

Original Paper

The Language Features and Translation of Business Contracts

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Abstract

Since the reform and opening up policy was adopted, Chinese economy has been keeping on developing with high speed, so as to its international trade. Therefore, English business contracts are widely used in the foreign economic and trade activities. However, we also find that there are still many foreign-related economic disputes which mainly caused by the ambiguity of translation happening in these trades. Due to the unclear rules of the parties' obligations and rights, the improper translation of the contract, the meaning vague and the loose broad, the parties are tracked in this situation where any part of them could intentionally or unintentionally exploited a contractual loophole to avoid responsibility and obligation, which would lead to a dispute. The distortion of translation can lead to the fuzziness and uncertainty of contract which can be easily exploited by commercial fraud to evade responsibility; this situation is happened in reality and practice which has negative impact on foreign relations and trade. In order to make the business activities carried out more effectively, this article will discuss it mainly from the perspective of lexical characteristics and translation principal of business contract in order to make the translation be more accurate to benefit international business trade.

Keywords

English business contracts, lexical features, translation

1. Definition and Categories of International Business Contract

As to what contract is, 1999 Contract Law of the People's Republic of China stipulates that contracts are agreements between equal natural persons, legal persons and other organizations for the purpose of establishing, altering and terminating mutual civil rights and obligations. Steven H. Gifts says in Law Dictionary (1997, p. 25): A contract is a promise, or a set of promises, for breach of which the law gives remedy, or the performance of which the law in some way recognize as duty.

Generally it consists of Contract for International Sales of Goods, Contract for International Technology Transfer, International Compensation Trade Contract, Contract for Sino-foreign Joint Ventures, International Loan Agreement and Contract for International Engineering Projects, etc.

2. Specific Criteria for Contractual Translation

International business contracts are becoming increasingly professional and “interdisciplinary”. It happens all the time that a word in a contract has a very technical meaning, which is seldom used in everyday language. Therefore, contractual translation must identify these differences so as to accomplish faithfulness and accuracy. Contractual translation, generally speaking, demands no rhetoric effect like literary translation. What it demands most is expressiveness and smoothness. Faithfulness and accuracy & expressiveness and smoothness are the specific criteria for contractual translation.

3. Language Features and Translation of Business Contracts

3.1 Lexical Features of Business Contracts

Compare with the daily use of English words, contract lexicons are more regular, solemn, conservative, rigid and authoritative, it neither pursues gaudiness just like the words in the literature works, nor strives for rhetoric methods like it is in the poetry. In order to keep the features of accuracy and strictness of the legal text, archaic words, formal words, pair synonyms, shall and legal terms are mostly used so as to make the contract clearer and less ambiguous.

3.1.1 Use of Archaic Words

Archaic words are old-fashioned words, which point to another part of the text in which they are found, or to another place or time (Gibbons, 2003). They are the Old and Middle English words, Old English is the name given to that form of the English language current in England before the Norman Conquest and down to about 1100. Lawyers tend to believe that these archaic words enable clearer and less ambiguous reference and give greater weight and authority to the language (Gibbons, 2003). Words like herein and therein may sometimes lead to economy of expression when they replace a longer phrase like in this document or in that clause (Tiersma, 1999). Crystal D. and Davy D. (1969) write, “It is especially noticeable that any passage of Legal English is usually well studded with archaic words and phrases of a kind that could be used by no one else but lawyers.” So we can find that as the important branch of legal English one of the most remarkable features of contract English is the use of archaic words.

Words composed of “here”, “there” or “where” plus “in”, “by”, “after” and “of” etc. are often used in contract, such as:

Table 1. Archaic Words in English Contract

Archaic Words	Modern meaning	Archaic Words	Modern meaning
Hereafter	After this	Thereafter	After that
Hereby	By means of this	Thereinafter	In that part of a contract
Hereof	Of this	Thereunder	Under that part of a contract
Hereby	By that means	Whereof	Of which
Hereinafter	Later in this contract	Whereby	By what; by which
Hereunder	Under this	Wherein	In what; in which

(Hu gengshen, 2004)

The use of these words can avoid repetition and make the contract concise and clear. “Here” means “this”, “there” means “that”, “where” means “what” or which, for example:

3.1.2 Use of Formal Words

Called as literary words or learned words, formal words mainly appear in formal writings, such as theoretical works, formal addresses and legal documents. There exist in English some synonymous words but with different stylistic characteristics. Here is a table of frequently used formal words in English contracts in contrast with their colloquial counterparts.

Table 2. Formal/Informal Words

Informal Words	Formal Words
Buy	Purchase
Change	Modify/after
End	Terminate
Go	Proceed
Make	Render
Begin/start	Commence
Duty	Obligation
Earlier	Prior
Around	Approximately
Require	Necessitate
Show	Demonstrate

(Li li, 2005)

Words in the right column exceed their colloquial counterparts in the left column, because they are more compatible with the greater solemnity demanded by English contracts. English contracts, like

other offshoots of legal English, naturally gravitate towards formal dictions, thus lending a sense of formality to contract texts. Take the following sentence as an example:

After the rights and obligations under a contract are terminated, the parties shall follow the principle of honesty and trustworthiness and the appropriate trading practice to perform the obligation of notification, assistance and confidentiality (Li, 2005).

Because formal vocabulary contributes to increasing solemnity in English contracts, in the above sentence, five formal words “terminate”, “principle”, “notification”, “assistance,” and “confidentiality” are adopted in English contract rather than their colloquial counterparts “end” “rule”, “notice”, “help” and “secret”.

Another feature of English contracts is their reliance on terms of Latin or Greek origins and many such words consist of three or more syllables. Though not revealing their foreign origins at first sight, words of Latin origin are quite formal, such as “confidential”, “insufficient”, “penalty”, “stipulate” and “authorized”. Some lawyers advocate a trend in the west to simplify the language of English contracts by replacing Latin words by plain English; however, the influence of age-old tradition cannot be changed overnight.

3.1.3 Use of Pair Synonyms

Two synonyms or two words with close meaning can be connected by and or to complement each other. They can be nouns, conjunctions, pronouns, prepositions, verbs and adjectives, etc. And in legal English this kind of use occurs very often. It is especially an outstanding characteristic of contracts, look at the following sentence:

The parties may, through consultations, make amendments to and revision of this contract as and when the need arises. 译文：双方可在必要时通过协商，修改本合同。

From the example we can know that by using these pair synonyms, ambiguity can be avoided or reduced, and it also makes emphasis and draws people’s attention.

3.1.4 Use of Fixed Legal Terms

In addition to the above lexical features, legal terms are also a kind of fixed and useful lexicon in contract, its main function for these terms is to introduce the background, aim and specific items of the establishment of contract. Such as the following examples:

(1) Whereas:鉴于

This word is used to introduce the background and aim of the establishment of contract. For example:

Whereas the contractor is desirous to provide the manpower for the works ...

译文：鉴于承包人想为此工程提供劳动力.....

(2) “Now, THEREFORE”兹特

This term is often used after the whereas clause to introduce specific items, but whereas clause is, at times, omitted. For example:

WHEREAS, A desires to export to B the goods as specified in Exhibit A hereof (hereinafter called the “Goods”); and whereas, B desires to import the good from A;

Now, THEREFORE, A and B hereby agree as follows:

译文：鉴于甲方愿意向乙方出口本合同附件 A 中所规定的物品(以下称“货物”)且鉴于乙方愿意从甲方进口上述货物。

因此,甲方和乙方特同意订立下列条款:

(3) “In witness whereof” (兹证明) is frequently used in contract. For example:

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by the respective representatives on the date first above written.

译文：兹证明,本协议由双方各自代表在上述订约日期签订。

The above three sentences illustrate that such kind of legal terms can reflect the regular, solemn, conservative, rigid and authoritative style of contracts.

3.2 Syntactical Features of Business Contracts

3.2.1 Passive Voice and Active Voice

There are two voices in English—active and passive. Active voice is direct, concise and forceful. Compared to active voice, passive voice may leave uncertain who the doer is, and even when the doer is known, passive voice tends to emphasize it (Chen, 1992). Passive voice is therefore used in English contracts when the doer is not known or the receiver of an action needs to be emphasized. This can be illustrated in the following examples:

(1) Booking of shipping space shall be attended to by the Buyers’ shipping agency China National Foreign Trade Transportation Corporation, Beijing, China (cable address: x x x Beijing).

译文：中国北京对外贸易运输公司(电报挂号:北京 X X X)将作为买方的装运代理人洽定舱位。

(2) The Buyer’s Shipping Agency, China National Foreign Trade Transportation Corporation, Beijing, China (cable address: x x x Beijing) will attend to booking of shipping space.

译文：买方的装运代理，中国北京对外贸易运输公司(电报挂号:北京 X X X)将洽定舱位。

Compare sentence 1) and sentence 2), we will find that the expression in sentence 1) by using passive voice is better than that in sentence 2) by using active voice from the perspective of meaning and expressive function.

3.2.2 Direct Expression and Indirect Expression

In contracts, direct expression is used more than indirect expression. Please look at the following examples:

(1) This article does not apply to bondholders who have not been paid in full.

译文：本条款不适用于尚未全部偿付的债券持有者。

(2) This article applies only to bondholders who have been paid in full.

译文：本条款只适用于已经全部偿付的债券持有者。

Through the comparison between the above two sentences, we will find that in legal stylistic text, direct expression is clearer in meaning and stronger in tone than indirect expression.

3.2.3 Long Sentences

In terms of length, sentences can be long or short. Long sentences are well versed in conveying complicated ideas and are usually adopted in legal document. In contrast, short sentences are concise and can often speed up the rhythm of writing; sometimes they can create an air of tension. Short sentences are usually found in literary works or sports to denote quick action or the change of rhythm between long sentences. Sentence length is usually regarded as one of the linguistic markers measuring the degree of formality: the greater the sentence length, the more formal the language. Contracts are composed of very long sentences. It is a characteristic legal habit and many sentences have more than 50 words. For example:

Force Majeure: In case of delayed shipment or non-delivery due to a generally recognized Force Majeure, the seller must advise the buyer immediately by cable of the occurrence, and within 15 days thereafter, the seller must airmail to the buyer a certificate of the incident issued by the competent government authorities or Chamber of commerce at the place where the incident occurred. The seller shall not be absolved from his responsibility unless such an incident is acknowledged by the buyer. In case conditions of Force Majeure continue to last over and above 30 days, the buyer shall have the right to cancel the contract. The seller's failure to obtain an export license shall not be considered as Force Majeure.

译文：不可抗力:如果由于被公认的不可抗力而导致了拖延装运或不能交货，卖方必须立即将发生的一切用电报通知买方，并在此后的 15 天内，必须将不可抗力发生之处的、有权威的政府机构或商会颁发的、能证明此不可抗力属实材料，航空邮寄给买方。在买方未收到和承认关于此不可抗力继续延续下去，并超过了 30 天，买方有权取消合同。出口商未能获得出口许可，不能被认为是不不可抗力。

Although sentences in contracts tend to be extremely long, they are usually self-contained units which convey all the sense that has to be conveyed at any particular point and do not need to be linked closely either to what follows or to what precedes. Sometimes one sentence comprises the whole paragraph. All in all, the predominance of long sentences is one distinctive feature of English contracts.

3.2.4 Declarative Sentences

In terms of function, sentences can be classified into four groups:

- (1) Declarative sentences: to make a statement, to state a factual event.
- (2) Interrogative sentences: to ask a question.
- (3) Imperative sentences: to give commands or instructions.
- (4) Exclamatory sentences: to show strong feelings towards something.

English contracts should be objective and show no personal emotions. Declarative sentences are used to make statements, give explanation and make judgments and they take a predominant place in

contracts. Exclamatory sentences are seldom found in English contracts for showing personal feelings and emphasizing atmosphere. Interrogative and imperative sentences are also seldom employed because there is no necessity for inquiry or commands.

4. Conclusion

Through the above discussion, we can find that words in contracts are different from the spoken language. Words in business contracts are professional with its complex sentences and advanced vocabulary, which are very difficult to understand. Contract is a paper which can restrict the two parties. Its features are accuracy and rigorous. So if it can't be understood or expressed precisely, the two parties will get in dispute and be difficult to solve problems. Business English contract which has strong professional business English contract translation, rigor and seriousness is a guide to all kinds of international business activities and legal basis. Therefore, to grasp the vocabularies and language features of English business contract well is very important to fully understand the original sentence characteristics. By using the translation skills, we can make the translation and the original correspond directly on the stylistic features and language features, so as to achieve the faithful translation to the contract. The author hopes that there will be more and more scholars get interested with this topic, improve it and bring forward more and more better and applicable translation strategies from other researching level and angle, such as linguistics and aesthetics etc., then by using these reasonable strategies to improve the translation quality and level of C-E business contract in the near future, put the English learners' major and knowledge into the real-life practice and contribute to the business translation as well as the trade between China and the world.

References

- Chen, J. P. (2006). English Lexical Features and Translation of Economic and Trade Contracts. *China Science and Technology Translation*, 5.
- Guo, J. R. (2008). *Business English Letter and correspondence*. Xi'an Jiao Tong University Press.
- Hu, G. S. (2001). *Drafting and Translation of International Business Contracts*. Foreign Language Press.
- Jiang, Q. (2021). Problems in Translation of Foreign-related Labor Contracts and the Ways to Optimize Them. *Foreign economic and trade practice*, 6.
- Nida, E. A. (1975). *Language Structure and Translation*. Stanford University Press.
- Samuelsson-Brown, G. (1998). *A Practical Guide for Translators*. Multilingual Matters.
- Wang, L. (2018). Questions and Countermeasures of English Business Contract Translation. *Education and Teaching Forum*, 42.