

国际贸易实务(双语版)

Chapter 12

Inspection, Disputes and Claim,
Force Majeure and Arbitration





Chapter 12. Inspection, Disputes and Claim, Force Majeure and Arbitration Teaching Plan 2

Teaching Contents

- 1. Section 3 Force Majeure**
- 2. Section 4 Arbitration**

Teaching time: Two-class hour (90 minutes)

Learning Objectives

- 1. Master the definition ,consequences and the clauses of Force Majeure**
- 2. Master the definition and the characteristics of Arbitration**
- 3. Master the importance and contents of arbitration agreement or clause**





Important Points:

- 1. Definition ,consequences and the clauses of Force Majeure**
- 2. Definition and the characteristics of Arbitration**
- 3. Importance and contents of arbitration agreement or clause**

Difficult Points:

- 1. Consequences and the clauses of Force Majeure**
- 2. Characteristics and agreement or clauses of Arbitration**

Teaching Methodology:

Questions and Answers; Presentation; Group discussion; case analysis

Teaching Aids:

PPT, blackboard, multimedia classroom





Section 3 Force Majeure

I. Definition of force majeure

According to CISG, force majeure which means superior force in French refers to an event or effect that cannot be reasonably anticipated nor controlled, such as a strike, riot and war. As no fault to both parties, neither the seller nor buyer is obligated to any damage, provided that the contract contains a force majeure clause, **and the liability of the suffering party (breaching party) to perform the contract will be exempted partially or totally.**





Section 3 Force Majeure

I. Definition of force majeure

To prove the event or effect is force majeure, the breaching party has to show:

1. That his failure was “due to an impediment beyond his control”;
2. That the impediment was not something he could have reasonably taken into account at the time of contracting;
3. That he remains unable to overcome the impediment or its consequences.





Section 3

2 Reasons of force majeure

1) Natural reasons

Natural disasters such as fire, flood, heavy snow, earthquake and so on;

2) Social reasons

Social disturbances like war, strike, riot, sanction etc.





Section 3

3 Consequences of force majeure

There are usually two consequences of force majeure: termination of the contract and postponement (suspending) of the contract.

Whether terminating the contract postponing(suspending) the performance of the contract depends on what degree the force majeure event has affected the performance of the contract, or on the detailed stipulations in the contract.





Section 3

3 Consequences of force majeure

1. Terminating the contract

If the occurrence of force majeure event has damaged or destroyed the basic of the contract and makes it impossible to perform the contract, for example, a flood has damaged or destroyed goods ready for shipment, and then the contract can only be terminated.





Section 3

3 Consequences of force majeure

Suspending the contract

If the performance of contract is delayed temporarily or for a short time because of a force majeure event, the suffering party can only make amendments to the contract to reduce the possible losses. When the event of force majeure finishes, the contract should resume.





Section 3

4 Force Majeure Clause

1) Importance of force majeure Clause

The force majeure clause enable the party suffering force majeure events avoid completely or incompletely his obligations without paying a compensation or penalty .





Section 3

4. Force Majeure Clause

2) Content of force majeure Clause

The force majeure clause usually contains:

(1) The scope of force majeure events: As there is no definite explanation on which events should be regarded as force majeure, the seller and the buyer usually stipulate in their contract about the scope of force majeure events.

(2) Time limit of notifying the other party: In case of a force majeure event, the party seeking to use the clause of force majeure has a duty to inform the other party promptly.

(3) The issuer of the certificate: A force majeure event should be verified by a certificate that attests such an event.





Section 3

4. Force Majeure Clause

3) Three ways of stipulating what constitutes force majeure

◎ Generalization (In a general way) 概括式

In this way, the contract does not stipulate what events are included in force majeure in detail.

Example:

“If the shipment of the contracted cargo is prevented or delayed in whole or in part due to Force Majeure, the Seller shall not be liable for non-shipment or late shipment of the goods of this contract. However, the Seller shall notify the Buyer by cable or telex and furnish the latter within 15 days by registered airmail with a certificate issued by China Council for the Promotion of International Trade attesting such event or events.”





Section 3

4. Force Majeure Clause

◎Specification (A way to list the contents)列举式

The stipulation of scope of force majeure would be stated in detail in the contract.

Example:

“If the shipment of the contracted cargo is prevented or delayed in whole or in part by reason of war, earthquake, flood, fire, storm, heavy snow, the Seller shall not be liable for non-shipment or late shipment of the goods or non-performance of this contract. However, the Seller shall inform the Buyer by cable or telex and furnish the latter within 15 days by registered airmail with a certificate issued by China Council for the Promotion of International Trade attesting such event or events.”





Section 3

4. Force Majeure Clause

©Combination (In a way to colligation)综合式

This is a way that combines generalization and specification.

Example:

“If the shipment of the contracted cargo is prevented or delayed in whole or in part by reason of war, earthquake, flood, fire, storm, heavy snow or other causes of Force Majeure, the Seller shall not be liable for non-shipment or late shipment of the goods or non-performance of this contract. However, the Seller shall inform the Buyer by cable or telex and furnish the latter within 15 days by registered airmail with a certificate issued by China Council for the Promotion of International Trade attesting such event or events.”





Section 4 Arbitration

When disputes arise between the seller and the buyer, there are four ways to settle down in sequence:

- 1) Negotiation **By the seller and buyer**
- 2) Conciliation **Third party involved**
- 3) Arbitration **Third party involved**
- 4) Litigation. **Third party involved**



Section 4 Arbitration

Friendly negotiation and conciliation are the most popular ways in the process of dispute settlement, which are able to maintain friendship between the exporter and the importer. When negotiation and conciliation do not work, should the two parties turn to arbitration and litigation . Litigation, a process in law instituted by one party to compel another to do him justice is usually costly and time-consuming. Compared with litigation, arbitration is a better alternative. In this section, we are going to have a further introduction on arbitration.





Section 4

I. Definition of Arbitration

Arbitration means that the two parties, before or after the disputes arise, reach a written agreement that they will submit the disputes which cannot be settled through amicable negotiations





Section 4



II. Characteristics of arbitration

1. **Voluntarily.** The litigants(plaintiffs) submit themselves voluntarily to an arbitrator. The arbitrator is a private, disinterested person or nonofficial government organization chosen by the parties to a disputed question.

2. An arbitration agreement in written form is required for arbitration. Arbitration agreement is a contract between two or more parties whereby they agree to refer the subject in dispute to others and to be bound by their award.

Independent arbitration agreement

A clause in a Sales Contract





Section 4



II. Characteristic of arbitration

3. Less time
4. Simpler and more informal procedures than in court
5. Privacy
6. Cheaper cost



Section 4



II. Characteristic of arbitration

7. The award is final and binding on both parties. Neither party may bring a suit before a law court or make a request to any other organization for revising the arbitral award. But if one party refuses to obey the award, the other can ask a court to enforce the implementation of the award. Another situation is that, when the procedures of arbitration are discovered to be illegal, a lawsuit can be filed in respect of award of arbitration.





Section 4

III. Arbitration procedures

The arbitration clause will stipulate how arbitration is to apply, to work, how arbitrators are to be appointed, and how the case will be heard. We can divide the procedures into several steps:

- (1) application for arbitration;
- (2) composition of arbitration tribunal;
- (3) hearing;
- (4) award.

V. The differences between Arbitration and Legal Actions





Section 4

IV. Arbitration clauses

Arbitration clauses in the contract will usually include the following terms:

1. Place of arbitration

The place of arbitration will decide which arbitration rules or laws are applicable. The arbitration place can be anywhere in the seller's country, the buyer's country or a third country (neutral country). The concerned parties always try to choose a place of arbitration they know well.



Section 4

IV. Arbitration clauses

2. Arbitration body

There are two forms of arbitration: institutional arbitration (机构仲裁) and ad hoc arbitration(临时仲裁).

The arbitration body can be a temporary organized body for specific arbitration and which is dismissed when the arbitration is over, or it may be a permanent arbitration body, such as the Arbitration Court of International Chamber of Commerce (ICC), the London Court of Arbitration, and American Arbitration Association and so on.



Section 4

IV. Arbitration clauses

In our country, the China International Economic and Trade Arbitration Commission (CIETAC) in Beijing, and its chapters in Shenzhen and Shanghai, and liaison offices in Dalian, Fuzhou, Changsha, Chengdu and Chongqing accept arbitration cases according to arbitration rules and regulations, and use the unified Arbitration Rules and Panel of Arbitrators.





Section 4

IV. Arbitration clauses

3. Applicable arbitration rules

4. Arbitration award

An award is the decision made by the arbitration tribunal. It must be in written form with or without explanations or reasons. An arbitration clause must provide that the arbitral award is final, which is the incarnation of excluding the jurisdiction of litigation of courts by the arbitration clause. If an arbitration clause doesn't conclude that the arbitral award is final, CIETAC will not accept the case.





Section 4

IV. Arbitration clauses

5. Arbitration fees

Generally, the arbitration clause shall provide that the arbitration fees shall be borne by the losing party.

6. Arbitration fees

Generally, the arbitration clause shall provide that the arbitration fees shall be borne by the losing party.





Section 4

IV. Arbitration clauses

An example of arbitration clause in a contract

“All disputes in connection with the contract or the execution thereof shall be settled through friendly negotiations. In case no settlement can be reached through negotiations, the case should then be submitted for arbitration to the Foreign Trade Arbitration Commission of the China Council for the Promotion of International Trade. The decision rendered by the said Commission shall be final and binding upon both parties. The arbitration fee shall be borne by the losing party.”





Section 4

This chapter is related to laws. In international trade, our work, our study or our life, laws exist and are applied everywhere. Some people abide by the laws and live a happy life; but some other people break the laws because they have no or little knowledge of the laws or they breach the laws although they know the laws, and therefore they are punished by the laws. So it is very important for us to enhance our legal consciousness, know the laws, abide the laws and act according to the laws.





Section 4

Firstly, we should know the laws. We should know and understand how the relevant laws are regulated and don't become legal-illiterates.

Secondly, we should abide by the laws and act according to the laws. What does it mean? It means we should do actively what the laws encourage and what the laws require and should not do resolutely what the laws forbid, especially we should not act impetuously even when we are dealing with disputes and contradictions.





Thank You !