

International trade law

[Economics](#), [Trade](#)



Law chosen to govern a transactions is clearly state the legal consequences of their contractual activities for example the right, obligation, and remedies for involve parties, and they can choose the law of particular country or international law to govern their contract. International trade law (CISG) includes the appropriate rules and customs for handling trade between states and it forms part of domestic law if the involve parties are from the contracting state of CISG.

With assistance from Unification of Private Law (UNIDROIT) for filling gap in the coverage of issues by the CISG which is the validity of contract, effect of contract on property and goods, exclusively or non-sale aspects for distribution agreement, and inability of sell for death or personal injury cause by the goods on any person. The domestic law that governs the transactions in Malaysia is the Contract Act 1950 and supplement from Sale of Goods Act (SOGA) 1957 (revised 1989) which is based on the English Sales of Goods Act.

As a Malaysian lawyer, I recommend you choose the Contract Act 1950 and SOGA as the governing law because the business you based is on Malaysia home soil and it creates a familiar factor to you. Besides that, Contract Act 1950 and SOGA already govern the basic contract of goods and contract of insurance but they did not cover the contract of carriage. However, because of Malaysia still practices the Hague Rules by virtue of the Carriage of Goods By Sea Act 1950 (Revised 1994), you have to choose the Hague Rules to govern your contract of carriage even though there are prominent weaknesses.

For contract of carriage, there is standard term used on trading call as International Commercial Terms (INCOTERMS), and Cost, Insurance and Freight (CIF) and Free On Board (FOB) are the generally used term in the trade. So, I recommend you to practice FOB even though your product price will slightly lower due to bargain from buyer, but the cost will reflect on save at the transport of the products. Besides, the main benefit is you do not need to make arrangement on carriage and thus this will reduced the burden to you as a seller's responsibilities.

Policies and regulations have the very close relationship because regulations are come under the policies. The policies and regulations at Malaysia are based on an open and encourage motive, so, normally you can smoothly doing your business on export the product out of Malaysia to foreign countries. This is see through the durian is one of the fruits that identifies by the Third National Agricultural Policy (1998-2010) (NAP3) as important role in creating competitiveness of the Malaysia fruit and vegetable industry in the ASEAN.

However, you need to take care about different policies and regulations of your dealing countries which are ASEAN countries and China in order to gain the benefits from all your dealing exporter countries which are actually on the free trade area as ASEAN Free Trade Area (AFTA) and also ASEAN-China Free Trade Area (ACFTA). Firstly, other than the list of preferential tariffs products that under the Common Effective Preferential Tariff (CEPT) scheme , the 40% rules of origin are also one regulation that need to comply with in able to benefit from preferential market access.

So, you need to obtain a different certificate of origin from Ministry of International Trade and Industry (MITI) to trade at both free trade areas. Besides certificate of origin, there are regulations for the quality of trading goods on AFTA and ACFTA. Start from sign of AFTA and ACFTA, the ASEAN countries and China fruits market move to more open market as can see through the fruits quality control have been replaced to which is more harmonized and standardized called as Sanitary and Phytosanitary Measures (SPS).

This is to prevent countries to protect their domestic agricultural producers from imports with stringent phytosanitary measures which are non-science-based, discriminatory and non-transparent. So, you now can be more efficiently and effectively on export your product to these particular countries. ? Answer 2: International agreement different to domestic contract that only contracting within the familiar home country itself, it is more complicated in contracting with various countries and sometimes may be in unfamiliar countries.

So in contracting International agreement, there normally required for more trade documents that covers wider range that classified under four main groups which is Financial, Commercial, official, and Transport and insurance documents. Compared to International agreement, domestic contract normally required fewer types of documents especially only commercial and insurance type. This is because domestic contract only contracting the goods move within country territory and did not cross over the national border, so documents like certificate of origin in Official group of documents, bill of lading (BOL) or airway bills (AWB) in Transport group of documents are not

needed. Term of payment decide on International agreement is more complicated than for domestic contract in reasons of more person involve in the payment process for International agreement. This process can explained though the general example of payment term which is letter of credit (LC) that involve bank parties assistance by act as a middle man in the payment process.

The next main difference between both is the risk face by each other. International agreement is exposed to a number of risks such as buyer's risk, transport risk and transfer risk that may be also faced by domestic contract. However, these similar risks faced by the domestic contract will be lower in term of cost factor and some other risks such as exchange rate risk and country or sovereign risk will exclude to domestic contract that only contracting at local currency and local policies.

Besides that, the transportation and delivery aspect must follow the international standard for example the standardized dimensions of shipping pallets for International agreement, but this requirement is not so strict for the domestic contract. Product packaging and labeling aspect is also not so concern by domestic contract because it normally travels across short distance. However, for International agreement that the goods travel at long distance, export packaging must be suitable for the particular mode of transport in order to provide maximum protection.

There are four different types of contracting methods available which is negotiating a complete contract, choosing international law to govern the contract, agree on standard form or terms, and standard industry contracts. Negotiating a complete contract is not suitable to you because your business

was just at the beginning stages of entering the new market, so there are many 'unknown' on the others' domestic law that will cause unfair situation in the contracting, thus this will also incurred even more time in making the final agreement.

For your situation that deals with many countries, standard industry contracts seem more suitable to you but there are still not any single association that published the standard contracts of durian even though there are already mature grow of durian industry in ASEAN. Then, Standard terms contracting method is suitable to you not only because it is a speedy and convenient way of contracting, but it also benefit to you as an offeror that has priority in the 'last shot doctrine' in the courts. Besides, the objective of choosing international law to govern the contract is to provide more comfortably for other parties to enter the contracts, rather than selecting particular domestic law. So, as I recommend you to choose the Malaysia law as governing law, this method is clearly not suitable because it controversy to governing law that you chosen.

The object clauses can create legal and practical problems to you in term of quality and specification of the goods you export. Certificate of origin is basic requirement for export goods to other countries, and as discussed before, you needs to obtain a certificate of origin 'Form D' from Ministry of International Trade and Industry (MITI) for trade on AFTA, and 'Form E' for trade on ACFTA in order to fulfill the CEPT scheme.

In other simply meaning, you must to obtain the certificate of origin in order to enjoy the benefit of tariff in the free trade area and simply act as a 'passport' that show approval to entering particular market. The packing

aspect of goods' specification creates the problem on the transport of durian to other countries by the strong odour of durian leaking out from the poor packaging.

So you need to practice the suitable packaging method for your export durian especially your fresh durian that exported by air shipment. Besides that, you must prepare for the future of sustainable packaging that reflect in the designed in a holistic way and be made from responsibly sourced materials that are safe and effective throughout its lifecycle, meet criteria for performance and cost, meet consumers' choice and expectations and, finally, it has to be recovered efficiently after use.

For the price clauses, you better determine the price that can change over time subject to review and modification because there are fluctuate in the currency exchange among all the different countries that will cause huge lost if there are big differences between the current currency and the currency that agree on the fixed price agreement. Payment clauses also need to be aware because the method of payment will affect your receivable ability, and letter of credit seem more suitable for you because it emphasis more on the seller side through the process that provide more insure on receiving of payment for seller side.

Penalty for late payment in this clauses will not only provide extra insure to you through the charges gain for the late payment, but it also help in your financial arrangement due to the on-time payment and assurance of creditability of the buyer through the slightly higher of penalty being set. Delivery and shipment clauses will also raise problem through period time that involve in transport the perishable durian product.

So, in order to maintain the product freshness especially when transport at long distance like to China, the date and also time must specify in detail referred to the time of harvest and the available of transportation to prevent any extra days or hours it incurred to transport the product. Besides that, port of shipment is also a critical element in this clause because the distance between the choosing port and the distribution centre determine the product freshness also.

For example in China, you can choose the port of Guangzhou because it is considering being a centre for exporting Malaysian durian to China. As I suggest you to choose Malaysian law as the governing law, you need to state this clearly in the clause of governing law. Besides, after state of the governing law is Malaysian law, follow by the jurisdiction will state Malaysia court is the place to resolve dispute. If this never state in the contract, it will depend on court to decide which law apply.

The clause of passing of title and risk is also a vital term to consider when there are accidents happen to the goods on the carrier stage or incident of unpaid seller. ? Bibliography 1. AB Teoh. 2008. Exporting and International Trade [access on 15 July 2010] 2. Essential international trade law by Michelle Sanson. 2002 by Cavendish Publishing (Australia) Pty Limited. Available www.cavendishpublish.com. [access on 15 July 2010]