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International Commercial Contracts: Form and Content

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Abstract:
International trade contracts are vital legal instruments for regulating commercial relations between parties from different countries, as they define rights and obligations and ensure the smooth and effective conduct of economic operations. These contracts include formal requirements to ensure the validity of agreements and their proof, as well as substantive requirements that reflect the essence of mutual consent and shared commercial objectives. They also regulate mechanisms of cooperation and the settlement of potential disputes through either amicable or judicial means. Despite their importance, the drafting of these contracts faces challenges related to the complexity of international laws and the diversity of the legal systems of the contracting states, which necessitates careful legal precision, the inclusion of flexible mechanisms, and reliance on specialized expertise to ensure the protection of all parties' interests and the achievement of sustainability in international trade relations.

Keywords: International trade contracts, dispute settlement, commercial cooperation, legal expertise.

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1. INTRODUCTION

International trade contracts occupy a central position in our contemporary world, which is witnessing increasing economic interactions and growing complexity in global supply chains. These contracts are not merely agreements between parties from different countries; rather, they are highly important legal instruments for regulating rights and obligations and defining mechanisms of cooperation within a multifaceted international environment.

When considering international trade contracts, two fundamental aspects emerge that deserve in-depth study: the form these contracts take and the substance they contain in terms of clauses and conditions. The form represents the legal framework within which the agreement is drafted, while the substance reflects the essence of mutual consent between the parties and their shared commercial objectives.

Understanding the drafting of these contracts, in terms of their diverse legal structures and the content that governs the various aspects of commercial exchange, is of great importance for both the contracting parties and the entities concerned with managing international trade and ensuring its smooth, simple, and effective conduct. This has prompted us to propose the following research problem:

How are international trade contracts finalized in their ultimate form?

To answer this problem, we deemed it appropriate to divide the research topic into two sections. In the first section, we examined the formal aspect of international trade contracts in two requirements: the structure of standard contracts in international trade in the first requirement, and the formal foundations in the second. As for the second section, we addressed the substantive aspect in two requirements: the first on the essential conditions for activating the contract, and the second on the special conditions.

2. The Formal Drafting of International Trade Contracts

The importance of clear and precise formal drafting of international trade contracts becomes evident due to the cross-border nature of these transactions and the multiplicity of legal systems governing them. This section seeks to review the basic structure of these contracts, with a focus on

the formal foundations that ensure the achievement of the parties' objectives and the regulation of their contractual relations in this complex field of international commercial law.

2.1 The Structure of Standard Contracts in International Trade

The general structure of international trade contracts usually follows a logical and organized pattern aimed at covering all the essential aspects of the agreement between the parties. This structure can be divided into the following main parts: the preamble, the contractual clauses, and the annexes.

2.1.1 The Preamble

The preamble refers to the first part of the international trade contract, which contains highly important data for guiding the will of the contracting parties and clarifying the circumstances of contracting—matters that may be relied upon in the event that issues arise in the performance of contractual obligations. The elements included in the preamble are as follows:

A. The Circumstances of the Concurrence of Offer and Acceptance

In international contracts, the preamble isn't where you'll find the actual offer or acceptance—that's all laid out in the main part of the contract. Still, the preamble matters. It usually explains why both sides came to the table in the first place. You'll often see a rundown of what pushed one party to make an offer, maybe some background on their needs or situation, and what convinced the other side to accept. It's less about the legal nuts and bolts, more about the story behind the deal[1].

Accordingly, the inclusion of these reasons and motives in the preamble serves several purposes, the most important of which is providing a comprehensive context for the contract that helps the reader understand the economic and commercial background of the contractual relationship, and demonstrating the shared intent of the parties, which reinforces the idea that there is a genuine agreement on the objectives and purposes behind the contracting. It also assists in interpreting the contractual clauses later, especially in the event of ambiguity or a dispute over the meaning of a condition, as recourse may be had to the preamble to understand the original purpose and the parties' intentions, which is based on the principle of good faith.

In short, although the preamble is not the place for the legal offer and acceptance, it contains valuable information about the circumstances that led to their issuance and approval, thereby enriching the understanding and interpretation of the contract.

B. Stipulating the Steps of Negotiations

Just as the contract, after its conclusion, requires real management of the implementation process in its financial, technical, administrative, and informational aspects and others, the pre-contractual stage likewise requires legal management of the negotiation process. Proper management of the pre-contractual stage ultimately leads to the establishment of a contract that is immune from subsequent annulment or invalidity, and helps avoid falling into mistake, fraud, or complaints of minor defects in the subject matter of the contract and other defects. Moreover, proper guidance of the pre-contractual stage serves the post-contractual stage, namely the stage of performance[2].

B.1 Stages of Negotiations in Concluding International Trade Contracts

The negotiation process passes through two main stages:

- **Preliminary negotiations:** The stage of preliminary negotiations is a preparatory stage for establishing the obligations that each of the contracting parties will undertake. Through these preliminary negotiations, the skills of the party wishing to contract become evident, whether in presenting the objectives of the contract or the distinctive characteristics of the subject matter of the contract. That is, this stage is a stage of discussion, confrontation, and initial dialogue in order to reach the final agreement.
- **The preliminary agreement stage:** The preliminary agreement is an agreement concluded by the parties at one of the stages of negotiation in which they determine the basic conditions and points that have been agreed upon, with the aim of not returning to them again in subsequent stages. It is, therefore, a step toward the final contract[3].

B.2 The Importance of Negotiations in International Trade Contracts

The legal importance of negotiations can be summarized in the following points:

- Negotiations prevent claims of adhesion; therefore, the parties to international trade cannot claim the existence of unfair terms in the contract as long as its conclusion was based on discussions and proposals exchanged during the negotiation stage.
- The negotiation stage is considered a preparatory period for the contract that precedes it; the better this preparation, the more the contract will meet and achieve the interests of both parties.
- Negotiations have a clear importance in the field of contracts, especially at the present time in which many composite contracts have emerged in response to the enormous development in industrial and technological means of production and the information revolution. These contracts often involve numerous and varied risks in addition to their immense value, which has made the existence of negotiations prior to their conclusion a necessity[4].

Accordingly, the stipulation of the steps of negotiations in the preamble has acquired its importance from the negotiation process itself, which has become a discipline with its own rules, foundations, and explanations, and is no longer merely a process of bargaining in markets dominated by the personal discretion of the negotiating parties.

2.1.2 Contractual Clauses

People use different names for this part—sometimes they call it the substance, the body, or just the provisions of the contract. Doesn't really matter what you call it; it all means the same thing.

This section is the heart of the contract. It's where both sides lay out exactly what they're supposed to do, what they expect from each other, and all the details that make the agreement work. Here, you'll find the rules about who's responsible for what, what happens if something goes wrong, and even which laws apply or which court steps in if there's a fight over the contract.

That's the standard setup. But international trade contracts don't all look the same. The details change depending on what kind of deal it is, and whether there are any established customs or rules that cover it[5].

If you think about it, people signing a typical international contract don't need to spell out every tiny detail, especially if some international

agreement already covers those points. But when it comes to new types of deals, the parties pretty much have to act like lawmakers themselves. They have to figure out and include everything, which makes this part of the contract much bigger and more complicated.

2.1.3 Annexes

The annexes are considered a complementary part of international commercial contracts. They include certain technical matters or detailed provisions related to the subject of the contract. These documents are prepared by technical specialists, in order to ensure that there is no contradiction between the annexes and the contractual clauses, so as to avoid disputes, especially since they acquire the same binding force for the parties. However, these annexes contain detailed conditions or descriptions, not additional conditions; that is, the principle or condition must have already been stated in the substantive section, after which the annexes come to elaborate or clarify it if it is ambiguous and requires further detail—otherwise, we would be faced with a new contract[6].

Examples:

- A technical specifications annex, in which precise details of the products or services that are the subject of the contract are stated, such as quality and performance standards; it is used in particular in contracts for the sale of technical equipment or the construction of engineering projects.
- A confidentiality annex.
- A description in the case of the transfer of a trademark.
- Guidelines and procedures in the case of technology transfer.
- An insurance conditions annex, in which the types of insurance and the party that bears them are specified; it is used especially in transport and construction contracts.

And many other examples, as each contract has the annex that it requires. Moreover, these annexes may not exist at all in a contract, but this is a very unlikely possibility in the field of international contracts.

2.2 Formal Foundations in International Trade Contracts

Although most legal systems do not require a specific form for the conclusion of international trade contracts, there are formal foundations and

recognized practices aimed at achieving clarity, ensuring proof, and avoiding ambiguity. Among the most important of these foundations are those related to the linguistic structure of the contract and those related to the form of signature.

2.2.1 Foundations Related to the Linguistic Structure of International Trade Contracts

The linguistic structure of international trade contracts is a vital foundation for the effectiveness of cross-border exchanges. It aims at clarity and precision in defining obligations and rights through the selection of the appropriate language and the accurate determination of essential terms, in order to establish solid and reliable international commercial agreements and avoid disputes.

A. Choosing the Language of the Contract

Choosing the language in which the contract will be drafted is a highly important strategic decision. This choice is influenced by several factors, including the language of the contracting parties, the law applicable to the contract, and the place where the contract will be performed or where disputes will be settled. Often, a common language is chosen between the parties to facilitate communication and mutual understanding, or the language of the party with greater bargaining power may be selected. In some cases, multiple versions of the contract may be prepared in different languages, with one version designated as the original and authoritative version in the event of any difference in interpretation. This choice must be made with great care to ensure clarity and avoid any ambiguity or differing interpretations that may arise due to linguistic differences[7].

Example:

If an Algerian company contracts with a Chinese company to supply Chinese equipment, the parties may agree that English will be the language of the contract, as it is a widely used international commercial language that is more broadly understood by both parties than their respective native languages.

B. Defining the Essential Terms in the Contract

Defining essential words and expressions constitutes the cornerstone of building a solid and clear international commercial contract. These include

words that carry a specific legal or commercial meaning, as well as those that define the fundamental rights and obligations of the contracting parties. This determination requires the utmost linguistic precision and careful selection of terms to avoid any ambiguity or multiple interpretations. These words must clearly reflect the intentions of the parties and precisely what they have agreed upon. This includes defining specialized technical or industrial terms used in the contract, accurately determining the scope of obligations through the use of clear verbs and expressions, and describing the goods or services that are the subject of the contract in a manner that leaves no room for doubt. Focusing on the precise linguistic meaning of these essential terms is necessary to ensure the effectiveness of the contract and to avoid future disputes[8].

Examples:

- **Specification of goods:** Instead of writing spare parts will be supplied, the essential terms may be defined more precisely as: 100 units of XYZ–2025 diesel engines shall be supplied in accordance with the technical specifications attached in Annex 'A'.
- **Specification of the payment period:** Instead of writing payment shall be made as soon as possible, the essential terms may be defined precisely as: The buyer shall pay the full value of the invoice within 30 calendar days from the date of receipt of the goods. Here, the essential terms are 30 calendar days and the date of receipt of the goods, as they determine the payment date precisely.
- **Specification of delivery terms:** Instead of writing delivery shall take place at the importer's port, the essential terms may be defined using a specific international commercial term, such as: CIF Port of Algiers (Incoterms 2020). Here, determining the port is essential, as it relates to who bears the costs of transport and insurance and the risks of loss and damage at the different stages of transport.

2.2.2 Foundations Related to the Form of Signature

The formal foundations related to signatures in international trade contracts involve several aspects aimed at conferring legality and binding

force on the agreement. However, electronic signatures have certain specific features compared with traditional signatures.

A. The Traditional Form of Signature

The traditional handwritten signature made using a pen on paper is one of the oldest and most widely accepted forms of expressing will in contracts. This type of signature requires the authorized person to write his or her name or special mark by hand on the physical copy of the contract. This signature carries a strong personal indication and is considered evidence of the party's consent to the terms and conditions contained in the document. In the context of international trade contracts, some legal systems often require the presence of an original handwritten signature to prove the validity and enforceability of the contract, especially in transactions of great importance. The official company seal may also be required alongside the handwritten signature to enhance credibility and to prove the representative capacity of the signatory[9].

B. The Electronic Form of Signature

Electronic signatures popped up thanks to tech advancements, and honestly, they play a huge role in electronic transactions—if you meet all the requirements. You'll see electronic signatures take a few different forms:

- **Signature by electronic pen:** Here, you scan a handwritten signature, save it on your computer, and then slap that image onto whatever document you need to sign. It's super flexible and easy—basically just turns your regular signature into a digital version. But let's be real, it's not very secure. Anyone can grab that scanned signature and stick it on any document they want, so it's tough to prove the signature actually belongs to the document. That's a big weakness[10].
- **Signature using biometric characteristics:** This approach uses physical or chemical traits unique to a person—like fingerprints, eye scans, voice tone, the shape of your hand, even your face or your signature style. For example, the system stores a detailed image of your eye or your fingerprint, and only lets you sign if it matches what's in the database. The idea here is no one else can fake it, since these features are unique to you[11].

- **Digital signature:** Digital signatures work differently. They use secret codes and a pair of keys—one public, one private. You need algorithms and some pretty serious math to make it happen. For people making deals online, digital signatures are a go-to for security, since they're designed to keep things locked down tight[12].

3. The Substantive Drafting of International Trade Contracts

Substantive drafting regulates the content of international trade contracts clearly and aims to ensure a shared understanding of rights and obligations in general. This section reviews the conditions for the effective drafting of international trade contracts, whether they are essential conditions for activating the contract or special conditions related to variables that may arise in the contract, the importance of which is reflected in building clear and reliable international commercial relationships.

3.1 Essential Conditions for Activating the Contract

The essential conditions constitute the pillars upon which the international trade contract is based, and without their fulfillment the contract cannot produce its binding legal effects. In most international contracts, these conditions consist of the subject matter and duration of the contract and the territorial scope for the performance of the contract.

3.1.1 Defining the Scope and Duration of the Contract

Getting clear about the scope and duration of a contract is crucial when drafting international trade agreements. This is where you set the boundaries—what the deal covers, how long it lasts, and exactly what each side has to do.

A. Defining the Subject Matter of the Contract

When we talk about the subject matter, we mean spelling out exactly what the contract covers. That includes the goods or services involved, how much, the technical specs, the required standards, and any other detail that nails down what both sides expect. Of course, this looks different depending on the kind of contract. The international sale of goods contract is probably the most common one out there, and it falls under the Vienna Convention. So, let's zero in on what the seller and the buyer have to do under that Convention[13].

A.1 Obligations of the Seller

The Vienna Convention lays out a bunch of requirements for the seller, but here are the key ones[14]:

- **Delivering the goods:** The seller has to deliver what's in the contract—right quantity, right quality, right specs—at the place and time everyone agreed on. That also means packing everything properly so it can handle international shipping.
- **Transferring ownership:** The seller must make sure the buyer actually gets ownership of the goods, following the contract and the law.
- **Providing documents:** The seller needs to hand over all the paperwork—bills of lading, certificates of origin, insurance documents—basically, anything needed to transfer ownership, receive the goods, or clear customs.
- **Warranty of conformity:** The seller guarantees the goods match what's in the contract—quantity, quality, specs—and that they're free from any obvious or hidden defects.
- **Bearing risks:** If something happens to the goods before delivery—loss, damage, whatever—the seller's on the hook, at least until the goods are delivered as agreed.

A.2 Obligations of the Buyer

The buyer has responsibilities, too. Here's what they need to do[15]:

- **Paying the price:** The buyer pays what's agreed, when and where the contract says, and in the right currency.
- **Receiving the goods:** The buyer has to take delivery of the goods when the seller hands them over, according to the contract.
- **Inspecting the goods:** As soon as the goods arrive, the buyer needs to check them, make sure they match the contract, and let the seller know about any problems within a reasonable time.
- **Bearing risks:** Once the goods are delivered, the buyer takes on any risk of loss or damage.
- **Bearing costs:** After delivery, the buyer covers costs like transport, customs, taxes, and other fees—unless the contract says otherwise.

B. Duration of the Contract

How long does the contract last? That depends. The duration spells out how long the agreement ties both sides together, and it can work a few different ways:

- **Fixed term:** The contract sets a clear start and end date. When time's up, the contract ends automatically—unless the parties decide to renew it.
- **Indefinite term:** There's no end date. The contract keeps going until one side ends it, following whatever termination rules are in the contract or under the law.
- **Tied to a specific event:** Sometimes, the contract ends when something particular happens or a project wraps up. As soon as that event or project is done, so is the contract.

The contract's duration clause needs to spell out a few things, and do it clearly: when the contract starts, when it ends (if there's a set end date), how it gets renewed—whether that's automatic or optional—what happens if someone wants out early (say, if there's a breach or some other agreed reason), how to give notice, and what comes next after the contract ends. Laying all this out up front gives both sides a solid sense of how long they're committed and lets them plan ahead. Plus, having clear rules for ending the contract protects everyone if something happens and either party needs to walk away before the original end date[16].

3.1.2 Defining the Territorial Scope for the Performance of the Contract

The territorial scope within which the contract is to be performed must be specified, as this constitutes the place of performance of the contract. The territorial scope of the contract may change with a change in the geographical area, for example as a result of the disintegration of a state into several states or entities, and consequently the scope may change accordingly. For this reason, defining the territorial scope is of great importance in this field. For instance, some contracts require the authorization of a third state. Moreover, one must take into account the expected changes that may occur in a given territory in order to exercise caution, such as the recent annexation carried out by Russia of the Crimean Peninsula in 2014 (a gateway to access the Mediterranean Sea via the Bosphorus Strait), or the secession of South Sudan

from Sudan in 2011 after a long civil war to form the world's latest independent state[17].

3.2 Conditions Related to the Variables That Arise in the Contract

Since most international contracts extend over long periods of time, they exist in practice amid a set of new developments. These developments may be manageable by the parties without resorting to disputes, or they may give rise to major disputes that may even lead to the termination of the contract.

3.2.1 Without Dispute

The occurrence of disputes, or at least the reduction of their severity, can be avoided through the inclusion of a set of clauses in the contract, namely:

A. The Renegotiation Clause

The renegotiation clause in contracts is a provision that specifies the circumstances under which the parties may return to negotiations in order to amend the contractual terms. It is considered a central clause in contracts because it ensures flexibility and allows the contract to adapt to changing circumstances that render the original terms impractical or unfair. It thus preserves long-term commercial relationships by providing a mechanism for resolving disputes and amending agreements instead of terminating them. The renegotiation clause is usually activated upon the occurrence of specific events, such as[18]:

- Major economic changes, such as severe inflation or recession.
- Legal or regulatory changes, such as the enactment of new laws that affect the performance of the contract.
- Technological changes and the emergence of new technologies that render the current terms obsolete.
- Force majeure circumstances, that is, unforeseen events beyond the control of the parties, the most notable example of which is what occurred in international commercial contracts in conjunction with the outbreak of the Coronavirus.

The renegotiation clause usually includes a precise definition of the events giving rise to renegotiation, the procedures related to how negotiations

are to be initiated, the time period available to reach a new agreement, and the consequences of failing to reach such an agreement[19].

B. The Contract Amendment Clause

The contract amendment clause is another important provision in contractual agreements. Its importance lies in the fact that it clearly defines the steps that must be followed when there is a desire to amend any part of the contract, thereby preventing any ambiguity or disputes regarding how amendments are to be made. It affirms the necessity of obtaining the consent of all parties to any amendment, thus protecting the rights of each party. In addition, the contract amendment clause requires that any changes be made in writing and signed by all parties, thereby providing a clear record of the agreed-upon changes[20].

Accordingly, it can be concluded that the contract amendment clause is largely similar to the renegotiation clause, which may create confusion in the reader's mind as to the nature of the clause—whether it is an amendment clause or a renegotiation clause. To remove this ambiguity, a brief distinction between them is made as follows:

- **Renegotiation clause:** It is usually activated upon the occurrence of new and fundamental circumstances that were not anticipated at the time of concluding the contract, and it aims at bringing about a radical change in some or all of the contractual provisions.
- **Contract amendment clause:** It relates to making specific changes to existing provisions in the contract, and these changes are usually agreed upon mutually without the need for exceptional circumstances[21].

3.2.2 In the Event of a Dispute

International trade contracts often include a special clause for the settlement of disputes, which specifies the method or methods to which the parties will resort in the event of a disagreement. It is important to draft this clause carefully to ensure the selection of an effective mechanism that is appropriate to the nature of the commercial relationship and the potential risks. The most important of these methods are judicial and quasi-judicial methods.

A. Arbitration:

Arbitration is a private method for resolving disputes outside the courts instead of resorting to a judge. The disputing parties agree to submit their dispute to a neutral third party (the arbitrator) or to a neutral body called an arbitral tribunal. The most important basic points of arbitration are:

- **Agreement of the parties:** Arbitration is primarily based on the consent of the parties, and it is usually included in the original contract or in a separate agreement to refer any potential or existing dispute to arbitration.
- **Neutral arbitrator:** The parties choose the arbitrator or the arbitral tribunal that will decide the dispute. The arbitrator must be neutral and independent of the parties.
- **Flexible procedures:** Unlike formal judicial procedures, the parties and the arbitrators enjoy greater flexibility in determining the procedural rules to be followed in arbitration.
- **Binding decision:** After hearing the parties' arguments and examining the evidence, the arbitrator issues a final and binding decision on the parties, called the arbitral award.
- **Confidentiality:** Arbitration sessions are conducted in a confidential manner, and the details of the dispute or the award are not disclosed to the public.
- **International enforceability:** Arbitral awards enjoy broad enforceability in many states pursuant to international conventions.

B. Litigation:

Recourse to the judicial system represents the traditional option for resolving disputes. In the context of international trade contracts, this option is complex due to issues of jurisdiction, the applicable law, and the enforcement of judicial judgments. Therefore, specifying which court will have jurisdiction and which law will apply in the original contract will reduce the disadvantages of this method of dispute resolution, provided that the agreed law accepts this type of dispute[22].

Accordingly, the advantages and disadvantages of litigation before national courts may be summarized as follows:

- **Advantages:** The existence of a well-established judicial system and clear legal procedures; the binding force of judgments within the state issuing the judgment.
- **Disadvantages:** It may be costly and time-consuming; difficulty in determining jurisdiction and the applicable law in international disputes; difficulty in enforcing judgments abroad; the possibility of bias in favor of the national party; and the publicity of proceedings.

4. CONCLUSION:

Through this research, we sought to demonstrate the great importance of the formal and substantive conditions in international trade contracts. While the formal conditions ensure the proof of the contract and the protection of rights, the substantive conditions determine the essence of the obligations and also highlight the necessity of incorporating flexible mechanisms such as renegotiation and amendment clauses, and of defining effective means for dispute settlement, if any, whether amicable or judicial, such as arbitration and international litigation.

Familiarity with these aspects and their proper application constitutes an essential element in building successful and sustainable international commercial relations and in avoiding legal and economic risks. Care in the final drafting and execution of these contracts, with an awareness of the importance of adapting them and resolving disputes efficiently, are decisive factors for achieving commercial objectives and enhancing global and national economic growth.

In conclusion, it can be said that international trade contracts are complex legal instruments that require great care in their drafting and execution, and it is always preferable that such contracts be drafted with the assistance of specialized expertise to ensure the protection of the parties' interests.

From what we have discussed, we have reached the following results:

- The formal conditions in international trade contracts ensure the proof of the contract and the protection of the parties' rights.
- The substantive conditions determine the essence of the obligations and clarify the rights and duties of each party.

- The inclusion of flexible mechanisms such as renegotiation and amendment reduces disputes and preserves commercial relationships.
- Commitment to precise legal drafting and proper execution of contracts enhances success and sustainability in international trade.
- Seeking the assistance of specialized legal experts protects the interests of the parties and ensures that contracts comply with international laws.

Proposals:

- Training the parties on the formal and substantive conditions and on understanding dispute settlement mechanisms.
- Including flexible clauses that allow for renegotiation and amendment in accordance with economic and legal changes.
- Drafting contracts with the assistance of lawyers or consultants specialized in international trade in order to avoid legal loopholes.
- Relying on international arbitration and amicable means before resorting to the judiciary in order to expedite the resolution of disputes and reduce costs.
- Periodically reviewing contracts to ensure their conformity with legal and economic changes and to guarantee the sustainability of commercial relationships.

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