**УО «БЕЛОРУССКИЙ ГОСУДАРСТВЕННЫЙ ЭКОНОМИЧЕСКИЙ УНИВЕРСИТЕТ»**

**В.Н. Крылович**

**Business English for Law Students**

**Деловой английский для студентов и магистрантов специальностей:**

**1-24 01 02 «Правоведение», 1-24 81 01 «Правовое обеспечение хозяйственной деятельности», 1-24 81 03 «Правовое регулирование внешнеэкономической деятельности»**

Минск: БГЭУ, 2017

Рекомендовано кафедрой профессионально ориентированной английской речи УО «Белорусский государственный экономический университет»

Крылович В.Н.

Business English for Law Students =Деловой английский для студентов и магистрантов специальностей:1-24 01 02 «Правоведение», 1-24 81 01 «Правовое обеспечение хозяйственной деятельности», 1-24 81 03 «Правовое регулирование внешнеэкономической деятельности»/ В.Н. Крылович. –Минск:БГЭУ, 2017. – 31c.

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#

# LEARNING OBJECTIVES

After studying this material, you should be able to:

1. Identify and discuss some basic principles and doctrines that frame international business transactions.
2. Describe some ways in which U.S. business persons do business internationally.
3. Explain how parties to international contracts protect against various risks through contractual clauses and letters of credit.
4. Discuss how specific types of international business activities are regulated by governments.

# INTRODUCTION

Since ancient times, independent peoples and nations have traded their goods and wares with one another. In other words, international business transactions are not unique to the modern world, because people have always found that they can benefit from exchanging goods with others, as suggested by President Woodrow Wilson’s statement in the opening quotation. What is new in our time is that, particularly since World War II, business has become increasingly multinational. It is not uncommon, for example, for a U.S. corporation to have investments or manufacturing plants in a foreign country, or for a foreign corporation to have operations within the United States.

Transacting business on an international level is considerably different from transacting business within the boundaries of just one nation.

Buyers and sellers face far greater risks in the international marketplace than they do in a domestic context because the laws governing these transactions are more complex and uncertain. For example, the Uniform Commercial Code will govern many disputes that arise between U.S. buyers and sellers of goods unless they have provided otherwise in their contracts. What happens, however, if a U.S. buyer breaches a contract formed with a British seller? What law will govern the dispute – British or American? What if an investor owns substantial assets in a developing nation and the government of that nation decides to nationalize – assert its ownership over – the property? What recourse does the investor have against the actions of a foreign government? Questions such as these, which normally do not arise in a domestic context, can become critical in international business dealings.

Because the exchange of goods, services, and ideas on a global level is now a com­mon activity, the student of business law should be familiar with the laws pertain­ing to international business transactions. In this chapter, we first examine the legal context of international business transactions. We then look at some selected areas relating to business activities in a global context, including international sales con­tracts, civil dispute resolution, letters of credit, and investment protection. We con­clude the chapter with a discussion of the application of certain U.S. laws in a transnational setting.

# UNIT I. INTERNATIONAL PRINCIPLES AND DOCTRINES

WORDS

1. To be consistent with – быть совместимым с
2. To vex – нарушать
3. Expropriation – экспроприация
4. Confiscation – конфискация
5. To seize – захватывать
6. Illegal – нелегальный

**WORD EXPRESSIONS**

1. To a greater or lesser extent – в большей или меньшей степени
2. Legal principles – правовые принципы
3. Pass upon the validity – рассматривать законность
4. Just compensation – справедливая компенсация
5. To bring an action – возбуждение дела
6. To waive its immunity – отказаться от своего иммунитета
7. Commercial activity – хозяйственная (коммерческая) деятельность

In this unit we look at some legal principles and doctrines that have evolved over time and that the courts of var­ious nations have employed – to a greater or lesser extent– to resolve or reduce con­flicts that involve a foreign element. The three important legal principles and doctrines discussed in the following sections are based primarily on courtesy and respect and are applied in the interests of maintaining harmonious relations among nations.

##

## The Principle of Comity

Under what is known as the principle of comity, one nation will defer and give effect to the laws and judicial decrees of another country, as long as those laws and judicial decrees are consistent with the law and public policy of the accommodating nation. This recognition is based primarily on courtesy and respect.

##

## The Act of State Doctrine

The act of state doctrine is a judicially created doctrine that provides that the judicial branch of one country will not examine the validity of public acts committed by a recognized foreign government within its own territory. This doctrine is premised on the theory that the judicial branch should not “pass upon the validity of foreign acts when to do so would vex the harmony of our international relations with that foreign nation”.

The act of state doctrine can have important consequences for individuals and firms doing business with, and investing in, other countries. For example, this doctrine is frequently employed in cases involving expropriation or confiscation. Expropriation occurs when a government seizes a privately owned business or privately owned goods for a proper public purpose and awards just compensation.

When a government seizes private property an illegal purpose or without just compensation, the taking is referred to as a confiscation. The line between these two forms of taking is sometimes blurred because of differing interpretations of what is illegal and what constitutes just compensation.

When applicable, both the act of state doctrine and the doctrine of sovereign immunity tend to immunize foreign nations from the juris­diction of U.S. courts. What this means is that firms or individuals who own prop­erty overseas often have little legal protection against government actions in the countries in which they operate.

##

## The Doctrine of Sovereign Immunity

Under certain conditions, the doctrine of sovereign immunity immunizes (protects)foreign nations from the jurisdiction of the U.S. courts. In 1976, Congress codifiedthis rule in the Foreign Sovereign Immunities Act (FSIA). The FSIA exclusively governs the circumstances in which an action may be brought in the United Statesagainst a foreign nation, including attempts to attach a foreign nation's property.

Section 1605 of the FSIA sets forth the major exceptions to the jurisdictional immunity of a foreign state or country. A foreign state is not immune from the jurisdiction of the courts of the United States when the state has “waived its immunityeither explicitly or by implication” or when the action is “based upon a commercial activity carried on in the United States by the foreign state”.

Issues frequently arise as to what entities fall within the category of a foreign state. The question of what is commercial activity has also been the subject of dispute. Under Section 1603 of the FSIA a foreign state is defined to include both apolitical subdivision of a foreign state and an instrumentality of a foreign state.

A commercial activity is broadly defined under Section 1603 to mean a commercial activity that is carried out by a foreign state within the United States. The act, however, does not define the particulars of what constitutes a commercial activity. Rather, it is left up to the courts to decide whether a particular activity is governmental or commercial in nature.

## Notes:

*Comity* – a deference by which one nation gives effect to the laws and judicial decrees of another nation. This recognition is based primarily on respect.

*Act of State Doctrine* – a doctrine that provides that the judicial branch of one country will not examine the validity of public acts committed by a recognized foreign government within its own territory.

*Expropriation* – the seizure by a government of pri­vately owned business or personal property for a proper public purpose and with just compensation.

*Confiscation* – a government's taking of privately owned business or personal property without a proper public purpose or an award of just compensation.

*Sovereign Immunity* – a doctrine that immunizes foreign nations from the jurisdiction of U.S. courts when certain conditions are satisfied.

**QUESTIONS FOR DISCUSSION**

1. Which international principles and doctrines of doing business condition could you specify?
2. How is the Principle of Comity implemented?
3. What is the Act of State Doctrine?
4. What are the important consequences of the act of state doctrine for individuals and firms doing business with, and investing in, other countries?
5. What is the main idea of the Doctrine of Sovereign Immunity?
6. How could you define *commercial activity*?

# UNIT II. DOING BUSINESS INTERNATIONALLY

**WORDS**

1. Taxes – налоги
2. Revenues – доходы
3. Licensing – лицензирование
4. Franchise – франшиза
5. Purchaser – покупатель
6. Principal – принципал
7. Empowered – уполномоченный
8. Antitrust – антимонопольное (регулирование)
9. Shipping – отгрузка, перевозка
10. Trademark – товарный знак
11. Franchisor – франчайзер
12. Franchisee – франчайзи

**WORD EXPRESSIONS**

1. Domestically produced products or services – отечественная продукция или услуги
2. Labor costs – затраты на оплату труда
3. Fewer government regulations – меньше правительственных постановлений
4. Trade barriers – торговые барьеры
5. Agency relationship – агентские отношения
6. Currency of payment – валюта платежа
7. Raw materials – сырье
8. Import duties – ввозные пошлины
9. Wholly owned subsidiary – дочернее предприятие, полностью принадлежащее материнской компании
10. Joint venture – совместное предприятие

A U.S. domestic firm can engage in international business transactions in a number of ways. The simplest way to engage in international business transactions is to seek out foreign markets for domestically produced products or services. In other words, U.S. firms can look abroad for export markets for their goods and services.

Alternatively, a U.S. firm can establish foreign production facilities so as to be closer to the foreign market or markets in which its products are sold. The advan­tages may include lower labor costs, fewer government regulations, and lower taxes and trade barriers. A domestic firm can obtain revenues through the licensing of technology to an existing foreign company. Yet another way to expand abroad is by selling franchises to overseas entities. The presence of McDonald's, Burger King, and KFC franchises throughout the world attests to the popularity of franchising.

##  Exporting

The initial foray into international business by most U.S. companies is through exporting. Exporting can take two forms: direct exporting and indirect exporting.

In *direct exporting,* a U.S. company signs a sales contract with a foreign purchaser that provides for the conditions of shipment and payment for the goods. If business develops sufficiently in foreign countries, a U.S. corporation may develop a specialized marketing organization that, for example, sells directly to consumers in that country. Such indirect exporting can be undertaken by the appointment of a foreign agent or a foreign distributor.

**Foreign Agent.** When a U.S. firm desires a limited involvement in an international market, it will typically establish an agency relationship with a foreign firm. In an agency relationship, one person (the agent) agrees to act on behalf of another (the principal). The foreign agent is thereby empowered to enter into contracts in the agent’s country on behalf of the U.S. principal.

**Foreign Distributor**. When a substantial market exists in a foreign country, a U.S. firm may wish to appoint a distributor located in that country. The U.S. firm and the distributor enter into a distribution agreement, which is a contract between the seller and the distributor setting out the terms and conditions of the distributorship—for example, price, currency of payment, availability of supplies, and method of pay­ment. The terms and conditions primarily involve contract law. Disputes concerning distribution agreements may involve jurisdictional or other issues. In addition, some exclusive distributorships — in which distrib­utors agree to distribute only the sellers’ goods—have raised antitrust problems.

## manufacturing abroad

An alternative to direct or indirect exporting is the establishment of foreign manufacturing facilities. Typically, U.S. firms want to establish manufacturing plants abroad if they believe that by doing so they will reduce costs—particularly for labor, shipping, and raw materials—and thereby be able to compete more effectively in foreign markets. Apple Computer, IBM, General Motors, and Ford are some of the many U.S. companies that have established manufacturing facilities abroad. Foreign firms have done the same in the United States. Sony, Nissan, and other Japanese manufacturers have established U.S. plants to avoid import duties that the U.S. Congress may impose on Japanese products entering this country.

There are several ways in which an American firm can manufacture goods in other countries. They include licensing and franchising, as well as investing in a wholly owned subsidiary or a joint venture.

**Licensing**. It is possible for U.S. firms to license their technologies to foreign man­ufacturers. Technology licensing may involve a process innovation that lowers the cost of production, or it may involve a product innovation that generates a superior product. Technology licensing may be an attractive alternative to establishing for­eign production facilities, particularly if the process or product innovation has been patented, because the patent protects—at least to some extent—against the possi­bility that the innovation might be pirated. Like any licensing agreement, a licens­ing agreement with a foreign-based firm calls for a payment of royalties on some basis—such as so many cents per unit produced or a certain percentage of profits from units sold in a particular geographical territory.

In certain circumstances, even in the absence of a patent, a firm may be able to license the “know-how” associated with a particular manufacturing process—for example, a plant design or a secret formula. The foreign firm that agrees to sign the licensing agreement further agrees to keep the know-how confidential and to pay royalties. For example, the Coca-Cola Bottling Company licenses firms worldwide to use (and keep confidential) its secret formula for the syrup used in that soft drink, in return for a percentage of the income gained from the sale of Coca-Col by those firms.

The licensing of technology benefits all parties to the transaction. Those who receive the license can take advantage of an established reputation for quality, and the firm that grants the license receives income from the foreign sales of the firm’s products, as well as establishing a worldwide reputation. Additionally, once | firm’s trademark is known worldwide, the demand for other products manufactured or sold by that firm may increase—obviously an important consideration.

**Franchising.** Franchising is a well-known form of licensing. Franchise can be defined as an arrangement in which the owner of a trade­mark, trade name, or copyright (the franchisor) licenses another (the franchisee) to use the trademark, trade name, or copyright—under certain conditions or limita­tions—in the selling of goods or services in exchange for a fee, usually based on a percentage of gross or net sales. Examples of international franchises include McDonald’s, the Coca-Cola Bottling Company, Holiday Inn, Avis, and Hertz.

Investing in a Wholly Owned Subsidiary or a Joint Venture One way to expand into a foreign market is to establish a wholly owned subsidiary firm in a foreign country. The European subsidiary would likely take the form of the société anonyme (S.A.), which is similar to a U.S. corporation. In German-speaking nations, it would be called an Aktiengesellschaft (A.G.). When a wholly owned subsidiary is estab­lished, the parent company, which remains in the United States, retains complete ownership of all the facilities in the foreign country, as well as complete authority and control over all phases of the operation.

The expansion of a U.S. firm into international markets can also take the form of a joint venture. In a joint venture, the U.S. company owns only part of the oper­ation; the rest is owned either by local owners in the foreign country or by another foreign entity. In a joint venture, all of the firms involved share responsibilities, as well as profits and liabilities.

## Notes:

*Export* – to sell products to buyers located in other countries.

*Distribution Agreement* – a contract between a seller and a dis­tributor of the seller's products setting out the terms and conditions of the distributorship.

*Exclusive Distributorship* – a distributorship in which the seller and distributor of the seller's products agree that the distributor has the exclusive right to distribute the seller's products in a certain geographic area.

*Technology Licensing* – allowing another to use and profit from intellectual property (patents, copyrights, trademarks, innovative products or processes, and so on) for consideration. In the context of inter­national business transactions, tech­nology licensing is sometimes an attractive alternative to the establishment of foreign production facilities.

**QUESTIONS FOR DISCUSSION**

1. Are there any advan­tages for a firm to establish foreign production facilities?
2. What are the forms of exporting?
3. How is it possible to export goods abroad through foreign agents and foreign distributors?
4. What should be taken into account while producing goods abroad?
5. What is technology licensing?
6. Who benefits from licensing of technology and in which way?
7. What is franchising?
8. What are the benefits of Investing in a Wholly Owned Subsidiary / Joint Venture?

# UNIT III. COMMERCIAL CONTRACTS IN AN INTERNATIONAL SETTING

**WORDS**

1. Dispute – спор
2. To be arbitrated – рассматривать спор в арбитраже
3. To be litigated – оспаривать в суде
4. Deal – сделка
5. Disagreement – несогласие
6. Stipulate – предусматривать
7. Embargoes – эмбарго
8. Lawsuit – судебный процесс, иск, тяжба
9. Plaintiff – истец
10. Defendant – ответчик

**WORD EXPRESSIONS**

1. Substantive law – материальное право
2. To strike a deal – заключить сделку
3. Contractual terms – условия договора
4. Applicable law – применимое право
5. Civil law systems – система гражданского права
6. Impose no limitation – не накладывать ограничений
7. Shortages of materials – нехватка материалов
8. Arbitration clause – арбитражная оговорка, положение

Like all commercial contracts, an international contract should be in writing.

Language and legal differences among nations can create special problems for parties to international contracts when disputes arise. It is possible to avoid these problems by including in a contract special provisions designating the official lan­guage of the contract, the legal forum (court or place) in which disputes under the contract will be settled, and the substantive law that will be applied in settling any disputes. Parties to international contracts should also indicate in their contracts what acts or events will excuse the parties from performance under the contract and whether disputes under the contract will be arbitrated or litigated.

## Choice of Language

A deal struck between a U.S. company and a company in another country normally involves two languages. The complex contractual terms involved may not be understood by one party in the other party’s language. Typically, many phrases in one language are not readily translatable into another. To make sure that no disputes arise out of this language problem, an international sales contract should have a choice-of-language clause designating the official language by which the contract will be interpreted in the event of disagreement.

## Choice of Forum

When several countries are involved, litigation may be sought in courts in different nations. There are no universally accepted rules regarding the jurisdiction of a particular court over subject matter or parties to a dispute. Consequently, parties to an international transaction should always include in the contract a forum-selection clause indicating what court, jurisdiction, or tribunal will decide any disputes arising under the contract. It is especially important to indicate specifically what court will have jurisdiction. The forum does not necessarily have to be within the geo­graphical boundaries of either of the parties’ nations.

## Choice of Law

A contractual provision designating the applicable law—such as the law of Germany or England or California -- is called a choice-of-law clause. Every international contract typically includes a choice-of-law clause. At common law (and in European civil law systems), parties are allowed to choose the law that will govern their contractual relationship provided that the law chosen is the law of a jurisdic­tion that has a substantial relationship to the parties and to the international busi­ness transaction.

Under Section 1-105 of the Uniform Commercial Code, parties may choose the law that will govern the contract as long as the choice is “reasonable.” Article 6 of the United Nations Convention on Contracts for the International Sale of Goods, however, **imposes no limitation** on the parties in their choice of what law will govern the contract. The 1986 Hague Convention on the Law Applicable to Contracts for the International Sale of Goods—often referred to as the Choice-of-Law Convention—allows unlimited autonomy in the choice of law. The Hague Convention indicates that whenever a choice of law is not specified in a contract, the governing law is that of the country in which the *seller's* place of business is located.

## Force Majeure Clause

Every contract, particularly those involving international transactions, should have a force majeure clause. Force majeure is a French term meaning “impossible or irre­sistible force”—which sometimes is loosely identified as “an act of God.” In interna­tional business contracts, force majeure clauses commonly stipulate that in addition to acts of God, a number of other eventualities (such as governmental orders or regula­tions, embargoes, or shortages of materials) may excuse a party from liability for nonperformance.

## Civil Dispute Resolution

International contracts frequently include arbitration clauses. By means of such clauses, the parties agree in advance to be bound by the decision of a specified third party in the event of a dispute. The third party may be a neutral entity (such as the International Chamber of Commerce), a panel of indi­viduals representing both parties’ interests, or some other group or organization. The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (often referred to as the New York Convention) assists in the enforcement of arbitration clauses, as do provisions in specific treaties between nations. The New York Convention has been implemented in nearly one hundred countries, including the United States.

If no arbitration clause is contained in the sales contract, litigation may occur, forum-selection and choice-of-law clauses are included in the contract, the lawsuit will be heard by a court in the forum specified and decided according to that forum law. If no forum and choice of law have been specified, however legal proceedings will be more complex and attended by much more uncertainty. For example, litigation may take place in two or more countries, with each country applying its own choice-of-law rules to determine which substantive law will be applied to the par­ticular transactions.

Even if a plaintiff wins a favorable judgment in a lawsuit litigated in the plain­tiff’s country, there is no way to predict whether the court’s judgment will be enforced by judicial bodies in the defendant’s country. As discussed earlier, under the principle of comity, the judgment may be enforced in the defen­dant’s country, particularly if the defendant’s country is the United States and the foreign court’s decision is consistent with U.S. national law and policy. Other nations, however, may not be as accommodating as the United States in this respect.

## Notes:

*Choice-of-Language Clause* – a clause in a contract designating the official language by which the con­tract will be interpreted in the event of a future disagreement over the contract's terms.

*Forum-Selection Clause* – a provision in a contract designating the court, jurisdiction, or tribunal that will decide any disputes arising under the contract.

*Choice-of-Law Clause* – a clause in a contract designating the law (such as the law of a particular state or nation) that will govern the contract.

*Force Majeure Clause* – a provision in a contract stipulating that certain unforeseen events—such as war, political upheavals, acts of God, or other events –will excuse a party from liability for nonperform­ance of contractual obligations.

**QUESTIONS FOR DISCUSSION**

1. Why should a contract contain a Choice of Language?
2. Are there universally accepted rules regarding the jurisdiction of a particular court over subject matter or parties to a dispute Choice of Forum?
3. Are parties allowed to choose the law that will govern their contractual relationship?
4. What is the main idea of the Force Majeure Clause?
5. What is the process of Civil Dispute Resolution, in case the arbitration clause is provided?
6. What is the process of Civil Dispute Resolution, if no arbitration clause is contained in the sales contract?
7. Is it possible to predict whether the court’s judgment will be enforced by judicial bodies in the defendant’s country if a plaintiff wins a favorable judgment in the plain­tiff’s country?

**UNIT IV****. MAKING PAYMENT ON INTERNATIONAL TRANSACTIONS**

WORDS

1. Supply – поставка, предложение
2. Demand – спрос
3. Funds – денежные средства
4. To reimburse – возместить

**WORD EXPRESSIONS**

1. financial risks – финансовые риски
2. convertibility of currencies – конвертируемость валют
3. foreign exchange rate – курс иностранной валюты (обменный курс)
4. correspondent bank – банк-корреспондент
5. performance under the contract – исполнение по контракту
6. letter of credit – аккредитив
7. to comply with the terms and conditions – соблюдать условия
8. bill of lading – накладная
9. bring an action – возбуждать иск

Currency differences between nations and the geographical distance between parties to international sales contracts add a degree of complexity to international sales that does not exist within the domestic market. Because international contracts involve greater financial risks, special care should be taken in drafting these contracts to specify both the currency in which payment is to be made and the method of payment.

## Monetary Systems

While it is true that our national currency, the U.S. dollar, is one of the primary forms of international currency, any U.S. firm undertaking business transactions abroad must be prepared to deal with one or more other currencies. After all, just as a U.S. firm wants to be paid in U.S. dollars for goods and services sold abroad, so, too, does a Japanese firm want to be paid in Japanese yen for goods and services sold outside Japan. Both firms therefore must rely on the convertibility of currencies.

**FOREIGN EXCHANGE MARKETS**

Currencies are convertible when they can be freely exchanged one for the other at some specified market rate in a foreign exchange market.

Foreign exchange markets are a worldwide system for the buying and sell­ing of foreign currencies. At any point in time, the foreign exchange rate is set by the forces of supply and demand in unrestricted foreign exchange markets. The for­eign exchange rate is simply the price of a unit of one country’s currency in terms of another country’s currency. For example, if today’s exchange rate is one hundred Japanese yen for one dollar, that means that anybody with one hundred yen can obtain one dollar, and vice versa.

**CORRESPONDENT BANKING**

Frequently, a U.S. company can deal directly with its domestic bank, which will take care of the international funds-transfer problem. Commercial banks sometimes have correspondent banks in other countries. Correspondent banking is a major means of transferring funds internationally.

The Clearinghouse Interbank Payment System (CHIPS) handles about 90 percent of both national and international interbank transfers of U.S. funds. In addition, the Society for Worldwide International Financial Telecommunications (SWIFT) is a communication system that provides banks with messages concerning transactions.

## letters of credit

Because buyers and sellers engaged in international business transactions are often separated by thousands of miles, special precautions are frequently taken to ensure performance under the contract. Sellers want to avoid delivering goods for which they might not be paid. Buyers desire the assurance that sellers will not be paid until there is evidence that the goods have been shipped. Thus, letters of credit are fre­quently used to facilitate international business transactions.

In a simple letter-of-credit transaction, the issuer (a bank) agrees to issue a letter of credit and to ascertain whether the beneficiary (seller) performs certain acts. In return, the account party (buyer) promises to reimburse the issuer for the amount paid to the beneficiary. There may also be an advising bank that transmits information, and a paying bank may be involved to expedite payment under the letter of credit.

Under a letter of credit, the issuer is bound to pay the beneficiary (seller) when the beneficiary has complied with the terms and conditions of the letter of credit. The beneficiary looks to the issuer, not to the account party (buyer), when it presents the requirements required by the letter of credit. Typically, the letter of credit will require the beneficiary deliver to the issuing bank a bill of lading to prove that shipment has been made. Letters of credit assure beneficiaries (sellers) of payment while at the same time assuring account parties (buyers) that payment will not be made until beneficiaries have complied with the terms and conditions of the letter of credit.

**THE VALUE OF A LETTER OF CREDIT**

The basic principle behind letters payment is made against the documents presented by the beneficiary and not against the facts that the documents purport to reflect. Thus, in a letter-of-credit transac­tion the issuer does not police the underlying contract; a letter of credit is independ­ent of the underlying contract between the buyer and the seller. Eliminating the need for banks (issuers) to inquire into whether or not actual conditions have been satis­fied greatly reduces the costs of letters of credit. Moreover, the use of a letter of credit protects both buyers and sellers.

**COMPLIANCE WITH A LETTER OF CREDIT**

In a letter-of-credit transaction, generally at least three separate and distinct contracts are involved: the contract between the account party (buyer) and the beneficiary (seller); the contract between the issuer (bank) and the account party (buyer); and finally, the letter of credit itself, which involves the issuer (bank) and the beneficiary (seller). These contracts are separate and distinct, and the issuer's obligations under the letter of credit do not concern the underlying contract between the buyer and the seller. Rather, it is the issuer's duty to ascertain whether the documents presented by the beneficiary (seller) comply with the terms of the letter of credit.

If the documents presented by the beneficiary comply with the terms of the letter of credit, the issuer (bank) must honor the letter of credit. Sometimes, however, it is difficult to determine exactly what a letter of credit requires. Moreover, the courts are divided as to whether *strict* or *substantial* compliance with the terms of the letter of credit is required. Traditionally, courts required strict compliance with the terms of a letter of credit, but in recent years, some courts have moved to a standard of *reasonable* compliance.

If the issuing bank refuses to pay the seller (beneficiary) even though the seller has complied with all the requirements of the letter of credit, the seller can bring an action to enforce payment. In the international context, the fact that the issuing bank may be thousands of miles distant from the seller's business location can pose difficulties for the seller.

## The “Life Circle” of a Letter of Credit

Although the letter of credit appears quite complex at first, it is not difficult to understand. This cycle merely involves the exchange of documents (and money) through intermediaries. The following steps depict the letter-of-credit procurement cycle.

**Step 1:** The buyer and seller agree on the terms of sale. The sales contract dictates that a letter of credit is to be used to finance the transaction.

**Step 2:** The buyer completes an application for a letter of credit and forwards it to his or her bank, which will issue the letter of credit.

**Step 3:** The issuing (buyer’s) bank then forwards the letter of credit to a correspondent bank in the seller's country.

**Step 4:** The correspondent's bank relays the letter of credit to the seller.

**Step 5:** Having received assurance of payment, the seller makes the necessary shipping arrangements.

**Step 6:** The seller prepares the documents required under the letter of credit and delivers them to the correspondent bank.

**Step 7:** The correspondent bank examines the documents. If it finds them in order, it sends them to the issuing bank and pays the seller in accordance with the terms of the letter of credit.

**Step 8:** The issuing bank having received the documents, examines them. If they are in order, the issuing bank will charge the buyer's account and send the documents on to the buyer or his or her customs broker. The issuing bank also will reimburse the corresponding bank.

**Step 9:** The buyer or broker receives the documents and picks up the merchandise from the shipper (carrier).

## Notes:

*Foreign Exchange Market* – a worldwide system in which foreign currencies are bought and sold.

*Correspondent Bank* – a bank in which another bank has an account (and vice versa) for the pur­pose of facilitating fund transfers.

*Letter of Credit* – a written instrument, usually issued by a bank on behalf of a customer or other person, in which the issuer promises to honor drafts or other demands for payment by third per­sons in accordance with the terms of the instrument.

**QUESTIONS FOR DISCUSSION**

1. To which difficulties in account settlement could lead the existence of different monetary systems?
2. How could the concept « Foreign Exchange Market » be defined?
3. What is Correspondent banking, CHIPS / SWIFT?
4. How are the parties of a Letters of Credit called?
5. How are the settlements done under a Letters of Credit?

**UNIT V. REGULATIONS OF SPECIFIC BUSINESS ACTIVITIES**

WORDS

1. Affect – воздействия
2. Expropriation – Экспроприация
3. Property – имущество
4. Owner – владелец
5. Negotiations – переговоры
6. Guarantee – гарантия
7. Treaties – договоры, соглашения
8. Restrictions – ограничения
9. Incentives – стимулы
10. Subsidies – субсидии
11. Income – доход
12. Loan – заем, ссуда, кредит
13. Illegal – незаконный

**WORD EXPRESSIONS**

1. Import Restrictions – ограничение импорта
2. Most-favored-nation status – статус наиболее благоприятствуемой нации
3. Bribing Foreign Officials – подкуп иностранных официальных лиц

Doing business abroad can affect the economies, foreign policy, domestic politics, and other national interests of the countries involved. For this reason, nations impose laws to restrict or facilitate international business. Controls may also be imposed by international agreement. Below is discussed how different types of international activities are regulated.

## Investing

Investing in foreign nations involves a risk that the foreign government may take possessions of the investment property. Expropriation occurs when property is taken and the owner is paid just compensation for what is taken. This does not violate generally observed principles of international law. Confis­cation occurs when property is taken and no (or inadequate) compensation is paid. International legal principles are violated when property is confiscated. Few reme­dies are available for confiscation of property by a foreign government. Claims are often resolved by lump-sum settlements after negotiations between the United States and the taking nation.

To counter the deterrent effect that the possibility of confiscation may have on potential investors, many countries guarantee that foreign investors will be com­pensated if their property is taken. A guaranty can take the form of national con­stitutional or statutory laws or provisions in international treaties. As further protection for foreign investments, some countries provide insurance for their citi­zens’ investments abroad.

## Export Restrictions and Incentives

The U.S. Constitution provides that “No Tax or Duty shall be laid on Articles exported from any State.” Thus, Congress cannot impose any export taxes. Congress can, however, use a variety of other devices to control exports. Congress may set export quotas on various items, such as grain being sold abroad. Under the Export Administration Act of 1979, restrictions can be imposed on the flow of technologically advanced products and technical data.

Devices to stimulate exports and thereby aid domestic businesses include export incentives and subsidies. The Revenue Act of 1971, for example, gave tax benefits to firms marketing their products overseas through certain foreign sales corporations, exempting income produced by the exports. Under the Export Trading Company Act of 1982, U.S. banks are encouraged to invest in export trading com­panies. An export trading company consists of exporting firms joined to export a line of goods. The Export-Import Bank of the United States provides financial assis­tance, which consists primarily of credit guaranties given to commercial banks that in turn loan funds to U.S. exporting companies.

## Import Restrictions

All nations have restrictions on imports, and the United States is no exception. Restrictions include strict prohibitions, quotas, and tariffs. Under the Trading with the Enemy Act of 1917, for example, no goods may be imported from nations that have been designated enemies of the United States. Other laws prohibit the impor­tation of illegal drugs, books that urge insurrection against the United States, and agricultural products that pose dangers to domestic crops or animals.

**Quotas and Tariffs**

Quotas are limits on the amounts of goods that can be imported. Tariffs are taxes on imports. A tariff is usually a percentage of the value of the import, but it can be a flat rate per unit (for example, per barrel of oil). Tariffs raise the prices of goods, which causes some consumers to purchase less expensive, domestically manufactured goods.

**Dumping**

The United States has specific laws directed at what it sees as unfair inter­national trade practices. Dumping, for example, is the sale of imported goods at “less than fair value.” “Fair value” is usually determined by the price of those goods exporting country. Foreign firms that engage in dumping in the United States hope to undersell U.S. businesses to obtain a larger share of the U.S. market. To prevent this, an extra tariff—known as an antidumping duty—may be assessed on the imports.

**Minimizing Trade Barriers**

Restrictions on imports are also known as trade barri­ers. The elimination of trade barriers is sometimes seen as essential to the world’s economic well-being. Most of the world’s leading trade nations are members of the World Trade Organization (WTO), which was established in 1995. To minimize trade barriers among nations, each member country of the WTO is required to grant most-favored-nation status to other member countries. This means each member is obligated to treat other members at least as well as it treats that country that receives its most favorable treatment with regard to imports or exports.

Various regional trade agreements, or associations, also help to minimize trade barriers between nations. The European Union (EU), for example, attempts to min­imize or remove barriers to trade among European member countries. The EU is the result of negotiations undertaken by European nations since the 1950s. Currently, the EU is a single integrated European trading unit made up of fifteen European nations. Another important regional trade agreement is the North American Free Trade Agreement (NAFTA). NAFTA, which became effective on January 1, 1994, created a regional trading unit consisting of Mexico, the United States, and Canada. The primary goal of NAFTA is to eliminate tariffs among these three countries on substantially all goods over a period of fifteen to twenty years.

## Bribing Foreign Officials

Giving cash or in-kind benefits to foreign government officials to obtain business contracts and other favors is often considered normal practice. To reduce such bribery by representatives of U.S. corporations, Congress enacted the Foreign Corrupt Practices Act (FCPA) in 1977.

## Notes:

*Dumping* – the selling of goods in a foreign country at a price below the price charged for the same goods in the domestic market

*Most-Favored-Nation Status* – a status granted in an international treaty by a provision stating that the citizens of the contracting nations may enjoy the privileges accorded by either party to citizens of the most favored nations. Generally, most-favored-nation clauses are designed to establish equality of international treatment.

**QUESTIONS FOR DISCUSSION**

1. What are the risks of investing?
2. When does expropriation occur?
3. When does confis­cation occur?
4. How could foreign investors be protected against expropriation?
5. What are the reasons for export restrictions and incentives?
6. What are the means of export control?
7. How could export be stimulated?
8. What types of import restrictions do you know?
9. What is known as an antidumping duty?
10. What is meant by ‘Most-Favored-Nation Status’?
11. What is the purpose of different trade agreements, or associations?
12. How is it possible to reduce bribery of foreign officials?

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