MODES OF INTERNATIONAL TRADE TRANSACTIONS

CHAPTER 1: MODES OF INTERNATIONAL TRADE TRANSACTIONS

MATERIALS

- Chapter 1, Textbook “International Trade Transactions” (Pham Duy Lien, 2012)
- UN Convention on Contracts for the International Sale of Goods;
- Civil Code (2015);
- Commercial Law (2005);
- Law on Tendering (2023);
- Decree No. 69/2018/NĐ-CP
- Related newspapers and magazines.

OVERVIEW ON MODES OF INTERNATIONAL TRADE TRANSACTIONS

- Mode of transaction means the method through which a transaction is conducted
- No unified classification (unlike trade in services)
- Direct vs. indirect transactions
- Ordinary vs. special transactions

OVERVIEW ON MODES OF INTERNATIONAL TRADE TRANSACTIONS

Commercial Law 2005, commercial activities include:

- Sales of goods
- Provisions of services
- Trade promotion
- Commercial intermediary activities
- Other specific commercial activities: processing, auction, bidding, franchising, logistics…

OVERVIEW ON MODES OF INTERNATIONAL TRADE TRANSACTIONS

- International sales of goods:
  - Direct import/export
  - Re-exportation
  - Countertrade
  - Import and export through commercial intermediaries
  - Import and export through commodity exchanges
- Other modes of transaction:
  - International processing
  - International auction
  - International bidding

INTERNATIONAL SALES OF GOODS

- **Art.1, CISG 1980:**
- "parties whose places of business are in different States"
- Nationality?
- **Art. 27, Commercial Law 2005:**
- No definition
- Forms of international sales of goods
- What element determines "international sales"?

INTERNATIONAL SALES OF GOODS

1. Direct import/export

1. **Definition**

   Sellers and buyers in different countries territories or customs areas directly negotiate and conclude contracts.

2. **Features:**

- Most widely-used
- Conditions: legally allowed to and can conduct the transaction without the assistance of third parties
- Either a complete or part of a commercial activity

INTERNATIONAL SALES OF GOODS

2. Re-exportation

2.1 Definition

Re-exportation is the transaction in which profit is gained by exporting the goods in the same state as previously imported.

2.2 Features

- Gain more foreign currency than that spent;
- Goods do not undergo processing;
- Involve 3 parties (triangular transaction), 2 separate contracts;
- Goods of great supply/demand & varying price;
- Enjoy customs and tax preferences.

⇒ Re-exportation vs. transit of goods?

INTERNATIONAL SALES OF GOODS

2.3. Classification

2.3.1 Temporary import for re-export

Money: Goods:

INTERNATIONAL SALES OF GOODS

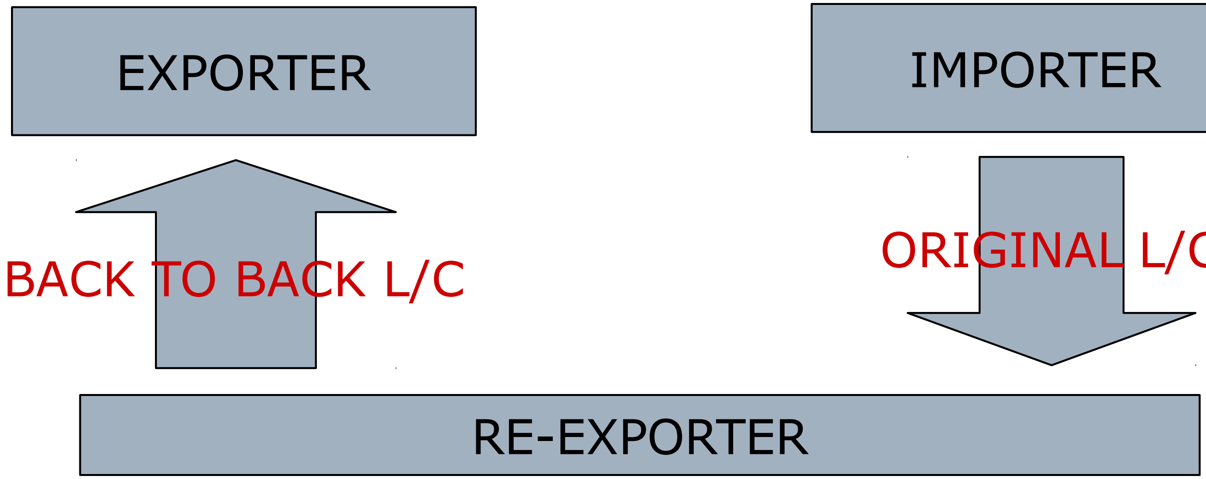
2.3.2. Transfer of goods through border-gates

Art. 30, Commercial Law 2005:

Transfer of goods through border-gates means purchase of goods from a country or territory for sale to another country or territory outside the Vietnamese territory without carrying out the procedures for importing such goods into Vietnam and the procedures for exporting such goods out of Vietnam.

2.4. Implementation of re-exportation transaction

- Sign contracts: 2 separate contracts with intimate linkage;
- Measures to assure the implementation: Deposit, penalty, back-to-back L/C.



INTERNATIONAL SALES OF GOODS

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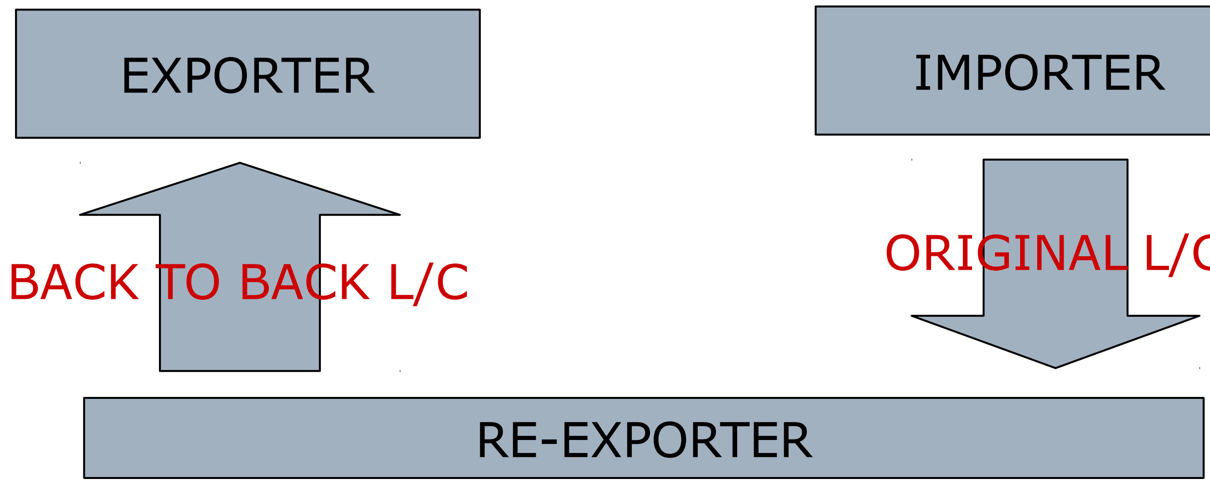

INTERNATIONAL SALES OF GOODS

3. Countertrade

1. Definition

- Counter-trade includes transactions with a <u>linkage between the export and the import</u> of goods or services in addition to, or in place of, financial settlements.

- Counter-trade means exchanging goods or services which are paid for, in whole or part, with <u>other goods or services, rather than with money</u>. However, monetary valuation can be used for <u>accounting purposes</u>.

INTERNATIONAL SALES OF GOODS

3.2. Features

- Exporter is also importer;

⇒ Similar to re-exportation?

- Counter-traders care more about use value (worth) than exchange value (value) of goods;
- Money is mainly used for calculation purpose;
- Require balance in use value, exchange value, weight, delivery terms…

3.3. Reasons for development

- Lack of money, lack of faith in money, lack of acceptability of money as an exchange medium;
- Maintain positive balance of trade, reduce trade imbalances (commodity that is being bought is equaled with that being sold);
- Gain competitive advantage over other nations/ companies selling or trading the same products:

+ A mechanism to gain entry into new markets;
+ Providing counter-trade services helps traders differentiate their products from competitors’.

INTERNATIONAL SALES OF GOODS

3.4. Classification

No unified classification

- Barter
- Offset
- Compensation
- Counter-purchase
- Buyback
- Switch trading

⇒ *http://www.witiger.com/internationalbusiness/countertrade.htm*

4. Import/Export Through Intermediary

4.1 Definition

Mode of transaction in which the relationship between the seller and the buyer is established through a third party – the commercial intermediary.

Art. 3, Commercial Law 2005:

"Commercial intermediary activities mean activities carried out by a trader to effect commercial transactions for one or several identified traders […]."

⇒ Commercial intermediaries are traders who carry out commercial intermediary activities.

INTERNATIONAL SALES OF GOODS

4.2. Features

- Commercial intermediaries connect sellers and buyers; producers and consumers;
- Commercial intermediaries work under entrustment;
- Commercial intermediaries and traders who entrust them are interdependent;
- Profit is shared between commercial intermediaries traders who entrust them.

INTERNATIONAL SALES OF GOODS

- **Advantages**
- Increase sales and reduce risks in newly penetrated markets;
- Save direct investment and transport cost;
- Take advantages of intermediaries' services;
- **Disadvantages**
- Lose direct contact with the market;
- Share profit with intermediaries;
- Take risk if wrongly choose bad intermediaries;
- Intermediaries may have so many requirements.

INTERNATIONAL SALES OF GOODS

- **Usage**
  - Penetrate into a new market;
  - Introduce new products;
  - Required by market practice;
  - Establishment of trade relationship is restricted by political, diplomatic reasons;
- **Requirements to become commercial intermediaries**
  - Lawful traders operate in registered fields;
  - Meet certain requirements of the relevant field.

INTERNATIONAL SALES OF GOODS

4.3. Classification

- **International**

+ Brokerage
+ Agency

- **Vietnam**

Art. 3, Commercial Law 2005:

+ Representation of traders
+ Commercial brokerage
+ Goods sale or purchase entrustment
+ Commercial agency

INTERNATIONAL SALES OF GOODS

4.3.1 Brokerage

4.3.1.1. Definition

Art. 150, Commercial Law 2005:

Brokerage is a commercial activity in which a trader acts as an intermediary (the broker) between parties selling and purchasing goods or providing services (the principals) in the course of negotiations and entering into contracts for sale and purchase of goods or provision of services and shall be remunerated under a brokerage contract.

INTERNATIONAL SALES OF GOODS

4.3.1.2. Features

- Brokers are not representatives of principals;
- Brokers do not sign contracts and take part in the performance of contracts between principals, except when authorized by the principals

⇒ *Representation of traders?*

- Brokers are responsible for the legal status, but not for the solvency, of the principals;
- Brokers often operate under short-term authorization for each single transaction.

INTERNATIONAL SALES OF GOODS

4.3.2 Agency

4.3.2.1 Definition

a. EU law

Agents are self-employed intermediaries who have continuing authority to negotiate the sale and purchase of goods on behalf of the principals, or to negotiate and conclude the contracts for sale and purchase of goods on behalf of and in the name of the principals.

⇒ Representation of traders in VN Law.

INTERNATIONAL SALES OF GOODS

b. Vietnam law

Art. 166, Commercial Law 2005:

Commercial agency means a commercial activity whereby the principal and the agent agree that the agent, <u>in its own name</u>, sells or purchases <u>**goods**</u> for the principal or provides <u>**services**</u> of the principal to customers for remuneration.

⇒ <u>*Goods*</u> sale or purchase entrustment?

INTERNATIONAL SALES OF GOODS

4.3.2.2. Features

- Agents may sign and carry out contracts;
- Agents often operate under long-term authorization;
- "The principal is the owner of goods or money delivered to the agent" **(Art. 170, CL 2005)**

⇒ Brokerage vs. Agency

⇒ Self-reading: *http://www.ecolaw.vn/vi/node/253*

http://luatsuquangthai.vn/thong-tin-luat-hop-dong/cac-hinh-thuc-

INTERNATIONAL SALES OF GOODS

5. Import/Export through the Commodity Exchange

5.2 Definition

Art. 6, Decree 158/2006/NĐ-CP:

- Commodity Exchange is a legal entity, established and operate as a limited liability company or joint-stock company, according to the provisions of the Enterprise Law

⇒ Commodity Exchange is a special market at which, through intermediaries nominated by the Commodity Exchange, traders purchase and sell generic goods of large volume and of interchangeable quality.

INTERNATIONAL SALES OF GOODS

5.2. Features

- Transactions are conducted at specific time and place;
- Goods: generic, large volume, commercially interchangeable;
- Transactions are conducted by brokers nominated by the Commodity Exchange;
- Purchase and sale goods must follow the Commodity Exchange's requirements and standards;
- Goods Exchange connects supply and demand of a certain product, at a certain time and in a certain area, therefore, shows the fluctuation of price;
- Most of the transactions are "short-sale" ones.

INTERNATIONAL SALES OF GOODS

5.3. Classification

- International:

+ Spot transaction
+ Forward transaction
+ Hedging transaction
+ Option transaction

- Vietnam:

Art. 64, Commercial Law 2005:

Contracts for purchase and sale of goods through the C.E include forward contracts and option contracts.

INTERNATIONAL SALES OF GOODS

5.3.1. Spot transaction

- In a spot transaction, delivery and payment are made at the moment of signing contract
- Price is called “spot price” or “spot quotation”
- This type of transaction accounts for about 10%

5.3.2. Forward Transaction

- In a forward transaction, price is agreed at the moment of signing contract, but the delivery and payment are carried out after a certain period of time. Forward transaction allows traders to benefit from the change in price.

INTERNATIONAL SALES OF GOODS

- Forward transactions are mainly “short-sale” ones, conducted by speculators;
- Bull speculator: Always anticipates a rise in the price (the buyer);
- Bear speculator: Always anticipates a fall in the price (the seller;
- Traders can flexibly postpone purchasing or buying by paying offset to the other party;
- Clearing House’s role in forward transaction: the seller and the buyer negotiate the contract, but fulfil their obligations through the Clearing House.

⇒ Futures Contract and Forward Contract?

INTERNATIONAL SALES OF GOODS

- ***Example:***

- **January 1st**: The seller and the buyer sign a contract for sale of 1000 MT of goods X, at the price of USD 500/MT; delivery shall be made 1 month later.
- **February 1st**: The market price of X falls to USD 400/MT.

⇒ The seller (bull) gains USD 100,000;

⇒ The buyer (bear) loses USD 100,000;

⇒ The buyer may choose to receive the goods or pay the purchase offset of USD 100,000 to the seller through Clearing House.

INTERNATIONAL SALES OF GOODS

5.3.3. Hedging transaction

- In a hedging transaction, traders conduct "short-sale" transactions at the Commodity Exchange beside actual transactions in the real market to avoid risks caused by the fluctuation of price;
- Hedging is a self-insurance measurement, and itself does not help traders gain profit;
- When conducting hedging transaction, a trader must choose a proper strategy based on his information on prices, costs...

INTERNATIONAL SALES OF GOODS

5.3.4. Option transaction

Art. 64, Commercial Law 2005:

Call option or put option contract means an agreement whereby the purchaser has the right to purchase or sell a specific goods at a pre-fixed price level (executed price) and must pay a certain sum of money to buy this right (option money). The option purchaser may opt to effect or not to effect such purchase or sale of goods.

⇒ The trader actually buys the right to effect the transaction; he has no obligation to effect it.

⇒ In any case, he always loses the option fee.

INTERNATIONAL PROCESSING

1. Definition

Art. 178, Commercial Law 2005:

Commercial processing means a commercial activity whereby a processor uses part or whole of raw materials and materials supplied by the processee to perform one or several stages of the production process at the latter's request in order to receive remuneration.

International processing:

- Processor and processee: in different countries/customs areas;
- Materials, semi-products, products: across border.

INTERNATIONAL PROCESSING

⇒ International processing is a commercial activity in which one party (the processor) imports materials, semi-products from the other party (the processee) to process into complete products, return them to the processee and receive remuneration (processing fee).

2. Features

- Remuneration is proportional to labour power;
- Ownership of materials, semi-products <u>often</u> belongs to the processee;
- Enjoy tax and customs preference.

INTERNATIONAL PROCESSING

3. Classification

1. In terms of material ownership

1. Provide materials, return products

- The processee provides the processor with materials/semi-products;
- After the processing period, the processor shall return products and gets remuneration;
- During the processing period, the ownership of material still belongs to the processee.

⇒ *Ownership: possession, use, and disposal.*

INTERNATIONAL PROCESSING

3.1.2. Buy materials, sell products

a. Materials from the procesee

- The processee sells materials to the processor;
- After the processing period, the processor sells products to the processee;
- In each step, payment is actually arranged => *considered to be* 2 separate contracts;
- Ownership *is considered to* pass from the processee to the processor;
- Unless otherwise stipulated, the procesee still holds the right to control *complete products*.

INTERNATIONAL PROCESSING

b. Materials from other sources

- The procesee provides samples and assissts the processor with technical equipments/documents;
- The processor independently prepare materials (import from the processee or not);
- After the processing period, the processor sells complete products to the processee;

⇒ The contract often stipulates that the processee is responsible for the consumption of the complete products.

⇒ (a) and (b) are often combined.

INTERNATIONAL PROCESSING

3.2. In terms of processing pricing

- Cost plus pricing: The processor will remunerate all reasonable costs and the processing fee;
- Target pricing: A target price is defined for each complete item, which includes target cost and target processing fee;
- Examples of processing pricing:

+ *CMT: Cutting, Making, Trimming*

+ *CMP: Cutting, Making, Packing*

+ *CMQ: Cutting, Making, Quota*

INTERNATIONAL PROCESSING

3.3. In terms of number of parties involved

- Two-party processing: Simple processing
- Multi-party processing: Transitional processing

+ Processee: Only one company;
+ Processor: Several companies. Products of the 1st phase become materials for the 2nd phase.

Art. 33, Decree 187/2013/ND-CP, :

Processed products under a processing contract in one phase shall, under the instructions of the supplier, be provided for the purpose of the processing contract of the following phase.

INTERNATIONAL AUCTION

1. Definition

Commercial Law 2005, Art. 185:

Auction of <u>goods</u> means a commercial activity whereby sellers themselves conduct or hire auction organizers to conduct public sale of goods to select purchasers that offer the <u>highest price</u>.

International auction:

- Sellers and buyers: different countries/ customs areas;
- Products: move across border.

⇒ **<u>Note</u>**: Role of *price* in auction transaction.

INTERNATIONAL AUCTION

2. Features

- Publicly organized at a definite time and place;
- Buyers are allowed to check before buying and free to compete
- Auction organizer: the seller or a trader who is mandated by the seller
- Goods: Often of great value, precious and rare; difficult to standardize;
- Seller dominate the transaction: single seller, many buyers.

⇒ *Can goods in need of liquidation be auctioned?*

INTERNATIONAL AUCTION

3. Classification

1. In terms of auction purpose

- Business auction
- Non-business auction

3.2. In terms of organizing method

- Voiced auction:

+ Upward bidding (*English auction*): Participants bid openly against one another, each subsequent bid higher than the previous bid;

+ Downward bidding *(Dutch auction)*: The auctioneer begins with a high price which is lowered until a participant is willing to accept the auctioneer's price;

- Voiceless auction: A variant of the English auction in which bids are written on a sheet of paper.

INTERNATIONAL AUCTION

4. Steps to organize auction

Step 1: Preparation

- Sign an organizing contract
- Prepare auctioned goods
- Prepare auction regulations
- Publicize information

Step 2: Displaying auctioned goods

Step 3: Conducting the auction

Step 4: Drafting auction documents

⇒ Self-reading: **Commercial Law 2005, Chapter VI, Section 2**

INTERNATIONAL BIDDING

1. Definition

Art. 214, Commercial Law 2005:

Bidding for goods or services means a commercial activity whereby a party purchases goods or services through bidding (referred to as bid solicitor) in order to select, among traders participating in the bidding (referred to as bidders), a trader that satisfies the requirements set forth by the bid solicitor and is selected to enter into and perform a contract (referred to as bid winner).

Art.4, Bidding Law 2005:

International bidding means the process of selecting contractors that satisfy the requirements of bid solicitors, with participation of both foreign and domestic contractors.

INTERNATIONAL BIDDING

2. Features

- Applied for both goods and services;
- Bidding packages are often of great value;
- Bid solicitors: investors or organizations fully capable and experienced, and employed by investors to organize biddings.
- Bounded by regulations of capital loan and use;
- Buyers dominates the transaction: One buyer vs. many sellers/suppliers

⇒ Role of *price* in bidding transaction.

INTERNATIONAL BIDDING

3. Types of bidding

1. In terms of number of bidders

- *Open bidding:* The number of participating bidders is not limited (with or without pre-qualification)
- *Restrictive bidding:*

+ At the request of foreign donors of capital sources;
+ For particular technical requirements;
+ At least 5 contractors identified as fully capable and experienced must be invited;

- *Appointment of contractors:* Force majeure, at the request of foreign donors; urgent projects for national interests, the requirement of compatibility.

⇒ Self reading: **Bidding Law 2005, Art. 18, 19, 20.**

INTERNATIONAL BIDDING

3.2. In terms of organizing method

- *One-stage bidding:*

+ one-dossier-bag: technical & financial proposals;
+ two-dossier-bag: technical & financial proposals separately submitted;

- *Two-stage bidding:*

+ Stage 1: Bidders shall submit technical proposals and financial plans without bidding prices;
+ Stage 2: Based on the bidding dossiers for 2nd stage, bidders that have participated in the 1st stage shall be invited to submit bids for the 2nd stage, which shall cover technical proposals and financial proposals, including bidding prices.

INTERNATIONAL BIDDING

3.3. In terms of bidding object

- Goods procurement bidding;
- Service provision bidding;

3.4. In terms of forms of contract

- *Package contracts*: quantity/volume has already been clearly defined
- *Unit price-based contracts*: quantity/volume cannot be exactly defined.
- *Time-based contract*: complicated research, design consultancy, construction supervision, training or refresher training
- *Percentage-based contracts*: common and simple consultancy

INTERNATIONAL BIDDING

4. Steps to organize bidding

- Preparing bidding
- Pre-qualifying
- Guiding, explaining to bidders
- Receipt of bidding dossier
- Opening bids
- Inspecting and assessing bidding plans
- Classifying and selecting bidder
- Informing results and signing contracts
- Bid winner submits deposit or contract performance security measurements

⇒ Self reading: **Chapter III, Bidding Law 2005.**