

The Problems of Export Trade: How to Solve?

by Gazanfar Ali

Export trade, disputes between two trading parties namely seller (exporter) and buyer (importer) may crop up to various causes, which in essence, are as under:

- (A) Misunderstanding concerning meaning or interpretation of terms as stipulated in export contract.
- (B) Execution of export sale in violation of contract terms.
- (C) Dishonour of export bill by non-acceptance or non-payment due to discrepancy in export documents.
- (D) Difficulties in repatriation of export proceeds due to change in trade policy or revenue policy of the government in the importer's country.

The above causes of dispute are enumerated below:-

(A) Misunderstanding concerning meaning or interpretation of terms as stipulated in contract:

- a) A contract executed between a buyer and a seller is the basis for every foreign trade transaction. Now how a foreign trade contract is executed? Occasionally it is executed in the form of a written document signed by both the parties. But very frequently an exporter communicates his offer to the importer by telex/cable or by airmail and an importer accepts the offer, when it becomes a contract and vice-versa. Sometimes even in export part two trading parties may reach a verbal agreement to buy/sell a product and when that verbal agreement is subsequently confirmed in writing, that becomes a contract.
- b) The principal of offer and acceptance though seem simple, in practice it may be more complex. Suppose, the exporter sends out his quotation on a standard form incorporating his general conditions such as (i) description and quality of goods (ii) quantity of goods (iii) rate and delivery terms (iv) date of shipment and (v) other required terms.
- c) The importer possibly accepts the offer, but communicates acceptance on his own standard form, where conditions incorporated were not identical

on all the points mentioned in the offer. In the eye of law, due to this divergence in the acceptance from the offer, it has become a counter offer, which the other party may accept or reject. If the exporter ignoring the difference in the terms between offer and acceptance effects shipment then he has probably implicitly agreed to the importer's terms.

(d) It is imperative on the part of an exporter to take into consideration the following before sending an offer or accepting the same:

- (i) Whether he has sufficient stock to ship the contractual goods in time.
- (ii) If he has to buy the goods from market or procure raw materials for production and shipment, then he must assess whether it will be possible to buy/manufactured goods at a cost which is less than the contractual price, which on shipment will enable him to retain a profit margin.
- (iii) In spite of the fact that answers to above propositions are negative and still the exporter has sent an offer or accepted the same, then a dispute is probably inevitable.

(B) Execution of export sale in violation of contract terms:

- (a) Exporter may encounter the following difficulties while executing the export order:
 - (i) He has no ready stock and has to procure the goods from the market, but finds that the market price has suddenly sprung up. This will result in a loss to him, if he decides to execute the order.
 - (ii) In the off-season the contractual goods are not available and by the time goods will arrive at the market, the shipment period mentioned in the contract will already be expired.
 - (iii) Production capacity of the factory is inadequate to complete production of the entire consignment within the shipment period mentioned in the contract/partial shipment may be effected, but contract prohibits partial

shipment. (iv) Vessel for the destination port is not available within the shipment period mentioned in the contract, though goods have already been sent to port for shipment.

(b) In the above unfavourable situation, the exporter may decide as under:-

- (i) To ship inferior quality goods in order to make good the losses due to rise in the price of commodity.
- (ii) To cancel the contract unilaterally without shipment of goods.
- (iii) To effect partial shipment, since full quantity could not be produced in time, though the same is prohibited as per contract.
- (iv) Goods shipped for delivery at another port in the importing country for which vessel is available, though the same is not in conformity with terms of contract.
- (c) Any one of the above actions of the exporter will give rise to a trade dispute provided he takes unilateral action without consent or agreement of the buyer. In order to avoid a dispute over the matter, the best course for the seller is to convince the buyer before shipment regarding necessary changes in the terms and conditions of contract. The seller should agree to pay compensation, where necessary, as per trade usage and practices. He should effect shipment only on receipt of written amendments of the contract letter of credit.

(C) Dishonor of export bill by non-acceptance or non-payment due to discrepancies in export documents:

- Occasionally, it becomes difficult to obtain payment of export bill due to even minor discrepancies in documents, although goods were shipped strictly as per quality and specification mentioned in the contract/letter of credit. Sometimes when the price of the imported commodity fall in the importer's country, the importer in order to avoid a loss refuses the documents on pointing out un-

tenable discrepancies in document. Occasionally, it also happens that buyer, failing to recover exports claims in respect of previous consignments draws on the same buyer, endeavours to find out imaginary/filmsy discrepancies, although the present documents are drawn strictly as per terms of contract/letter of credit in order to exert pressure on the seller (exporter) to make a compromise at the terms dictated by the buyer (importer). For example, in our trade with Italy for export of hides and skins, a dispute of this nature is a common phenomenon. Payment of export bill payable on demand or ever duly accepted time bill is held up by the concerned letter of credit issuing bank at the instance of Italian court and this type of legal proceedings in Italy is commonly called "Conservative Arrest" in such a case the payment is delayed till the Italian court delivers judgement. And it is hardly possible to get a favourable judgement until the Bangladesh exporter has made prior compromise with the Italian buyer at the buyer's dictated terms.

(D) Difficulties in Repatriation of export proceeds due to change in trade policy or revenue policy of the government in the importer's country:

- Difficulties may arise in repatriation of export proceeds due to change in trade policy or revenue policy of the government in the importer's country. For example, the US government imposed quota restriction on four popular categories (334,335,340,341) of their textile products on March 1, 1985. As a result, payment of goods of those categories exported beyond the quota restriction could not be recovered.

Dishonoured Bill:

Steps for protect on negotiating bank and exporter's interest:

(a) Reasons for dishonour of export bill by non-payment or non-acceptance by the drawee (buyer) is communicated to the correspondent bank in the importer's country, who presented the documents. The correspondent bank, in turn, transmit the information to the negotiating/collecting bank in the exporter's country by telex/cable message. On receipt of the information, negotiating/collecting bank passes over the same to the exporter seeking his instruction in the matter.

(b) The exporter now endeavours to comprehend the reasons of dishonour nature of discrepancies as communicated to him. The discrepancies in documents are normally as under:

- (i) Late shipment.
- (ii) Letter of credit expired.
- (iii) L/C amount exceeded.
- (iv) Pre-shipment/transhipment effected not covered by the L/C terms.
- (v) Description or rate of goods in invoice differ from that in the L/C contract.
- (vi) Port of loading or destination is different from that stipulated in L/C contract.
- (vii) Shipment on deck or by chartered vessel though not authorised in L/C.
- (viii) Bill of lading does not evidence whether freight is prepaid or not.
- (ix) Unclean bill of lading or bill of lading does not bear "on Board" notation duly authenticated.
- (x) Weights differ between documents.
- (xi) Dishonour may be due to other discrepancies in documents.
- (b) It all depends upon the nature of discrepancies whether compromise settlement is possible or not. If the discrepancies are due to apparent mistake in preparation of documents, which is not possible to be rectified at this stage, and if these mistakes in documents do not materially affect the interest of the buyer, than the

buyer could possibly be convinced by the seller (exporter) when the points of discrepancies are amply clarified over phone/telex. But where discrepancies may possibly jeopardise the interest of the buyer resulting in monetary losses, reconciliation between buyer and seller could be achieved only on agreeing to make good the possible losses of the buyer. When the buyer's demand is reasonable and justified, the best course for the seller is to agree to his terms and obtain consent for payment/acceptance of the dishonoured bill. The seller will then advise his banker to instruct correspondent bank in the importer's country to represent the bill to the drawee (buyer) and abstain payment/acceptance as the case may be. Negotiating/collecting bank will accordingly instruct the correspondent bank to represent the bill to the drawee and obtain payment/acceptance. Thus the dispute may be resolved amicably.

(c) In case where in spite of best efforts, settlement over the dispute could not be achieved, the seller may instruct negotiating/collecting bank as under:

- (i) To protest the export bill in respect of dishonour by non-payment/non-acceptance.
- (ii) To protect the goods at the port of destination. The negotiating/collecting bank on receipt of exporter's instruction will advise correspondent bank by telex/cable accordingly.
- (d) Some foreign banks express their inability to undertake the responsibility of protecting the goods at the landing port. In that case, the negotiating bank may request the commercial wing of our embassy in the importer's country to arrange for protection of relative goods at the landing port on supply of a set of non-negotiable documents.
- (e) Where all efforts for mutual settlement of dispute fail, the exporter may approach following organisations for their assistance

in a settlement; — Commercial wing of Bangladesh embassy in the importer's country.

— Export promotion Bureau.

(i) Federation of Chamber of Commerce and Industry.

(ii) Export Promotion Bureau. Exporter may approach the Export Promotion Bureau on supply of papers/documents as mentioned in the preceding para for their assistance in the dispute for settlement. They generally take up the dispute with the commercial wing to foreign embassies of importer's country located in Bangladesh.

(iii) Federation of Chamber of Commerce and Industry.

Federation of Chamber of Commerce and Industry in Bangladesh has formed a joint committee with their counterparts in several countries for settlement of trade disputes. The federation is in a position to play an important role in this regard. Exporter may submit copies of relevant papers/documents relating to their dispute with buyer for a settlement.

Settlement of dispute raised by importer

When a buyer lodges claims to the seller in respect of any of the above ground and if the claim is reasonable and justified then he should accept the claim for better mutual relationship. In addition, he should be careful not to repeat similar incidence in order to preserve his own image and protect interest of the country's export trade in general. International Arbitration: In case no settlement could be reached either

by mutual understanding or through the assistance of organisations mentioned earlier, then the last resort of the exporter is international arbitration. International Chamber of Commerce undertakes such type of arbitration.

Steps to be followed by exporters where settlement failed:

(a) In case of non-settlement of dispute with buyer in spite of all possible efforts made, the only course left is to sale the goods to a second buyer. Exporter has to find out a new buyer and enter into a contract with him. The commercial wing to Bangladesh embassy in the importer's country may be requested to find out a new buyer.

(b) Negotiating/collecting bank informs Exchange Control Department of Bangladesh Bank regarding dishonour of the bill by non-payment or non-acceptance. The exporter has to obtain approval of the sale to the second buyer on submission of the relative contract through negotiating/collecting bank. On receipt of approval of the new sale from Bangladesh Bank and instruction of exporter, negotiating/collecting bank instructs correspondent bank to deliver the goods to the second buyer on collection of contractual amount from him.

In export the best course is to avoid the dispute. In order to achieve this exporter should abide by the terms and conditions as mentioned in contract letter of credit and to supply goods in time as per specification and quality as mentioned in the contract. Risks of dispute may be reduced only through improved mutual relationship with the buyer. This improved relationship in the case of trading transactions must depend on integrity, straight forward dealing and righteousness of the exporter.

GATT Council Reviews Trade Regimes of Thailand

MEMBERS of the GATT Council welcomed the evolution which had taken place in Thailand's economy in the direction of more open policies and commended Thailand for its smooth transition from import substitution to greater integration into the international economy. Since the late 1970s, Thailand has pursued a range of positive policies, including fiscal and monetary discipline and a more flexible exchange rate regime. These policies, in combination with an improved external situation, had contributed to impressive growth and diversification in Thailand's economic structure, foreign trade and investment. The Council appreciated the important steps taken by Thailand to liberalize its trade and investment regimes on a most-favoured nation basis.

The impetus provided by developments had helped Thailand transform its economy from one founded largely on basic agriculture to a more diversified structure with a major share of domestic output coming from manufacturing. The foreign investment attracted to Thailand had further strengthened Thailand's competitiveness and boosted economic growth.

It was pointed out that Thailand's liberalization and expansion of trade had been a positive contribution to the world trading system. At the same time the liberal international trading system had been highly beneficial to Thailand's promotion of exports. Even so, many members emphasized the need for Thailand's economic policy efforts to be supported by international trade liberalization, including in agriculture and textiles. The rapid growth in Thailand's international trade had increased its dependence on external markets and strengthened the emphasis given by Thailand, since its accession to the GATT in 1982, on a strong, open and equitable multilateral trading system.

Concerns

While commending Thailand for the direction of its policy reforms, Council members indicated several areas where general or particular measures created uncertainty or lacked transparency:

- The replacement of non-tariff measures by variable levy-type surcharges was seen as continuing existing distortions;
- The scope and variety of incentives for exports could lead to subsidization, and hence risk the application of countervailing measures by other parties;
- The need to improve intellectual property protection was emphasized;
- Thailand had not signed any MTN Code. Members particularly encouraged Thailand to accede to the Customs Valuation and Import Licensing Agreements. In this regard, it was pointed out that Thailand need not

clude all product categories. Council members hope that Thailand's plans to rationalize and further reduce tariffs, lower other import and export restrictions, and to replace the business tax with a more transparent VAT system would be implemented in the near future; that the government would continue its policy of reduced reliance on import surcharges; and that the tariffification of non-tariff measures would be extended.

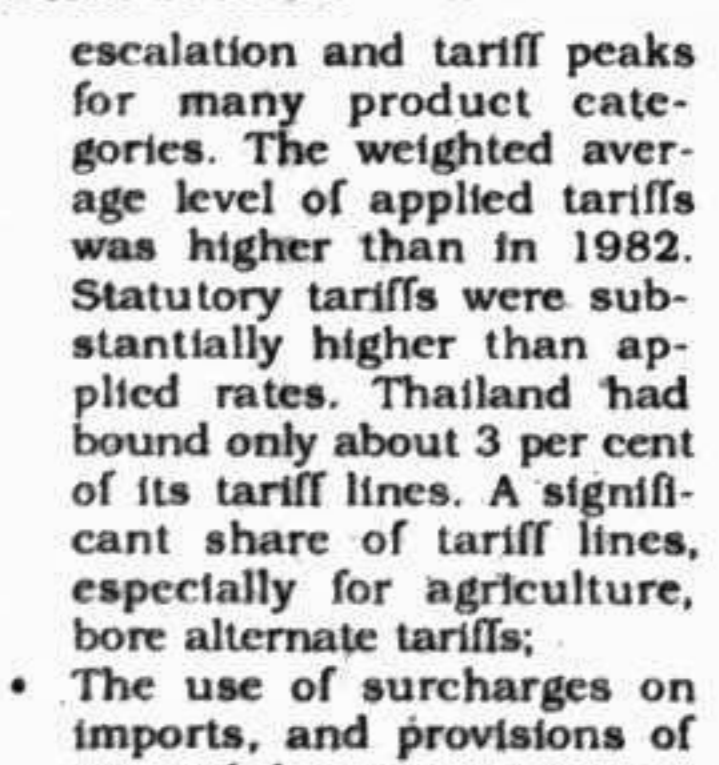
Members took note of the priority given by Thailand to domestic processing and decentralization of economic activity. One member, welcoming Thailand's liberalization, said that reductions in barriers to imports of raw materials, intermediates and capital goods were appropriate for a developing country where tariffs provided both protection for infant industries and substantial government revenues, and import licensing was to some extent unavoidable. Policies concerning liberalization of foreign investment conditions were welcomed. Some members looked forward to greater predictability and further liberalization in this area. Important trade policy objectives of Thailand focused on promotion of light industries, selected heavy industries and export-oriented industries. The process of making specific decisions in various policy areas; plans for developing alternative revenue sources to tariffs; customs valuation procedures; the trade regime for agricultural products; the nature of, and prospects for liberalization of, local content schemes; details of rationalization of sectoral assistance policies, in particular through the import licensing regime; criteria used for replacing non-tariff measures with surcharges; procedures used in government procurement; the problems arising in Thailand's possible accession to the MTN Codes; how far environmental concerns had been incorporated in policy; Thailand's views on increasing economic cooperation with ASEAN; plans to widen the sources of foreign direct investment in Thailand; and steps taken to liberalize trade-related investment measures. One participant asked whether any research bodies had made studies showing how industrial protection could be reduced.

to non-automatic, discretionary licensing. The number of items under licensing now as higher than in 1982.

Members welcomed Thailand's commitment to replace the business tax by a VAT system and expressed the hope that it would be applied in a transparent and non-discriminatory manner. The question was asked whether Thailand would seek an extension of its GATT waiver for the business tax.

The generally non-discriminatory nature of Thailand's tariff regime was recognized. Most members welcomed Thailand's offer to bind about 50 per cent of its tariff lines in the Uruguay Round. Some others felt that this offer was not fully satisfactory. Hope was expressed that future liberalization would be balanced and in-

Brisk business with Thai Commodities



Down Under Market Too Competitive for Foreign Banks

by Vincent W Stove

AUSTRALIA has once again put out the welcome sign to entice more foreign banks to set up business. But given the experience of foreign banks already operating in Australia, the response to the invitation is sure to be a lot less than enthusiastic. Most of them have lost money. They have had to lower their expectations, growth projections and profit forecasts to reflect the tougher than anticipated competitive environment.

All foreign banks in Australia are reassessing their positions. All but a few have no plans for expansion. Many continue to be in business only because of the deep pockets of their parent banks. There are plenty of rumours in financial circles that some foreign banks are seriously considering retreating from Australia before their losses become too horrendous. Some observers predict that half of them will have closed within five years. And that only a couple, possible three, will be operating in Australia by the end of the decade.

The Australian government is disappointed with the performance of foreign banks already here. It wants more of them to provide greater competition. Early in 1985 the government approved applications from 16 foreign banks (out of 42) for licences to set up full banking services. Five of the banks were American. Three were British banks and three Japanese. The other five were from Singapore, Canada, West Germany, Hong Kong and New Zealand.

The move was part of the Labour Party government's deregulation programme. It also reflected a need to inject more competition into the local banking scene. But despite the large number of newcomers, the extra competition proved to be minimal, and it occurred mainly in the corporate sector. Most Australians experienced little, if any, improvement in banking. They were given no incentive to desert the long-established domestic banks. The government had hoped the foreign banks would secure at least 20 per cent of the Australian market within five years. But, although there have

been 16 of them, and only four major local banks, the newcomers cornered only roughly 10 per cent of the business.

About half of them have consistently posted losses. Except for one notable exception, the others have made only negligible profits. Recent estimates suggest that total losses of the foreign-based operators are just about in sight of US\$ 1 billion.

Despite the government's wish that foreign banks should

participate in some form of retail operations — with easily accessible banking services and innovative products — most have stuck to corporate banking.

In general, their approach has been limited, tentative and lacking genuine competitiveness. In contrast, the big four Australian banks (three private and one government-owned) met the foreign invasion with a massive capital investment programme. They poured money into electronic systems, a comprehensive automatic teller machine network, marketing programmes to develop new and acceptable financial prod-

ucts and staff training. The newcomers found it particularly difficult to compete with solidly entrenched networks of local banks across the sparsely populated Australian continent. Since entering the country, foreign banks have opened less than 100 branches to compete with about 6,500 branches and 8,000 agencies operated by local banks.

The performance of foreign banks has been far from impressive considering that the group includes some of the biggest and most profitable names in world banking. But because many of them plunged quickly and recklessly into the lending scene to establish market shares, foreign banks acquired a percentage of non-performing loans four times greater than local banks.

Japanese banks have performed well in Australia by restricting their operations to the blue-chip end of the corporate lending market and avoiding dealings with speculators and high-flying entrepreneurs. And forgot about the retail sector.

US giant Chase Manhattan Depthnews Asia



Photo: Executive

Persevered with retail banking in Australia through five disastrous loss-making years before it called quits. It sold its retail operations to local operator Westpac last year, and now concentrates on profitable wholesale banking.

As an added incentive to attract newcomers, the government now allows foreign banks operating in a wholesale capacity to function as branches of parent banks. This gives them greater flexibility and reduces costs.

Retail banking by foreign banks will continue to be conducted within a framework incorporated locally as subsidiaries of the parents. This allows the Australian Reserve Bank to maintain supervision and protection for depositors.

The Reserve Bank rejects claims that Australia already has too many foreign banks. Reserve Bank governor Bernie Fraser recently stated: "Even in a crowded market, a place will always exist for new entrants who can provide some additional competition or some nice service." Foreign banks are expected to "make a worthwhile contribution to banking services in Australia, not only add to the number of banks," he said.

Hongkong Bank Australia (a subsidiary of the Hongkong and Shanghai Banking Corporation) hopes to make a profit this year, largely because it has distanced itself from entrepreneurial lending which characterised its commercial activities in previous years.

Leading the foreign bank pack in Australia, and showing how it should be done, is America's Bankers Trust. It is the most successful foreign bank operating in Australia.

BTA is wholly owned by the US parent. It has gained a reputation as a low profile but tough and aggressive operator, with a large reliance on prudent, old-fashioned banking caution in lending practice.

BTA has proved a substantial opponent for all banks in Australia. Prospective newcomers will no doubt study BTA's performance very carefully before opting to risk the dangerous Australian financial scene.