

***Chapter 11:***  
***Export Business Negotiation***  
***and Conclusion of Contract***

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# ***Export Business Negotiation and Conclusion of Contract***

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- A.** General procedure in business negotiation
- B.** Conclusion of the contract



## ***A. General procedure in business negotiation***

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*Offer and Acceptance  
are the necessary  
procedures*



## ***A. General procedure in business negotiation***

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### **1. Enquiry**

- Enquiry are usu. made by the buyers **without engagement** to get information about the goods to be ordered, such as quality, quantity, price, delivery date and other terms.



## ***A. General procedure in business negotiation***

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### **Kinds of Enquiry**

- ① “Invitation to make an offer”
  - The enquiry is made by the buyer
- ② “Invitation to make a bid”
  - The enquiry is made by the seller



# ***1. Enquiry***

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## **① “Invitation to make an offer”**

- “PLEASE OFFER NORTHEAST SOYA BEAN”
- “BOOKABLE MAXAM BRAND DENTAL CREAM  
LARGE SIZE MAX 10000 GROSS PLS CBL  
LOWEST PRICE EARLIEST DELIVERY TIME”



# ***1. Enquiry***

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## **② “Invitation to make a bid”**

- “NORTHEAST SOYA BEAN AVAILABLE PLEASE BID”
- “CAN SUPPLY MAXAM BRAND DENTAL CREAM USD0.50 PER PC MAR SHPMT CBL RESP IF INTERESTED”



## ***A. General procedure in business negotiation***

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### **Attention when making Enquiry**

- ① The buyers should not give away his real intentions in the Enquiry
- ② Can ask for more information besides the prices of the goods
- ③ Will not **bind upon** both parties
- ④ Enquiries should be brief, specific, courteous and reasonable
- ⑤ Can be taken as an integral part of the documents and as evidence to handle the disputes



## ***A. General procedure in business negotiation***

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### **2. Offer**

- A proposal for concluding a contract addressed to **one or more specific persons** constitutes an offer if it is **sufficiently definite** and indicates the intention of the offeror to **be bound** in case of acceptance.



## ***A. General procedure in business negotiation***

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### **Parties in Offer**

1. Offeror: the party who makes an offer
  - A selling offer: the offeror is the seller
  - A buying offer or bid: the offeror is the buyer
2. Offeree: the party who receives an offer



## ***A. General procedure in business negotiation***

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### **Kinds of Offer**

1. Firm offer
2. Non-firm offer



# ***Kinds of Offer***

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## **1. Firm offer**

- Is a promise to sell goods at a stated price, usu. within a stated period of time.
- The contents of a firm offer:
  - An exact description of the goods
  - Quality, quantity and packaging of the goods
  - Mode of the payment
  - Terms of delivery
  - The valid period for the offer



# ***Kinds of Offer***

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## ■ **Example of a Firm offer**

- “OFFER 300 M/T LIQUID GLUCOSE  
WATER CLEAR 45° - 46 ° PACKED IN  
IRON DRUMS OF 300KGS, EACH  
STERLING 1000 CFR ROTTERDAM  
SHIPMENT MARCH/APRIL IRREVOCABLE  
SIGHT L/C REPLY HERE 10<sup>TH</sup> OUR TIME.”



# *Kinds of Offer*

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## **2. Non-firm offer**

- Is an offer without engagement.
- In most cases, the contents are not **clear and definite**, the main terms and conditions are not **complete**.



# ***Kinds of Offer***

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## ■ **Example of a non-firm offer**

- “OFFER NORTHEAST CHINA SOYBEAN  
10000 M/T OUR REFERENCE PRICE  
USD300 PER M/T FOB DALIAN SUBJECT  
TO OUR FINAL CONFIRMATION.”



## ***A. General procedure in business negotiation***

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### **Four Basic Conditions For an Offer**

1. Shall be made to one or more specific persons
2. Shall indicate the intention of the offeror to be bound in case of acceptance
3. Contents of the offer shall be definite, i.e. trade terms of the offer shall be complete, clear and final
4. Shall be sent to the offeree and contain the term of validity



## ***Four Basic Conditions For an Offer***

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### **1. Shall Be Made to One or More Specific Persons**

- “Commercial advertising”?

***Commercial Advertising VS Offer***

# ***Commercial Advertising VS Offer***



**Law of continental countries:** not an offer

**The British laws and the American Laws:** If the contents are definite, can be an offer

《**CISG**》: A proposal other than one addressed to one or more specific persons is to be considered merely as an **invitation to make offers**, unless the contrary is clearly indicated by the person making the proposal.



## ***Four Basic Conditions For an Offer***

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### **2. Shall indicate the intention of the offeror to be bound in case of acceptance**

- Indicate by terms as “firm” offer, “offer with engagement” , etc.



## ***Four Basic Conditions For an Offer***

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- 3. Contents of the offer shall be **definite**,  
i.e. trade terms of the offer shall be  
**complete, clear and final****



## ***Four Basic Conditions For an Offer***

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### **Complete offer**




- ① An agreement on “general terms and conditions” in advance
- ② The main trade terms in the offer same as the previous ones
- ③ Form certain trade practices which are known to the two parties



## ***Four Basic Conditions For an Offer***

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### **Clear offer**





-  No terms such as
  -  “the price is only for your reference” or
  -  “delivery may be made in August or in September”



## ***Four Basic Conditions For an Offer***

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### **Final offer**

-  Without any restrictive conditions, such as
  -  “subject to our final confirmation”
  -  “subject to prior sale”
  -  “without engagement”



## ***Four Basic Conditions For an Offer***

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### **4. Shall be sent to the offeree and contain the term of validity**

- An offer becomes effective when it **reaches** the offeree.
- An offer is terminated until the date of validity stipulated in the offer.



## ***Four Basic Conditions For an Offer***

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### **Validity of an Offer**

- If an offer doesn't clearly stipulate the time of validity, it will be effective within **a reasonable time**.
- An **oral offer**, unless otherwise agreed, must be **accepted immediately** unless the circumstances indicate otherwise.



## ***Four Basic Conditions For an Offer***

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### **Methods to stipulate time of Validity**

1. Stipulate the latest date for acceptance
2. Stipulate a period of time for acceptance
3. Not stipulate clearly the time of validity



## ***Methods to stipulate time of Validity***

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### **1. Stipulate the latest date for acceptance**

- “OFFER SUBJECT TO REPLY HERE TENTH”
- “OFFER VALID TILL TENTH OUR TIME”



## *Methods to stipulate time of Validity*

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### **2. Stipulate a period of time for acceptance (CISG: Article 20)**

- Example : “OFFER VALID FOR THREE DAYS”
- In a telegram or a letter begins from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope.
- By telephone, telex or other means of instantaneous communication, begins from the moment the offer reaches the offeree.



## ***Methods to stipulate time of Validity***

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### **2. Stipulate a period of time for acceptance**

- “Official holidays or non-business days are included in calculating the period.”
- “If a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.”



## ***Methods to stipulate time of Validity***

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### **3. Not stipulate clearly the time of validity**

- “OFFER... REPLY BY TELEX”
- “OFFER... CABLE REPLY IMMEDIATELY”



## ***Four Basic Conditions For an Offer***

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### **Withdrawal or Revocation of an Offer**


- Difference between the “withdrawal” and “revocation”.
- Different countries have different explanations
- Stipulation by “The United Nations Convention on Contracts for the International Sale of Goods”.



## ***Four Basic Conditions For an Offer***

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### **Withdrawal of an Offer**

-  An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree **before or at the same time as the offer.**



## ***Four Basic Conditions For an Offer***

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### **Revocation of an Offer (CISG Article 16)**

- “Until a contract is concluded, an offer may be revoked if the revocation reaches the offeree **before he has dispatched an acceptance.**”
- **“An offer can not be revoked:**
  - a. If it indicates, that it is **irrevocable**, or
  - b. If it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.”



## ***Four Basic Conditions For an Offer***

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### **Termination of an Offer**

- ① The time validity stipulated in the offer becomes due
- ② The offeree rejects or makes a counter offer
- ③ The offerer revokes the offer before acceptance



## ***Four Basic Conditions For an Offer***

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### **3. Counter-offer (CISG: Article 19)**

- ① A reply to an offer which purports to be an acceptance but contains **additions, limitations or other modifications** is a rejection of the offer and constitutes a counter-offer.



## 3. Counter-offer (CISG: Article 19)

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- ② However, a reply to an offer which purports to be an acceptance but contains additional or different terms which **do not materially** alter the terms of the offer constitutes an **acceptance**, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.



## 3. Counter-offer (CISG: Article 19)

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- ③ Additional or different terms relating, among other things, to the **price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes** are considered to alter the terms of the offer materially.



## ***Four Basic Conditions For an Offer***

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### **4. Acceptance**

- A statement made by ... or other conduct of the offeree indicating assent to an offer is an acceptance. **Silence or inactivity** does not in itself amount to acceptance.



## ***Four Basic Conditions For an Offer***

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### **■ Four conditions for a valid Acceptance**

- ① Acceptance shall be made by a specific offeree.
- ② Be declared in certain ways, orally or in a written form
- ③ Reach the offeror within the time of validity.
- ④ Shall be in accordance with the offer.



## ***Four Basic Conditions For an Offer***

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### **Time of validity for Acceptance**

- ① “At the moment the letter is dropped in the mail box, the contract is formed”.
  - The British laws and the American Laws
- ② “It is in operation until received by the offeror”
  - Law of continental countries
- ③ “An acceptance of an offer becomes effective at the moment the indication of assent **reaches** the offeror.”
  - “the United Nations Convention...”



## ***Four Basic Conditions For an Offer***

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- **Late Acceptance** Is generally considered **invalid.**
  - ① Is effective if without delay the offeror orally so informs the offeree or dispatches a notice to that effect.
  - ② In case of delayed transmission



# CISG: Article 21


- (1) A late acceptance is nevertheless **effective** as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect.
- (2) If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect.



## ***Four Basic Conditions For an Offer***

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### **Withdrawal of an Acceptance**

-  If the withdrawal reaches the offeror **before or at the same time** as the acceptance would have become effective.



# Case Study

- Mr. Anderson intended to sell a plane to Mr. Johnson. In his cable, Mr. Anderson offered: "Confirm sale of a plane ... Please send 5,000 pounds by telegraphic transfer." Mr. Johnson cabled back immediately: "Conform purchase of your plane, terms and conditions same as your cable. I've sent the 5,000 pounds to your Account Bank who keeps your money on your behalf until delivery of the plane. Please confirm delivery within 30 days from the date of this cable." Mr. Anderson did not reply and sold the plane to another buyer at a much higher price. Disagreements occurred between the two parties about whether the contract was concluded effectively. In such a case, was the contract concluded? Why?



# Case Study

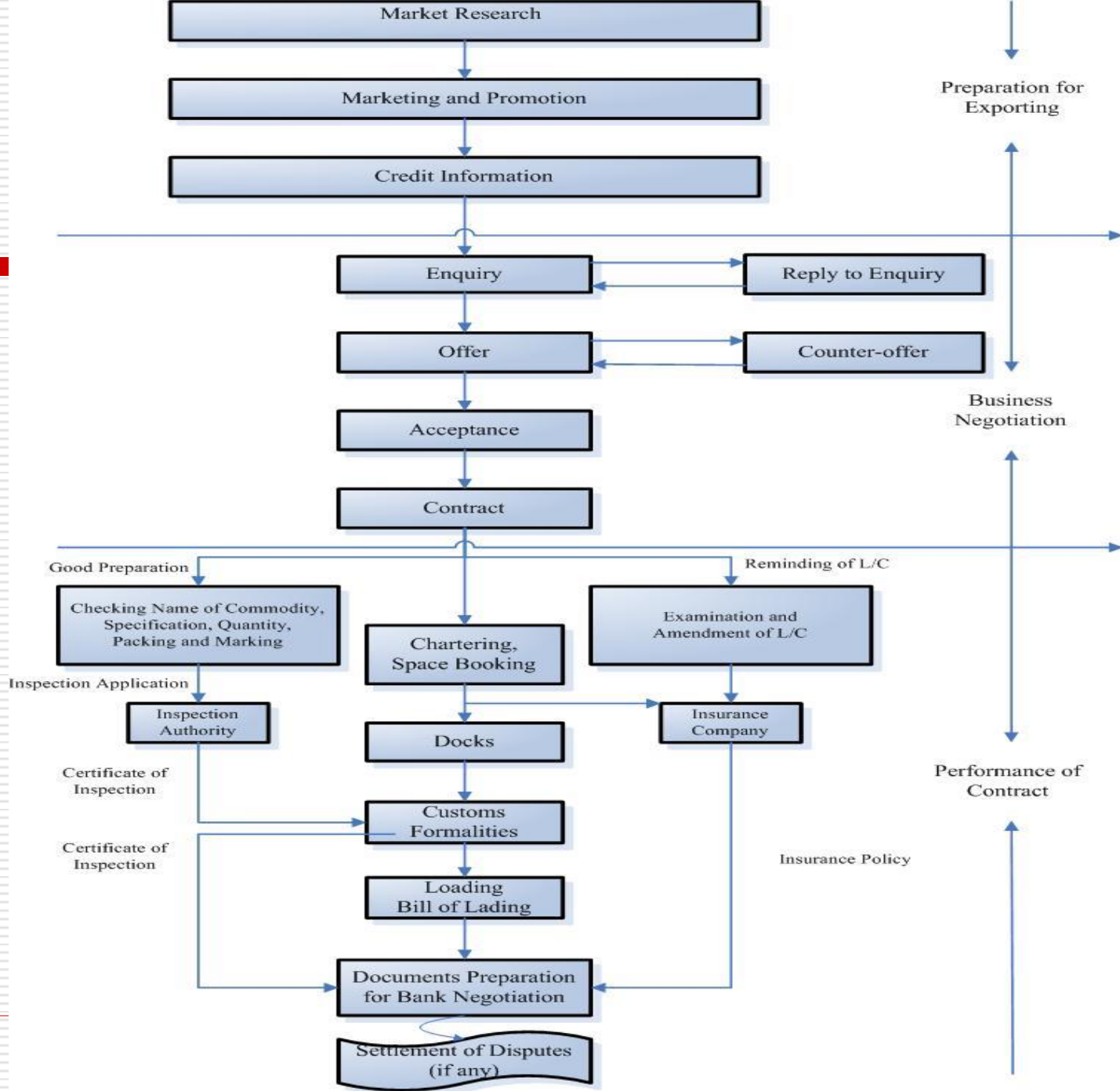
- An export company in China made an offer on an agricultural product to an American importer. Aside from all the essential conditions, it was also indicated in the offer that 'packing in sound bags'. Within the validity period, the American importer gave a reply: 'refer to your telex first accepted, packing in new bags'. After receiving this, the export company started to prepare the goods. A few days later, when the price of the agricultural product plummeted in the international market, the American importer claimed in its telex: the contract is invalid because you have not confirmed our alteration to the offer. But the export company insisted that the contract was valid. A dispute was thus aroused.



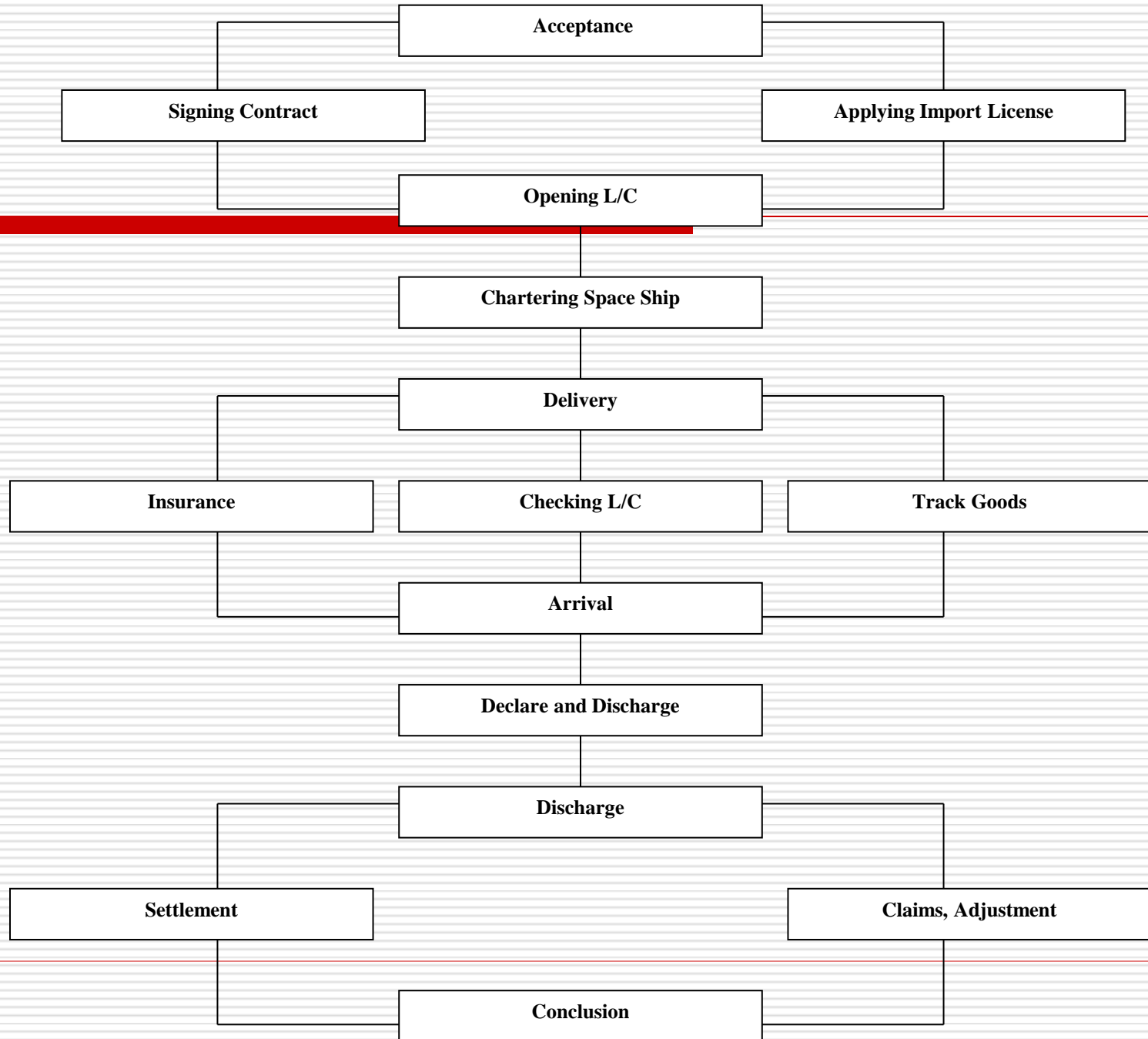
# Case Study

- A Chinese export company sent on June 1 an offer to a businessman living in Italy, stipulating for the reply to reach them before June 10. The Italian businessman cabled his acceptance of the offer on June 8. Because of the delay by the post office, the acceptance did not reach the Chinese company till on the morning of June 11. And before receiving the acceptance, the Chinese company was informed that the prices of the said products were rising rapidly.
- What do you think is the best way for the Chinese company to deal with this case? Why?

# Export Procedures under CIF on the side of Seller



# Procedures of Import Transaction



## Section 1 General procedures of executing export contract

We take executing a CIF, L/C payment contract, the most complicated one for example.



## **Section 2 Execution of Export Contract**

### **1. Getting goods ready**

**Goods must conform to the terms and conditions of the contract in quantity, quality, packing and marking, be ready for customs clearance and shipment before time of shipment.**

### **2. Applying for Inspection of Goods**

**❖The seller shall inspect the goods by themselves or have them inspected by a qualified inspection institution who shall issue an inspection certificate showing the goods' conformity to the contract for customs release and negotiation.**

### **3. Urging & checking L/C**

If payment by L/C, the seller should ask the buyer to establish the L/C in time. Usually the L/C reaches the seller 30 days before shipment.

### **4. Chartering ships or Booking shipping space**

If it is the seller's obligation to charter the ship or book the shipping space, the seller should do it promptly in order to ship the goods in time.



**5. Procuring Insurance**

**6. Clearing the goods for export**

**7. shipping the goods**

**8. Making out documents for settlement**

**9. Verification of receipt of proceed**

**10. Apply for tax refund for export sale**



## **Section 3 Execution procedures of Import Contract**

1. Opening L/C
2. Chartering ships or Booking shipping space
3. Covering Insurance
4. Checking documents and effecting payment
5. Clearing the goods for import, Taking delivery of and inspect the goods.
6. File a claim & settlement of disputes (if any)

江苏和泰股份有限公司  
JIANGSU HOTIY CORPOARATION  
HOTIY BUILDING,50 ZHONGSHAN.,NANJING,CHINA

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**COMMERCIAL INVOICE**

**TO:** JYSK CHANALET SILK A/S BRIGHT  
BULIDING14,SKOVSGERD DK-9990  
BROVET. DENMARK

**NO:** A2400A/98

**DATE:** 041021

**S/C NO.:** 03HL21401

**L/C NO.:** 202-612-1068

**FROM** SHANGHAI **TO** COPENHAGEN

**BY** SEA

MARKS&NO.S	DESCRIPTION	QUANTITIES	UNIT PRICE	AMOUNT
			CIF COPENHAGEN	
JYSK	X'MASDECORATIONS			
COPENHAGEN	2-A15261	250BOXES	USD4.15/BOX	USD1,037.50
A24001/98	2-A15261-1	40BOXES	USD6.45/BOX	USD258.00
1-7	2-A15261-2	23BOXES	USD6.45/BOX	USD148.35

**TOTAL:** 313BOXES USD1,443.85

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HOTIY BUILDING, 50 ZHONGSHAN.,NANJING,CHINA

装箱单制作样  
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## PACKING LIST

TO:  
JYSK CHANALEF SILK A/S  
BRIGHT BUILDING 14,SKOVSGERD  
DK-9990 BROVET.DENMARK

INVOICE NO.:2 A2400A/98

DATE: 031021

MARKS&NO.S11	DESCRIPTIONS 6	QUANTITIES 8 MEAS.(CM)10	PACKAGES7	GW./NW.(KGS)9	M <sup>3</sup> 10
JYSK	2-A15261	250BOXES	5CTNS	@12/10	@65*36*45
COPENHAGEN	2-A15261-1	40BOXES	1CTNS	@12/10	@67*39*58
A2400A/98	2-A15261-2	23BOXES	1CTNS	@7/5	@67*39*36
1-7					

12 TOTAL: 313BOXES 7CTNS 79/65KGS 0.772CBM

SAY TOTAL PACKDE IN SEVEN CTNS ONLY.

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