



Chapter 8

Disputes, Claims & Arbitration

Content

8.1

Disputes

8.2

Claim

8.3

Arbitration



8.1 Disputes

1. Reasons for Disputes



1. Breach of Contract by the Seller



2. Breach of Contract by the buyer



3. Breach of Contract by both parties



8.2 Claim

1. Claim Clause in the Sales Contract

Discrepancy and
Claim Clause



Penalty Clause





An Example of Discrepancy and Claim Clause in a Sales Contract

Any claim by the buyer regarding the goods shipped shall be filed within 30 days after arrival of the goods at the port of destination specified in the relative B/L and supported by a survey report issued by a surveyor approved by the seller. Claims in respect of matter within responsibility of the insurance company, shipping company/other transportation organization will not be considered or entertained by the seller.



An Example of Penalty Clause

Should the Buyers for their own sake fail to open the Letter of Credit within the time stipulated in the contract, the Buyers shall pay a penalty to the Sellers. The penalty shall be charged at the rate of 0.5% of the amount of the letter of credit for every ten days of delay in opening the letter of credit, however, the total penalty shall not exceed 5% of the total value of the credit which the Buyers should have opened. Any fractional days less than ten days shall be deemed to be ten days for the calculation of penalty. The penalty shall be the sole compensation for the damage caused by such delay.



Force Majeure

1. Features of a force majeure event

- (1) It happens after the contract is signed;
- (2) It is not resulted from the negligence or malfeasance of the parties involved;
- (3) Neither the buyer nor the seller can control the situation.



2. Consequences of force majeure



(1) Termination of contract



(2) Postponement of contract



3. Types of force majeure events

Force majeure events generally can be divided into two basic types: natural events and political events.

01

Political and special events

02

Natural events



8.3 Arbitration

1. Methods of Dispute Settlement

	Negotiation	Mediation	Arbitration	Litigation
Self-Control	High	High	Low	Low
Cost	Low	Low	High	High
Formality	Informal	Informal	Formal	Formal
Time	Short	Short	Long	Long
Risk to Relationships	Low	Low	High	High
Success	Win-Win/ Win-Lose	Win-Win	Win-Lose	Win-Lose



2. Arbitration Procedure

1

Applying for Arbitration

2

Forming Arbitration Tribunal

3

Hearing an Arbitration Case

4

Issuing an Award

5

Setting Aside an Award

6

Enforcing an Award



3. Arbitration cost

Arbitration cost consists of two parts:



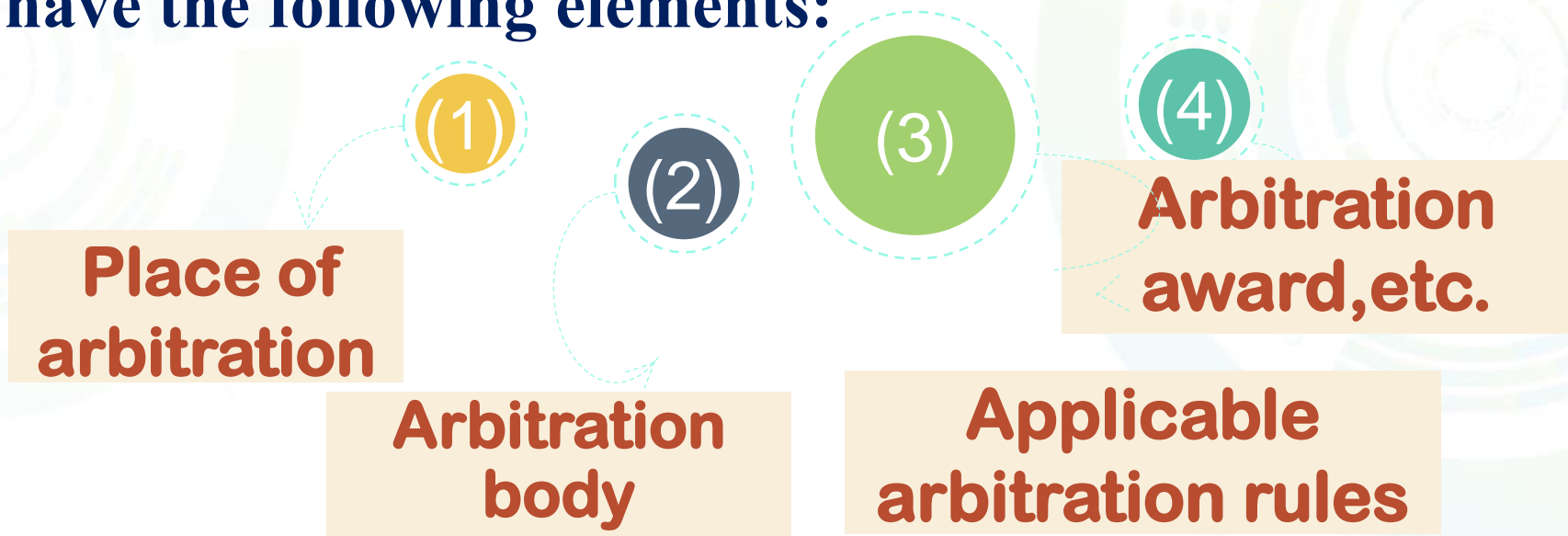
**1. Arbitration
fee**

2. Actual cost



4. Arbitration Clause in the Sales Contract

An eligible, effective, complete and accurate arbitration agreement or arbitration clause should have the following elements:





An Example of Arbitration Clause

"Any disputes arising from or in connection with this contract, shall be settled amicably through negotiation. In case no settlement can be reached through negotiation, the case shall then be submitted to the China International Economic and Trade Arbitration Commission of the China Council for the Promotion of International Trade. Beijing for arbitration which shall be conducted in accordance with the Commission's Arbitration Rules in effect at the time of applying for arbitration The arbitral award is final and binding upon both parties."



Case Study

Our company exported a batch of frozen food to a certain country. After the arrival of the goods, the buyer lodged a quality claim within the validity period of the claim stipulated in the contract, which amounted to several hundred thousand RMB.

The attached evidence by the buyer included :

(1) the legal commodity inspection certificate, indicating that the goods had deteriorated. However, it did not specify the detailed batch number of the goods, nor the quantity or proportion of the goods that had deteriorated. (2) deterioration certificate issued by the official laboratory based on the inspection of the sample food delivered by a local food retail store.



our company replied carelessly without denying the deterioration problem, instead vaguely asking the other party to reduce the claim amount but failed. After one-year ineffective communication between each other, the other party sent representatives to Beijing for face-to-face negotiation and asserted that Arbitration will be the last resort if there is no alternative.

Question: Should we accept this claim? What were the mistakes made by both parties? How should we deal with this case in the spirit of seeking truth from facts and on the principles of fairness and rationality.

Case Study Analysis

- *It depends on the actual situation. It is impossible to exempt the seller from the delivery responsibility when any force majeure event occurs. If company B is capable of performing its contractual obligations, the delivery time can be delayed; if it is determined through investigation that company B cannot perform its obligations due to force majeure, its delivery responsibility can be exempted.*



The background features a light gray hexagonal grid. On the left side, there is a circular diagram with concentric rings and segments in shades of green and blue. Some segments are labeled 'TWO', 'THREE', 'FOUR', and 'FIVE'. A horizontal line, colored blue and green, spans across the middle of the image. At the bottom, there is a solid yellow wavy bar.

Thanks