



Chapter 2: Quality of Goods



Contents

- Definition
- Importance
- Methods of Stipulating Quality of Goods
- Quality Clause in the Contract
- Case Study



1. Definition

**shape, structure,
colour, flavour**

- **Outward appearance**
- **Essential quality of the goods.**

**chemical composition, physical and
mechanical property, biological feature**



2. Importance



- **CISG Stipulations:**

- **“The goods the seller delivers must be up to the standard required in the contract. If the seller fails to deliver the goods as required by the contract, the buyer is entitled to **claim damages, repairs, and substitutes, or reject goods, or sometimes even cancel the said contract.**”**

3. Methods of Stipulating Quality of the Goods



- **Sale by Description**
- **Sale by Subject**





3.1 Sale by Description



- Sales by Specification
- Sale by Grade
- Sale by Standard
- Sale by Brand or Trade Mark
- Sale by Name of Origin
- Sale by Description or Drawing



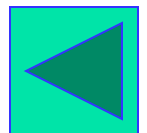
3.1.1 Sales by Specification

■ **Def.**

- Detailed descriptions of the goods to be sold, including composition, content, purity, strength, size etc. of the goods.

■ **e.g. Chinese Northeast soybean**

- | | |
|----------------------|------------|
| ■ Moisture | 15% (Max.) |
| ■ Admixture | 1% (Max.) |
| ■ Imperfect granules | 7% (Max.) |
| ■ Oil content | 17% (Min.) |





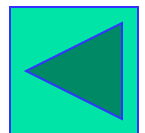
3.1.2 Sales by Grade

■ Def.:

- The classifications of the commodity of one kind which is indicated by words, numbers or symbols.

■ E.g.

- Chinese raw silk consists of 12 grades: 6A, 5A, 4A, 3A, 2A, A, B, C, D, E, F, and G.





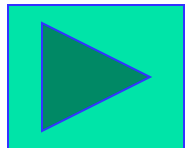
3.1.3 Sales by Standard

- **Def. :**

- the specifications or grades that are laid down and proclaimed by the government or the chamber of commerce, ISO, EC, etc.
- Standard subject to change, mention **the name of the publication,**

- **E.g. :**

- “Rifampicin B.P.**1993** (British Pharmacopoeia)”



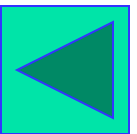
3.1.3 Sales by Standard (continued)

■ F. A . Q (Fair Average Quality)

- the **average quality level** of the export commodity within a certain period of time. E.g. :
 - Chinese Groundnut, 1994 crop, F. A. Q.,
 - Moisture (max.) 13%
 - Admixture (max.) 5%
 - Oil content (min.) 44%

■ G. M. Q. (Good Merchantable Quality)

- sound quality free from defect & good to satisfy aim

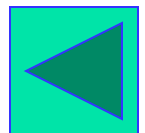


3.1.4 Sale by Brand or Trade Mark



■ Illustration:

- quality is stable
- reputation is sound
- with which the customers are quite familiar
 - Most industrial products are represented by brands or trade marks.



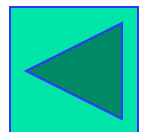
3.1.5 Sale by Name of Origin

- **Illustration:**

- There are some agricultural products and by-products whose origins are well-known all over the world.

- **E.g.:**

- Qimen black tea
- Longjing green tea



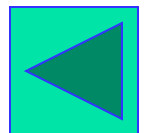
3.1.6 Sale by Description or Drawing

■ Illustration:

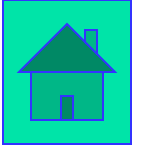
- Relevant technical manuals, booklets of directions, drawings or diagrams
- Quality and technical data to be in conformity with the attached technical agreement which forms an integral part of this contract

■ e.g.:

- Machines, apparatuses, instruments, and complete sets of equipment



3.2 Sale by subject



- **Sale by Actual Quality**
- **Sale by Sample**



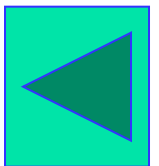
3.2.1 SALE BY ACTUAL QUALITY

■ Def:

- Seller delivers the goods inspected by the buyer or his agent after concluding the transaction

■ Usage:

- for consignment, auction and trade show

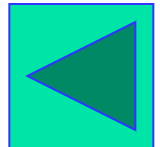




3.2.2 Sale by Sample

■ Sale by Sample

- **Def.:** a small quantity of a product, often taken out from a whole lot or specially designed and processed
- **Sale by Seller's Sample**
- **Sale by Buyer's Sample**

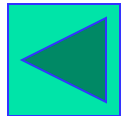




3.2.2 Sale by Sample

■ Sale by Seller's Sample

- usually- -Quality as per seller's sample
- but- -Quality shall be about equal to the sample or Quality is nearly the same as the sample
- **Duplicate sample**

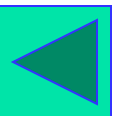




3.3.1.2 Sale by Sample

■ **Sale by Buyer's Sample**

- Usually - - Quality as per buyer's sample
- **Counter Sample (Confirming Sample or Return Sample):** after receiving a sample by the buyer, the seller usually first duplicates the sample and then sends the duplicate to the buyer for confirmation.
- **Infringement of industrial property**





CISG: Article 42

- (1) The seller must deliver goods which are free from any right or claim of a third party based on **industrial property or other intellectual property**, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property:



“British Sales of Goods Act”

Section 15.—

- (2) In the case of a contract for sale by sample—
 - (a) There is an implied condition that the bulk shall correspond with the sample in quality:
 - (b) There is an implied condition that the buyer shall have a **reasonable opportunity** of comparing the bulk with the sample:
 - (c) There is an implied condition that the goods shall be **free from any defect, rendering them unmerchant-able**, which would not be apparent on reasonable examination of the sample.

Methods of stipulating quality



cloth

?

soybean

?

medicine

?

tea

?

cosmetic

?

electrical appliance

?

furniture

?

4. Quality Clause in the Contract



- **Quality Tolerance**
- **Quality Latitude**





4.1 Quality Tolerance

■ **Def.:**

- means that the quality of the goods delivered by the seller is allowed to have certain differences within a certain range since **such differences are usually unavoidable** and commonly accepted as the usage of the same special trade.

■ **e.g.**

- $\pm 3 - 5\%$ tolerance allowed for size or weight





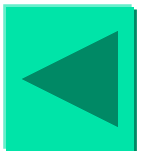
4.2 Quality Latitude

■ **Def.:**

- quality indexes of the goods delivered by seller may be controlled flexibly within a certain latitude

■ **3 ways**

- **scope:** e.g. Width of cotton cloth- - 47/48 inches
- **more or less:** e.g. Duck's down content 18% (1% more or less)(or $\pm 1\%$)
- **“max” or “min”:** e.g. Moisture (max or \leq) 15%





5. Case Study

- One export company exports Tea. According to the stipulation of both L/C and contract, the quality of the tea is: "Tea, the third grade." But when the seller prepares the delivery of the goods, he just discovers that he has no sufficient third-class tea in stock. Finally the export company delivers second-class tea to the buyer, and notes on the invoice: "The second grade tea will still be calculated at the price of the third grade, without other additional charges."
- Please analyze: whether the seller's activity is appropriate or not? Why?



5. Case Study



- A Chinese company (hereinafter A) exports Chinese groundnut to a British company (hereinafter B). In the contract it is stipulated: "Moisture (max) 13%, Admixture (max.) 5%, Oil content (min.) 44%". Before the conclusion of the contract A has also sent sample to B, and after the conclusion of the contract A notified B by telex that the quality of goods is same as the sample. When the goods arrived at British and after inspection it is found that the quality of goods is lower than sample by 7%, therefore the buyer claimed for compensation. A refused and thought that the goods was sold by specification instead of by sample.
- Please analyze the case: Should the Chinese company accept the claim or not?



5. Case Study

- One Chinese company does business with a Vietnamese company and both sides agree to sell sickle by sample. In the contract it is stipulated that the validity of commodity re-inspection is within 60 days after the goods arrives at the port of destination. After the arrival of goods the Vietnamese merchant re-inspects the goods and has no discrepancy on the quality of goods. But half year later, the Vietnamese merchant sends a telex and declares: The sickle completely rusts; they can only reduce prices to sell them. Therefore, they lodge a claim against the Chinese company and ask for compensation for the loss by 40% of the contract price. After the receipt of the telex the Chinese company examines immediately the kept duplicate sample, also discovers the similar situation.
- Question: should the Chinese company agree with the request? why?



5. Case Study

- One Chinese company exports advanced porcelain to an American company. The contract is sale by sample. In the contract it is stipulated that the validity of commodity re-inspection is within 60 days after the goods arrives at the port of destination. After the arrival of goods the American company re-inspects the goods and has no discrepancy on the quality of goods. But one year later, the American company sends a telex and declares: all the porcelain appears "glaze crack ", Therefore, they lodge a claim against the Chinese company and ask for compensation for the loss by 60% of the contract price. After the receipt of the telex the Chinese company examines immediately the kept duplicate sample, also discovers the similar problems.
- Question: should the Chinese company agree with the request? why?



THE END

