

A Study of Translation Strategies of Foreign Trade Contracts from the Intercultural Perspective

Lei Kang, Yan Li
Foreign Languages College
Inner Mongolia University
Hohhot, China

Zhi-ling Wu*
Foreign Languages College
Inner Mongolia University
Hohhot, China
*Corresponding author

Abstract—With the steady advancement of China’s “One Belt, One Road” strategy, China’s foreign trade business activities have become more frequent, and the number of transactions reached has increased. In a transaction, the importance of a foreign trade contract is unparalleled which is directly related to the economic interests of the parties. Due to the differences between Chinese and Western cultures, the accurate translation of foreign trade contracts meets some challenges. Based on this, it is necessary to analyze the translation of foreign trade contracts from the intercultural perspective. Firstly, the paper summarizes the intercultural communication and foreign trade contracts, and then points out some problems in the translation of foreign trade contracts. Finally, on the basis of analyzing the language characteristics of foreign trade contracts and the differences between Chinese and Western cultures, this paper proposes some translation strategies for foreign trade contracts from the intercultural perspective.

Keywords—foreign trade contract translation; translation strategies; intercultural communication

I. OVERVIEW OF MULTICULTURAL COMMUNICATION AND FOREIGN TRADE CONTRACT TRANSLATION

Any kind of across nationalities, countries or groups can be classified as intercultural communication [1], so as translation activities. The essence of the translation of foreign trade contracts is to convert the contract text under a cultural control to the contract text under the influence of another culture on the basis of retaining the original meaning. In the translation process of foreign trade contracts, translators do not only shuttle between two different languages, but more often communicate with two different cultures. Because different countries and ethnic groups have differences in historical traditions, development processes, customs and ways of thinking [4], it is extremely difficult to accurately express the contents of the contract text in an appropriate way on the basis of retaining the original meaning. This process not only takes care of the differences between the two cultures, but also ensures that the translation will not be distorted, thus affecting normal international business dealings.

II. PROBLEMS IN THE TRANSLATION OF FOREIGN TRADE CONTRACTS

A. Misinterpretation of the Original Text of the Foreign Contract

In the translation of legal provisions of foreign trade contracts, the original text of the foreign contract is frequently misinterpreted. In order to clearly define the rights and obligations of both parties to the transaction, the legal provisions of foreign trade contracts will be elaborated. In English, the sentences are relatively long, and a large number of complex sentences and long sentences are used the foreign contract. These long sentences generally contain clauses, clause phrases, etc., which create certain difficulties for understanding and translation. In this case, if the translator’s international trade knowledge is not rich enough and the English level is not high enough, it is easy to misinterpret the original text.

B. Misinterpreting the Grammatical Structure of the Contract

The legal clauses in foreign trade contracts are often the most complicated grammatical structure, and at the same time the barriers to translation. Some mistranslations often stem from misunderstanding of the grammatical structure of the original text. For example, the original text in a contract is as follows:

“For the avoidance of doubt, the Non-Defaulting Party shall have the right, in its discretion, to notify the Defaulting Party of the Early Termination Date at any time prior to an Event of Default being cured, notwithstanding the fact that the Non-Defaulting Party exercised the rights under clause 18.2 (ii) or 18.2 (iii).”

When translating the clause, “terminating” is easily translated as “suspended”, and the sentence has more limited structure, and it is easy to distinguish the order before or after losing one or several qualifiers so as to change the original meaning of the contract.

C. Unfamiliarity with Foreign Trade Contracts and International Trade Expertise

For example, in a contract clause, the original text is as follows:

“Restricted Party” shall mean any person (entity, individual, or vessel) that is identified on any applicable government-issued restricted party list, including but not limited to the List of Specially Designated Nationals and Blocked Persons (“SDN List”), maintained by the U.S. Department of the Treasury; the Denied Persons, Unverified, and Entity Lists, maintained by the U.S. Department of Commerce; the non-proliferation sanctions lists maintained by the U.S. Department of State; the EU Consolidated List of Designated Parties, maintained by the European Union; the Consolidated Lists of individuals and entities subject to UN sanctions, as maintained by the UN Security Council Committees; and similar lists maintained by any government with jurisdiction over the transaction(s) contemplated by the Contract.”

There are some translations of terminology in international trade such as SDN List, restricted party list, and non-proliferation sanctions lists, if the translator does not understand them, it's pretty hard to understand the original text, and even harder to translate it accurately.

In the long process of legal history and the development of international trade, there have been many fixed English expressions and vocabulary. The important international trade knowledge also needs to be memorized by heart by translators.

Except as herein provided

For the avoidance of doubt

In witness whereof

The parties hereto have thereunto set their hands and seals

Including, without limiting the generality of the foregoing

No waiver of these provisions

It can be seen that the translator should learn and master the international trade expertise, such as proper nouns, fixed usage and trade practices commonly used in foreign trade contracts, which is extremely important for the translation of foreign trade contracts.

III. TRANSLATION STRATEGIES OF FOREIGN TRADE CONTRACT TRANSLATION

On the basis of analyzing the language characteristics of foreign trade contracts and the differences between Chinese and Western cultures, some translation strategies for foreign trade contracts are proposed from the intercultural perspective.

A. Language Characteristics of Foreign Trade Contracts

1) Extensive Use of Foreign Words and Archaic Words

Foreign vocabulary is often used in contracts because some foreign words express rigorous and singular meanings, which are not easy to be ambiguous between the parties, and are more conducive to expressing concepts more clearly in the contract, so they often appear in commercial contracts. It is mostly in Latin and French. For example: *ad hoc* (Latin “special”), *amercé* (French “fine”). [2]

Archaic words often appear in the legal terms of the contract. Commonly used words in foreign trade contracts

include *Hereto-to*; *Thereby-by*; *whereof-of* which and so on. The use of such words in contracts will undoubtedly make the text more appropriate, rigorous and formal.

2) Frequent Use of Words Juxtaposed and Modal Verbs

The juxtaposition of words is a special use of legal English and foreign trade contract English, which is to use two or three words in order to replace a specific vocabulary. For example: stipulations and provisions, import duty and tax, etc. The unique meaning of a word is defined by the common meaning of multiple words to highlight the rigor and thoroughness of the contract and it is not easy to cause ambiguity and lead to future disputes.

Foreign trade contracts require accurate and precise use of words, especially the legal provisions of contracts, and often use sentence patterns with modal verbs. For example, “shall” is often used to enhance tone and enhance compulsive feelings, such as terms: “Any sums paid by Buyer to Seller for Material not delivered shall be repaid to Buyer by Seller.” In the same way, Chinese also uses some words to achieve the feeling that the contract text is more formal and decent.

3) Solemn and Serious Words

The text of the foreign trade contract itself has solemn and serious characteristics and is often reflected in the vocabulary. For example, contracts usually use “commence” instead of “begin” and “start”; use “in accordance with” instead of “according to”; use “in the event of” instead of “if” to make the contract text more serious.

4) Declarative Sentences and Long Sentences

Declarative sentences are used to state objective facts, and a clear statement of the rights and obligations of the parties in a foreign trade contract requires the use of a large number of statements. The difference between a long sentence and a short sentence is that the short sentence has a heavier tone, while the long sentence has more modifiers, so it is more accurate in expressing the meaning. For example:

“In any legal proceeding to enforce an arbitration award and in any legal action between the parties pursuant to or relating to this Contract, each party expressly waives any defense of sovereign immunity and any other defense or exemption from suit, judgment or execution based on the fact or allegation that it is a party, agency or instrumentality of, or representing a government.”

The translator should pay attention to the translation of long sentences in the contract during translation. It is necessary to carefully analyze the sentence structure in the contract, understand the meaning of the source contract, and clarify the internal relationship between the components of the sentence. The translator needs to re-adjust the order of the words according to the habit of the target language to ensure that the translated sentences are logically clear and structurally complete.

5) Extensive Use of Adverbial Clauses

The purpose of using adverbial clauses is to make the contract terms more clear, to exclude any possible exceptions, and to avoid possible disputes. For instance:

“Should any portion or provision of this Contract prove to be invalid or unenforceable the rest of this Contract shall not be affected by such invalidity or unenforceability and any such invalid or unenforceable portion or provision shall be deemed severed from this Contract? The parties will in such circumstances attempt in good faith to agree a suitable replacement provision or portion for inclusion in this Contract by way of written amendment.”

6) Use of a Large Number of Attributive Clauses

The use of a large number of attributive clauses is determined by the accuracy and rigor of the foreign trade contract. The terms of the contract relate to the direct economic interests of the parties, so the terms must be precise and unambiguous. For instance:

“The cost of umpire assay shall be paid by the party whose assay is further from the umpire, except when the umpire assay is the exact mean of the other two in which event the cost shall be borne equally by both parties. The umpire shall mail and fax/email its assay results to both Buyer and Seller.”

B. Translation Strategies of Foreign Trade Contracts from the Perspective of Intercultural Communication

The translation of any text is, in the final analysis, through the transformation of inter-lingual to achieve a purpose that the cultural information in the original text is retained and reflected as much as possible in the translation, and the original text caused by the translator’s personal subjective delusion or machine recognition is minimized as much as possible. Especially, the translation of foreign trade contract needs to be paid more attention. The text of the foreign trade contract is accurate, professional and rigorous, so its translation is absolutely not allowed to join anyone’s subjective factors. Translation should be carried out with the help of language, and each language is based on the overall culture of this nation. So the translation cannot exist and develop independently from culture. Therefore, the language of each nation is inevitable with its own national characteristics, and it is closely related to cultural factors. Differences between Chinese and western cultures and their impact on foreign trade contract translation are analyzed and some translation strategies for foreign trade contracts are proposed from the intercultural perspective.

1) The Influence of Different Thinking Ways on Contract Translation

From the perspective of thinking, the whole thinking of the Chinese nation is comprehensive and overall focusing on “whole priority”, while Westerners are focusing on “partial priority”. This difference in the way of thinking, firstly, is expressed in the expression of the concepts of time and space. The difference in the order is particularly obvious. For example, the arrangement of place name is usually from large to small in Chinese, but in English is from small to large. The order of time is different too. In Chinese, it is customary to follow the year, month, and day, but the order in English is day, month and year. Reflected in the foreign trade contract, for instance, the address of a seller is: “Rue De La Gare 29, 1110 Morges, Switzerland.” And the time of contract is: “April 3, 2018.”

The Chinese people’s thinking pays more attention to the overall effect, and does not pay much attention to the

completeness of the form and the connection between the various parts. On the contrary, Westerners pay more attention to the integrity in formal and the rigorous relationship between the various parts. Therefore, in the translation of foreign trade contract, the translator should focus on the adjustment of sentences and word order, the adjustment of the overall structure of sentences and the control of related words. [6]

Language is essentially an external manifestation of thinking. Language to a certain extent directly reflects the way of thinking of information transmitters. Different nationalities and countries have different ways of thinking. Reflected in language is the difference in language structure. When we want to transfer the language information established by one way of thinking to the recipient with another way of thinking, the information will be reorganized, arranged and processed, which is easy to produce ambiguity. Therefore, in the process of foreign trade contract translation, the translator should have a clear understanding of this issue. The following contract term is taken as an example.

“All tariffs and duties whether currently existing or imposed after the date of this Contract, within the People’s Republic of China on the Material or any of its contained metals or on commercial documents relating thereto shall be borne by Buyer.”

The translation of the provision should replace the word order in the original text, making it more in line with the Chinese way of thinking and without changing the original intention.

2) The Influence of Ideological Differences on Contract Translation

For the translation of foreign trade contract, we must make clear that translation is not the purpose. The value of translation is to enable the audience of the target language to obtain the same feelings as the source language audience. In accurately translating the contract content, the translator must also consider the influence of different ideologies on the two types of audiences. The original text should become a true “reality of existence”. In the process of translation, the translator needs to re-join the original meaning in the way of the recipient’s thinking and add the special explanations if necessary so that the recipient of the translated language can accept the original text faster and easier without deviation.

Because of the large differences in ideology, the aesthetic psychology of Europeans and Chinese is completely different. Some words in English have specific and symbolic meanings. For example, during contract translation, one of the beauty products was named “Fang Fang”. In the Chinese subconscious, “Fang Fang” seems to represent a beautiful girl with a beautiful appearance. So in their opinion, this product’s name is to the benefit of product promotion. When the translator translates the product into “Fang Fang”, it will give western people a horrible psychological suggestion. It is because “fang” in English means “a long sharp tooth of a wild dog”. Therefore, when the British saw the product named “Fang Fang”, they would think of a horrible picture of a fierce dog, which is not conducive to the promotion and sale of products in the local market.

3) *The Influence of Different Customs and Habits on Contract Translation*

The difference in customs and habits in a nation and a region is a direct manifestation of cultural differences, manifested in different areas of the lifestyle of the local people. And habits are affected by many aspects, such as economics, politics, culture, education, environment, religious beliefs, etc., and the influences of various factors are mutually exclusive. Therefore, in a certain social environment, language habits will be naturally formed. For example, the word "all at sea", literally, we can easily translate it as "at sea". But if it is related to the British people's habits, the word means that you are at a loss.

4) *The Influence of Different Values on Contract Translation*

Our country has a long and splendid Chinese culture of 5,000 years, and our ancestors have left countless precious spiritual heritages. Over time, it has become the unique value of today's Chinese people. Confucianism and Taoism for instance. In the process of business dealings, once a problem occurs in a certain link, the first thing we think that is to report to the leader or department. We are not trying to find a solution first. And in the event of a conflict or dispute, we will firstly create some paradox to support our views. Because in our consciousness, only in line with ethics, we can further obtain legal support. This is the form of foreign trade business communication that was born under the background of Chinese culture.

At this point, Western culture is very different from Chinese culture. Westerners pay attention to the realization of individual self-values in the negotiation and handling of business matters. They believe that personal interests are above everything else. Once problems arise in the process of foreign trade, they firstly think of using legal weapons to solve problems rather than creating public opinion. Therefore, we can see that in the foreign trade contract legislation formulated by Westerners, the legal provisions occupy nearly 60% of the proportion, sometimes even more, and the sentences of each clause are very long and complicated, which makes it difficult to understand.

IV. CONCLUSION

Due to various differences in historical origins, social systems, development paths and ideological concepts, there are obstacles in understanding and communication. This kind of obstacle is especially reflected in the exchanges between China and European and American countries. As a translator, we must be familiar with the differences between Chinese and foreign languages, cultures, customs, and other aspects. In particular, we should pay attention to the taboos that exist between China

and foreign countries due to ideology, religious beliefs, or legal systems. In the process of contract translation, it is necessary to accurately convey the meaning of the parties, and avoid the misunderstandings which are caused by inappropriate wording and touching taboos.

As a translator of business English, on the basis of understanding the differences between the target language culture and the source language culture, it is necessary to further study the differences in business English under the influence of different cultural backgrounds, and avoid the phenomenon of distortion in the translation process. The translator should carefully study the cultural differences between China and foreign countries, especially between China and the West, and adopt a relative strategy to effectively resolve the misunderstandings and ambiguities that may arise due to cultural differences, and avoid unnecessary misunderstandings and even losses in business activities.

The translator is the core in translating the foreign trade contracts. The quality and level of the translator directly determine the quality of the translation work. A qualified foreign trade contract translator must not only have a good foreign language level and translation ability, but also be familiar with international trade business processes and foreign trade knowledge. The translator should have a strong sense of responsibility and mission to the translation industry. On this basis, the translator should constantly improve his foreign language level, deeply understand the different lexical meanings, master a variety of translation skills, and enrich and improve translation and foreign trade related knowledge in foreign trade contracts to convey the contract text information accurately in the translation activities.

REFERENCES

- [1] D.K. He Translation, [United States] Michael H. Prosser, *Cultural Dialogue*. Beijing: Peking University Press, 2013.
- [2] Y. Liao and Z.S. Mo, *International Business English Language and Translation Studies*. Beijing: Mechanical Industry Press, 2005.
- [3] W.Z. Jiang, "Common Mistakes and Coping Strategies in English Contract Translation", *Business Modernization*. China, vol. 31, pp. 191, August 2013. (In Chinese) (In Chinese)
- [4] Q. Shan, "Research on Modern Business English Translation Strategies", *Journal of Liaoning Radio and Television University*. China, vol. 4, pp. 114-115, April 2014. (In Chinese) (In Chinese)
- [5] L. Wang, X.Q. Chu, "Common Problems in Business English Contract Translation and Coping Strategies", *Education and Teaching Forum*. China, vol. 31, pp. 193-194, October 2018. (In Chinese) (In Chinese)
- [6] Z.X. Yang, "Stylistic Features of Business Contracts and Their Translation", *Learning Weekly*. China, vol. 31, pp. 188-189, August 2018. (In Chinese) (In Chinese)