during shipment, and for the financing of the transaction. Since export transactions require special expertise, the parties commonly employ the services of specialist *export houses* or *freight forwarders* who make the arrangements for shipment, insurance and financing.

**Export Houses**or **Freight Forwarders** – specialist firms that make the arrangement for shipment, insurance, and financing in export sales

**Proper Law of the Contract** – the law of the country or jurisdiction by which the provisions of a contract are to be interpreted and its effect determined

**Conflict of Laws** or **Private International Law** – the principles of law that apply to resolve questions concerned with private relationships that are affected by the laws of two or more countries

To determine which law applies (the *proper law of the contract*), it is necessary to refer to a body of principles known as the *conflict of laws* or *private international law*. Generally the proper law of the contract is the law that the parties intended to govern. A contract might state that it is subject to the law of Ontario, England, or Switzerland. The choice of law need not be that of the location of one of the parties or be related to the place where the contract is to be performed. If the parties do not expressly state the proper law, the court will attempt to determine the intention of the parties from the surrounding circumstances. For example, if the contract states that any dispute is to be submitted to arbitration, then it is probable that they also intended the law of that country to govern the contract.

**Incoterms** – a set of standard contractual terms adopted by the International Chamber of Commerce

An export sale normally requires at least four documents:  
- the contract of sale  
- the bill of lading (an acknowledgement by the carrier that the goods have been delivered)  
- the insurance policy or certificate  
- the invoice (states name and addresses of buyer/seller, date of order, description of goods, price etc.)

**Exchange Controls** – restrictions on the conversion or export of currency

- generally a seller doesn’t mind in which currency the price is paid, as long as that currency is freely convertible - however, it will state the price in a stable currency  
- if the buyer’s country imposes exchange controls, or doesn’t permit its currency to be freely converted, the seller will also require actual payment to be made in “hard” currency

**Foreign Exchange Risk Management** – methods of reducing the risk involved in currency fluctuations

Methods of Financing Other Than Bill of Exchange

**a) Collection Arrangement** – an arrangement whereby the seller employs the services of its bank to collect payment by depositing the documents with the bank and receiving credit for the price

**b) Letter of Credit** – a document that the buyer of goods obtains from the bank and uses to pay the seller

**Countertrade** – a form of barter, under which a seller agrees to accept payment in goods produced or procured by the buyer

**Non-Tariff Barriers** – national rules, other than import duties, that restrict or prevent the importation of goods

**Quotas** – restrictions on the quantities of goods that may be imported

**Dumping** – selling products abroad at prices below those charged on domestic sales

**Export Subsidy** – the granting by governments of financial assistance to promote exports

**Anti-dumping Duties** and **Countervailing Duties** – special duties imposed on imported products to country the advantage obtained from dumping or export subsidies

**Trade-Related Investment Measures** – national measures regulating investment that have an impact upon international trade

**Most-Favoured-National (MFN) Treatment** – the principle that goods imported from one country should not be treated less favourably than those imported from any other country

**National Treatment** – the principle that goods from another country should not be treated less favourably than domestic goods

**Free Trade Area** – group of countries within which customs duties are eliminated

An exception to the MFN principle, accepted under WTO rules, permits the creation of regional free trade areas, within which custom duties may be eliminated entirely.

Foreign Direct Investment (FDI) is conducted through the establishment of a branch, subsidiary, or joint venture:

**Branch** – a business carried on by the owner in its own name at a location distinct from its head office

**Subsidiary** – a separate corporation owned or controlled by its “parent” corporation

**Joint Venture** – a form of partnership between two or more independent enterprises, or a corporation jointly owned by them

**Performance Requirements** – conditions attached by the host country in granting approval to a foreign investment

**Expropriation** – a state’s right to assume ownership of private property within its geographic borders

**Bilateral Investment Protection Treaty** – a treaty entered into between two countries, whereby each country undertakes to protect investors from the other country and to give them certain rights

Courts of a country/province will normally assert jurisdiction over foreign defendants if:  
- a tort was committed there  
- a contract was to be performed there  
- damage from a tort or breach of contract was sustained there  
- the dispute concerned property or goods situated there  
- the contract stipulated that it should be governed by the laws of the country or province  
- the parties to a contract specified that those courts should have jurisdiction in the event of a dispute

**Security for Costs** – money deposited into the court in case an unsuccessful foreign plaintiff is ordered to pay the legal costs of the successful defendant

**Party Autonomy** – the parties’ freedom to determine how their dispute will be resolved

**Arbitration Clause** – a term in a commercial contract designating arbitration as the process for resolution of any disputes arising between the parties

A major advantage or arbitration, as opposed to litigation (a court), is the ability to select an arbitrator with great experience in the specific area of the dispute, a right not available in the public courts. Awards would be enforced must more easily as well.