

一、名词解释:

- 1 市场准入
- 2 LSLP
- 3 外汇倾销
- 4 国家契约
- 5 Law-making Treaty.Sovereign Immunity.Letter of Credit

二、论述题

- 1.试述限制性商业条款的性质,并说明我们对其应持的态度
- 2.何谓税收饶让抵免,税收饶让抵免和一般的外国税收抵免有哪些区别
- 3.说明国际公法,国际私法与国际经济法的关系
- 4.简述外商投资企业的注册资本与投资总额的法律含义及两者之间的关系

三、案例题

1.中国某公司(买方)与外国某公司签定了一批进口一批钢材的买卖合同.按合同规定,货物分两批装运,支付方式为不可撤消的即期信用证.经买方申请,信用证有中国的银行开立,每批货分别开立一份信用证,第一批货物装运后,卖方在有效期内向银行交单议付,议付行审单后,即向该商*议付货款.随后开证行对议付行作了偿付.买方在收到第一批货物后.发现货物品质与合同不符,因而要求开证行对第二批信用证项下的单据拒付款.请根据信用证的法律关系及性质来回答:

- 1)你认为开证行能否拒绝付款,为什么
- 2)如果买方的要求遭到开证行的拒绝,你认为买方应采取何种措施?

*该商即外国某公司

2 In April 1986, X, a Chinese Radio Component Factory signed a contract in Beijing with Y, a US company for a capacitor production line worth 17 million yuan. The equipment was to have been delivered before April 30, 1987, but it did not arrive even by September that year. The contract set out a penalty of one percent of the line value as compensation if the equipment was one to nine weeks overdue. Another agreement was signed by the two parties in October 1987 and stipulated delivery by the end of December 1987, but it did not specify claims. The equipment finally arrived in March 1988 i.e. eleven months late. Inspection shows that 30 of the 113 imported pieces equipment were found to be second hand. Some were useless. The defect caused losses of 2.44 million yuan. Supplementary agreement signed in May required the US company to replace the defective parts of equipment before the end of October 1988. But to-date, none has arrived. All this caused X, the factory in Beijing a total loss of 3.7 million yuan. X then filed a suit against Y in the people's Court for compensation of all the losses.

Questions:

- 1) Since Y is an absent defendant residing outside the Chinese territory, in view of the principle "the plaintiff follows the forum of the defendant" incorporated in Chinese procedure law, does the People's Court have jurisdiction over such a case? Why?
- 2) What is the proper law to be applied if the contract is to be applied by the People's Court, as there is no express choice of law provision in the contract? And why?