

# An Empirical Study on Trade Claim Management from a Relational Perspective

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## Abstract

**Purpose** – This study is designed to provide new insights on trade claim management by typifying trade claims from a relational perspective, which defines trade as an organic combination that exchanges relationships based on a mutual goal instead of conflicts between obligations and rights of the contracting parties.

**Design/methodology** – This is a phenomenological study that aims to typify trade claims based on a relational perspective and extract implications for trade claim management. The research procedures of this study are as follows. First, international commercial dispute cases applying the CISG are collected. Second, the cases collected are quantified through content analysis. The variables for quantification are developed based on a relationship perspective. Third, cluster analysis is conducted on coded data to typify cases. And finally, this study compares the characteristics of each type using analysis of variance and suggests implications for the strategic management of trade claims from a relational perspective.

**Findings** – Results show that trade claims are divided into four clusters, depending on whether flexibility is accepted or not and which party violates mutuality. There is also a difference between the claimant and the cause of the claim, according to the cluster. Based on the results, this study suggests that the buyer and the seller should employ different strategies depending on the type of trade claim and presents proposals for strategic claim management.

**Originality/value** – Firstly, this study extends the theoretical discussion on trade claims by applying relational contract theory. Prior studies on trade claims have been primarily based on traditional contract theory. The second is to analyze trade claims quantitatively. Prior case studies on trade claims have mainly relied on qualitative research. Finally, the study contributes to international commercial practice by typifying trade claims and presenting options for strategic management.

**Keywords:** Flexibility, Mutuality, Relational Perspective, Trade Claim

**JEL Classifications:** F14, K12, M16

## 1. Introduction

Trade is a collaborative mechanism in which exporter and importer interact (Bello, Chelariu and Zhang, 2003). Successful collaboration with a trading partner has a positive impact on a firm's competitiveness and can increase performance (Leonidou, Katsikeas and Hadjimarcou, 2002; Leonidou et al., 2014). Accordingly, many studies have been conducted on how to develop and maintain the relationship between exporter and importer (Aykol and Leonidou, 2018; Dwyer, Schurr and Oh, 1987; Skarmeas and Katsikeas, 2001; Styles, Patterson and Ahmed, 2008). Global competition and increasing uncertainty are further enhancing the importance of managing this relationship.

The relationship between exporter and importer consists of five phases: awareness, exploration, expansion, commitment, and dissolution (Dwyer, Schurr and Oh, 1987). Of

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these, there is little attention paid to the area of dissolution by scholars when compared to the other phases. However, the study of dissolution is essential for managing the relationship between exporter and importer effectively because the termination of interdependence formed through trade negatively affects business performance. The dissolution phase of trade corresponds to a claim.

Trade claims mainly arise during the process of implementation after the contract. When one party's obligation is not fulfilled, the other files the claim. Generally, trade parties try to resolve conflicts through negotiation first. If mutual agreement is reached, the implementation of the contract may proceed to the next stage, but otherwise, it will escalate into conflict and eventually lead to litigation. This shows that the trade claims have phases and that the interaction of the parties can influence this process. Therefore, a more efficient estimation of trade claims should take into account the claim development processes and the interaction of the parties involved.

Prior literature on trade claim management is divided into two categories: the risk perspective and the arbitration perspective. The risk perspective has mainly studied methods to prevent and manage claims as a risk that interferes with achieving the goal of the business. The arbitration perspective has been mainly focused on the analysis of legal clauses and their cases, the comparison of national arbitration systems, and claim response through arbitration procedures. These approaches provide practical implications such as identifying the causes and types of claims and suggesting guidelines for a strategic response using the arbitration system. However, there is a limit as these do not take into account the relationship between exporters and importers. This is because both perspectives assume that trade is a transfer of product and payment, not an exchange of relationship. Therefore, the risk perspective deals mainly with managing claims pre-contract and the arbitration perspective concentrates on managing the resolution of claims after they are made.

The relational perspective defines that trade is an organic combination that exchanges relationship based on a mutual goal instead of conflicts between obligations and rights of the contracting parties (Macneil, 1980). It assumes that an agreement initially made at the time of a contract is just a part of the process required to establish, conduct, and complete the contract and that those agreements become finalized as the contract progresses (Macneil, 1980). This approach implies that a contract is not complete at the time the contract is made and that the contracting parties should mutually work on the terms and conditions afterward to create a complete contract. This is found in Article 6.2.1, 6.2.2, and 6.2.3 of the UNIDROIT principles of the International Institute of the Unification of Private Law (hereafter, UNIDROIT) and Article 25 and 29 of UN Convention on contracts for the International Sale of Goods (hereafter, CISG).

This study is designed to provide new insights on trade claim management by classifying international trade claims from the viewpoint of relational contract theory. This study collects and analyzes the cases of trade claims ruled by the CISG from the Chinese court or the China International Economic and Trade Arbitration Commission. The cases are provided by the United Nations Commission on International Trade Law. Content analysis is used to quantify cases, and cluster analysis is conducted to classify types of claims. One-way ANOVA is then used to compare the characteristics of each type. The remainder of this study is as follows: Section 2 examines the previous studies on trade claim management from the risk perspective and the arbitration perspective, and discusses trade claim management from a relational perspective. Section 3 presents a framework for analyzing trade claims from a relational perspective. Section 4 presents the analysis results and discusses claim management strategy from a relational perspective by dividing them into buyers and sellers. Section 5 summarizes the study and suggests implications.

## 2. Literature Review

### 2.1. The Risk Perspective on Trade Claim Management

The risk perspective focuses on preventing the occurrence of trade claims, assuming they are a risk factor accompanying international commercial contracts. International commercial contracts are riskier and more costly than domestic commercial contracts due to their international nature, cultural differences, long distance, and extended duration (Jung Hong-Joo, 1999). The inherent risks such as the foreign exchange risk and geographical risk add additional risk to international commercial contracts over and above that of domestic commercial contracts. Specifically, first, international trade has a higher barrier to entry than domestic transactions because of differences in cultures, practices, and institutions. This barrier imposes additional costs and requires more time not only of the sellers but also of the buyers. Second, governmental support and regulations play a role in international trade. For their domestic economy, countries generally encourage exports and discourage imports. Therefore, a company who wants to export their products to another country must avoid regulations in that country or incur additional costs to overcome that country's regulatory barriers intended to protect their domestic markets and industries. This is one of the risk factors that weakens the exporter's competitive advantage in the target market. The third is foreign exchange transactions. The use of different currencies is a factor that increases the uncertainty of the trade environment in line with the characteristics of trade, which can take a long time from contract to payment. Fourth is the high portion of sea transportation. While it has its advantages over air transportation such as lower cost and higher capacity, it takes a long time to deliver products and consequently exposes goods to greater risk. Finally, the absence of unified laws regarding international trade requires international commercial contracts to be made based on the treaties and commercial practices between countries. This absence of laws increases time and cost required for resolution when a dispute arises in international commercial practice (Jung Hong-Joo, 2005).

Jung Hong-Joo (2005) classifies risks in international trade based on the structure of risks, ways to manage risks, and the trade procedures. In terms of risk structures, the study categorizes risks into loss, peril, and hazard, and in terms of ways to manage risks, the study classifies risks into predictable risk, controllable risk, and financial risk. Based on the trade procedures, risks are classified into contract risk, shipping risk, and payment risk. Hong Chang-Ki (2007) separates external risks and internal risks in an export environment in which external risks are political, economic, social, or cultural environments and internal risks are strategic flaws and inappropriate management. Based on this, the author suggests a flexible trade management strategy. This means combining different trade management strategies that are appropriate for different trade environments to achieve a firm's goal. Seo Jung-Doo (2011) analyzes cases of international trade claims and insurance and makes suggestions such as shipping document conditions to prevent non-payment for L/C, improvement of export credit insurance policies for non-payment, and introduction of import credit insurance policies. Jung Hong-Joo, Sung Soo-Nam and Choi Yoo-Mi (2012) conducted a meta-analysis of prior research on international trade risk based on the process of transactions. In this analysis, risks are sorted into contract and fraud, shipping and clearance, payment and market, and consumption phases. Kim Yong-Il and Park Kwang-So (2011) classify international trade risks into controllable and uncontrollable. Controllable risks include credit, product refusal, defection and repair, quality nonconformity, delay/cancellation, advance payment refund risk, etc. Uncontrollable risks are grouped into risks from the traditional transaction form and risks from changes in trade environments, the

former of which includes exchange, transportation, and emergency, and the latter includes global compliance, distribution security, and global environmental regulation. Pak Myung-Sup and Han Nak-Hyun (2006) classify international trade risks into contract, transportation, and payment risk and conducted case studies. For contract risk, they analyzed cases of misrepresentation and the timing of the letter of credit issuance. The study investigates a transfer of risk by analyzing cases of transferring title with FOB and claims for damages. It also examines cases of inappropriate goods and the buyer's refusal of acceptance. The study suggests that the sellers and buyers should simultaneously fulfill obligations or clarify the duties of each party in the case of failure to fulfill obligations in order to avoid risk occurrence.

## 2.2. The Arbitration Perspective on Trade Claim Management

The arbitration perspective has mainly focused on the analysis of legal clauses and their cases, comparison of the national arbitration systems, and resolution of disputes through arbitration. Kim Sang-Ho (2003) analyzed cases related to claim period clauses, statute of response as pertains to product inspection, and the application of arbitration provisions. The author suggests it set a claim period confirming the nature and characteristics of goods and uses broader arbitration provisions. Park Chong-Suk (2013), citing data of the Korean Commercial Arbitration Board, identified the cause of trade claim from payment, quality defect, interpretation of contract conditions, and non-fulfillment of shipping terms and delivery. The study proposes negotiation, mediation, adjustment, arbitration, and litigation as ways to resolve disputes. The study also suggests investigation into the buyer's credibility, careful preparation of contracts, direct interaction between the contracting parties when involving a third party, and the use of arbitration provisions to prevent international trade claims. In the study on effective international trade claim resolution through arbitration, Choi Rack-In (2017) discusses response processes to the disputes. A claim can be filed after the involved parties are specified, the inspection of the goods is conducted, and one party notifies the other party with the official documents of proof. The statute of response from claims varies depending on applicable laws, but it usually cannot exceed two years. The party receiving the claim should carefully review it and respond with its stance on the content and how they will resolve the dispute. Yu Byung-Yook (2012) raises the necessity for understanding the religious and economic environments in Islamic countries and for studying Islamic countries' international commerce practices and usage through examining the arbitration structure of Malaysia. Woo Kwang-Myung (2013) examined the interpretation problem with application of Incoterms in Arbitral Awards of the International Chamber of Commerce.

## 2.3. The Contribution and Limitation of Two Perspectives on Claim Management

The risk and arbitration perspectives have contributed significantly to claim management. Firms can find guidelines for preventing claims by identifying causes and types of trade claims, coping with claims through arbitration systems, and responding to risk strategically. However, the following limitations exist. The risk perspective is difficult to apply to claim management among trading parties because it has mainly focused on risks arising in international commercial practices. Jung Hong-Joo, Sung Soo-Nam and Choi Yoo-Mi (2012) point out that prior research in the risk perspective has been limited to insurance as a hedge. Furthermore, the risk perspective limits the timing of claim management to the period prior to the occurrence of disputes because this view considers claim management as a process of

looking ahead and preventing disputes in advance. On the other hand, the arbitration perspective has a limitation in that it focuses on the response using arbitration after claim occurrence. This approach provides limited explanations on claim management because not all claims end up in arbitration trials. Also, this approach has a lack of consideration for the cause and type of claim. This study is designed to complement these research gaps in prior research based on the risk and arbitration perspectives by utilizing a relationship perspective.

## 2.4. Relational Perspective on Trade Claim Management

### 2.4.1. *The Limitation of Traditional Contract Theory on International Commerce*

Trade is an international transaction involving the transfer of goods from one party to another and is completed through contracts. A contract is an agreement in which a seller and a buyer specify terms and conditions regarding transferring goods and making payments (Dalton, 1985). The contracting parties have obligations resulting from the mutual agreement they made, and the contract is completed when both parties successfully fulfill those obligations. From the risk perspective, trade claim management means preventing a breach of contract, and from the arbitration perspective, it means effectively responding to a breach of contract.

However, in international commerce, it not only takes a long time to actually exchange goods and payments after contract but is also accompanied by numerous unexpected situations during the process. And even when the contract is mutually agreed upon, the degree of understanding and embracement can be different between the parties due to traditions and limited rationality (Jung Hong-Joo, 1999; Macneil, 1980; Simon, 1972). Although these issues are inherent in the nature of trade, it is difficult for the risk and arbitration perspectives to consider them. This is due to the fact that they follow traditional contract theory, which assumes that a contract is completed when mutual agreements are made and that it cannot be changed afterwards.

Traditional contract theory assumes that the contracting parties have equal power and voluntarily make the contract in their own best interest following the principles of free competition (Williston, 1921). Because the market is assumed to be completely free, an agreement made between parties that both have reasonable judgment capability is fair, and the actions of the parties after the agreement shall not affect the effectiveness of the contract. Therefore, after a contract is made, only the rights and duties remain, and these are not subject to management but only to fulfillment. Accordingly, the risk and arbitration perspectives based on traditional contract theory become limited with regard to claim management.

Some of the limitations of traditional contract theory on international commerce are supplemented by the inclusion of hardship clauses similar to force majeure for use as justification for the non-performance of a duty. These include frustration in U.K., impracticability in U.S.A., the Doctrine of Impervision, and Wegfall der Geschäftsgrundlage in Germany (Heo Kwang-Uk, 2005). When a breach of a contract is caused by an inevitable and uncontrollable reason that was not expected at the time of the contract, it is excused. Force majeure, however, is not subject to management because it occurs without the will or intention of the contracting parties.

### 2.4.2. *Relational Perspective on Trade Claim Management*

From viewpoint of relational contract theory, a contract is defined as an exchange of relation, including the transaction, between seller and buyer. Entering into a contract is the creation of a relationship, and agreements made at the time of entering into a contract are

just a part of the process required to establish, fulfill, and complete the contract, with the contract being gradually completed as it progresses. In other words, because the contract is not completed at the time of signing, the contracting parties become obligated to adjust the detailed conditions through mutual consultation during a transaction, finalize unspecified terms, and elaborate upon the commercial practice if needed. During this interaction, the relationship between the contracting parties is not affected (Macneil, 2000). Therefore, deviating from the traditional perspectives, the relational perspective introduces a new section to consider, which is that between the beginning of the relationship (agreement) and the end of the relationship (a claim filing or completion of the contract), and emphasizes a need to manage this section effectively.

For example, a market claim which is made to make up for economic losses suffered by the buyer due to a fall in commodity prices would not be under a firm's management from the traditional perspective but becomes subject to management from the relational perspective. A contract is an agreement made fully mutually, and because both parties make the contract in their own best interest, they would not demand anything harmful for themselves later or act against a previous agreement made in their best interest (Park Ki-Ju, 2015). This means there is no logical possibility for a market claim after a contract is made. However, from a perspective assuming incompleteness of a contract, the occurrence of the insolvency of the obligation according to the change of market situation can happen during the contract implementation process and the need for effective management is raised.

A contract is formed because the contracting parties expect that the transaction with each other will bring greater benefit than what could be achieved when making a contract with others in the market based on the information they have at the time of entering into the contract (Anderson and Narus, 1984; Dwyer, Schurr and Oh, 1987; Nevin, 1995). In other words, the expectation of moving to a better position after the exchange compared to before the exchange leads them to form a relationship. In this case, the exchange surplus is the motivation for entering into a contract. Therefore, under the relational perspective, a claim is filed when one of the contracting parties concludes that there is no longer any exchange surplus or the expected exchange surplus would not be realized, and it attributes the fault to the party that harmed the exchange surplus expected by the other party. This approach is clearly different from the traditional perspectives that consider non-fulfillment as a reason for a claim.

The UNIDROIT principles and CISG adopt the relational contract theory. The UNIDROIT principles, issued in 1994, adopts the hardship clauses, apart from Force Majeure, and prescribes that the contract can be modified. Hardship is established when, in consequence of an uncontrollable event occurring after the conclusion of a contract, the increase in real costs or a decrease in the value to be received has fundamentally changed the balance of the contracting parties from the contract that existed at the time of agreement (Oh Won-Seok, 2001). One party in the hardship can ask the other party to renegotiate the contract, and the other party receiving the request must cooperate in modifying the contract (Heo Kwang-Uk, 2005; Hong Sung-Kyu and Kim Yong-Il, 2013). The CISG stipulates that the contract may be modified or terminated by the mere agreement of the parties in Article 29. Because the contract is incomplete, it can be modified through mutual consultation if there is a significant unexpected change in circumstances even after the agreement. The CISG also applies the relational view by distinguishing between fundamental and non-fundamental breach of contract in Article 25 (Yu Cheon, 2018). Relational perspective on a contract of international sale of goods generates a renegotiation obligation even after the contract is signed (Hong Sung-Kyu and Kim Yong-Il, 2013; Yu Cheon and Hwang Yun-Seop, 2018). Therefore, management of the contract is necessary even after the agreement.

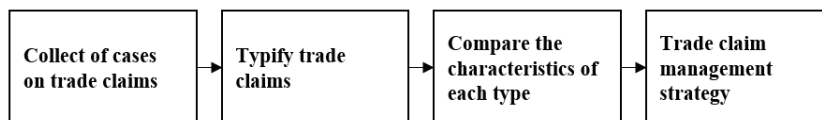
Based on the relational perspective, this study defines international trade as an exchange of relationship created to pursue expected benefits and that a contract is an incomplete deal that should be completed through mutual interaction between the parties after the contract is made.

### 3. Research Methodology

#### 3.1. Research Procedure

This is a phenomenological study that aims to typify trade claims based on a relational perspective and extract implications for trade claim management. The research procedures of this study are as follows. First, international commercial dispute cases applying the CISG are collected. Second, the cases collected are quantified through content analysis. The variables for quantification are developed based on a relationship perspective. Third, cluster analysis is conducted on coded data to typify cases. And finally, this study compares the characteristics of each type using analysis of variance and suggests implications for the strategic management of trade claims from a relational perspective. Fig. 1 shows the research procedures.

Fig. 1. Research Procedure 1



#### 3.2. Collection of Cases on Trade Claims

The sample<sup>1</sup> consists of 81 Chinese cases of arbitration and litigation that apply the CISG. This number excluded 4 cases determining jurisdiction and 1 case involving a mutual breach of contract from the original total of 86 cases made available by the United Nations Commission on International Trade Law. Each case can be viewed on the website of the United Nations Commission on International Trade Law.

#### 3.3. Typify Trade Claims

##### 3.3.1. Analytical Framework for Typifying Trade Claims under the Relational Perspective

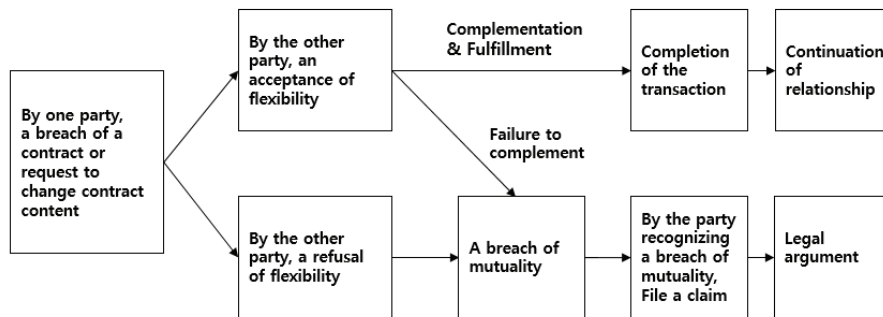
The following analytical framework for typifying trade claims was set. Under the relational perspective, a trade claim arises between the beginning and end of a relationship. The beginning of a relationship<sup>2</sup> is the point in time when a contract is made, and the end of a relationship is the point in time when the transfer of goods and receipt of payment are completed or when arbitration or litigation arises due to non-fulfillment of obligations by one

<sup>1</sup> China is the world's No. 1 trade volume country and has an important position in the global economy, so it is considered an appropriate case for this study.

<sup>2</sup> Although the beginning of a relationship can include the negotiation stages before a contract is made (Feiman, 1993), this study sets the beginning of a relationship as entering into a contract to allow differentiation from the risk and arbitration perspectives.

or both parties. After a contract is made, if one of the contracting parties breaches the contract or requests a revision of the contract, the other party can either accept flexibility or reject it. If accepted, and one party revises its duties, the contract can be completed and the relationship can be continued. However, if one party does not fulfill its obligations when the other party accepts flexibility or if one party cannot fulfill the obligations because flexibility is rejected, the party being harmed can file a claim against the other party that is breaching mutuality. Accordingly, international commercial disputes can be classified based on a breach of mutuality and the acceptance of flexibility. Fig. 2 shows the process of enacting a trade claim from the relational perspective.

Fig. 2. Analytical Framework of a Trade Claim under the Relational Perspective



### 3.3.2. Development of Relational Variables for Typifying

This study develops variables for typifying trade claims using mutuality and flexibility, which are two representative norms in relational contract theory. Mutuality is the most important factor that allows a contract to be made and maintained, and flexibility is a factor that reflects the limited rationality and incompleteness of a contract (Kafmann and Dant, 1992; Rajamma, Zolfagharian and Pelton, 2011).

The first factor that should be investigated in order to develop the variables for typifying trade claims is the party that breaks mutuality after a contract is made. The relational perspective assumes that trade is an inevitable result from specialization in a social context. When there are many transacting parties, making an exchange with one party is based on mutuality. To satisfy mutuality is to expect that the contracting parties will move through the contract to a better position than they were pre-exchange. As such, the expectation of exchange surplus is a prerequisite for the exchange. Therefore, the contracting parties would not participate in an exchange if they did not receive benefits through the exchange, and a contract would not be made (Macneil, 1980). Consequently, under the relational perspective, a break of mutuality by one party eliminates the motivation of the other party to continue the trade, and the other party can end up filing a claim because resources invested in the transaction become a loss. Thus, which party breaks mutuality is one of the variables on typifying trade claims under the relational perspective.

The second factor is the acceptance of flexibility. The relational perspective assumes that a contract is incomplete and that there is a possibility of renegotiation due to limitations of human rationality, available information, and unwilling changes in society (Macneil, 1980). Flexibility in the relational perspective means that a contract is neither fixed nor unchangeable, but rather, it involves renegotiations and changes. Thus, the content of a contract is not fixed and, because incomplete parts can be brought up depending on the



situation, the contracting parties that pursue social benefits together should mutually work on completing the contract. In this regard, the willingness to accept flexibility can be linked to a filing of claims. For example, in a case where a seller requests an extension of the delivery date because of the supply of raw materials, the buyer can either accept or reject it. The contract can be continued if the buyer accommodates the extension, while the contract would be terminated if the buyer refuses and files a claim against the seller on account of late delivery. The former case is the acceptance of flexibility, and the latter is the refusal. Under the traditional perspective, the delay in delivery caused by the seller is a breach of contract and the seller should have a responsibility for said breach. However, from the relational perspective, if the request of extension of the delivery date is not a fundamental breach of the contract, the buyer's right to terminate the contract is not generated, and the contract can be continued if the seller compensates for the loss occurred to the buyer due to the delay. Thus, the acceptance of flexibility can be a determinant of contract termination and lead to a claim. Flexibility in a trade arises in cases such as acceptance of revisions in contracts, acceptance of requests that were not previously in the contract, and an offer of opportunities to make up for non-fulfillment<sup>3</sup>. Therefore, the acceptance of flexibility is considered one of the variables for typifying trade claims under the relational perspective.

**Table 1.** Variables for Typifying Trade Claims

	Variables	Measurement
<b>A breach of mutuality</b>	A buyer's breach of mutuality	When a buyer breaks mutuality = 1, otherwise =0
	A seller's breach of mutuality	When a seller breaks mutuality = 1, otherwise =0
<b>Acceptance of flexibility</b>	A seller's acceptance of flexibility	When a seller accepts flexibility requested by a buyer = 1, otherwise =0
	A seller's refusal of flexibility	When a seller rejects flexibility requested by a buyer = 1, otherwise =0
	A buyer's acceptance of flexibility	When a buyer accepts flexibility requested by a seller = 1, otherwise =0
	A buyer's refusal of flexibility	When a buyer rejects flexibility requested by a seller = 1, otherwise =0

Based on the discussion, this study develops six variables for typifying trade claims under the relational perspective. For the acceptance of flexibility, there are four variables: a seller's acceptance of flexibility, a seller's refusal of flexibility, a buyer's acceptance of flexibility, and a buyer's refusal of flexibility. For the party that breaks mutuality, there are two variables: a seller's breach of mutuality and a buyer's breach of mutuality. The six variables are presented in detail in Table 1.

### 3.3.3. Quantify Trade Claims and Inter-coder Reliability

This study conducts a content analysis based on grounded theory to measure flexibility and mutuality in a contracting parties' relationship as they appeared in international commercial dispute cases. Content analysis is a method that uses certain procedures to draw valid inferences from a text, and it is helpful in describing the content objectively, systematically,

<sup>3</sup> This is considered as acceptance of flexibility because they offer opportunities to complement the duties when they have rights to act otherwise as creditors.

and quantitatively in order to understand the properties of the content (Holsti, 1969; Weber, 1990). When research data is in the form of documents, this approach categorizes the content of those documents quantitatively. It has been widely used in disciplines such as communication, tourism, marketing, etc. The process of quantifying trade claim cases is as follows. The first variable is the contracting party that breaks mutuality in the case. For example, in case of missing the promised delivery date for goods, the seller is the party that breaks mutuality because it impairs the exchange surplus expected by the buyer, and in case of late payment or non-payment, the buyer is the party that breaks mutuality. The second variable is the acceptance of flexibility. This variable is classified into cases in which one party accepted flexibility explicitly regarding non-fulfillment or request of revision to contract by another party, and cases where flexibility was refused. For example, if the buyer accepts an extension request to the delivery date from the seller, it is considered an acceptance, and otherwise, it is considered a refusal. For this classification, the seller and the buyer are the subjects of acceptance and refusal.

The following steps are applied to process data and ensure inter-code reliability. Data is coded based on a case number, a party filing a claim, causes of claims, a party at fault, and variables for typifying trade claims. A Coding Manual is generated by the author, and data is coded while ensuring that each research result is verified at least twice with a doctoral student in international commerce. The inter-code reliability is calculated using Krippendorff's Alpha to validate the reliability of variables for typifying trade claims. The value of  $\alpha$  is 96.6%, which suggests that the data is reliable because it is above the 85.0% suggested by Kassarian (1977) and 90.9% suggested by Holsti (1969). Also, for objective data such as a case number, a case year, a party filing a claim, the cause of a claim, and a party at fault, there was no discrepancy between the codes.

### 3.3.4. *Typify Trade Claims*

After content analysis, this study carries out a cluster analysis to typify trade claims. Cluster analysis separates cases by allowing individual entities in a cluster to have similar characteristics and allowing different clusters to have different characteristics (Hair et al., 2006). For this analysis, a party that breaks mutuality and the acceptance of flexibility as coded through the content analysis are used as clustering variables. Each group separated by cluster analysis then becomes a type of trade claims. This study then conducts ANOVA and Fisher's Exact Test to compare characteristics of different categories of trade claims under the relationship perspective. For post hoc test, Duncan's Multiple Range Test is used if Levene's test indicates the equality of variances, and Dunnett's correction<sup>4</sup> is used if the equality of variances is rejected.

## 4. Results

### 4.1. Descriptive Statistics

Descriptive statistics on the CISG cases from China show the following results. A seller was the party that filed a claim in 42 cases (51.9%), and a buyer was the party filing a claim in 39 cases (48.1%). The number of cases was the highest in 1997, with 15 cases (18.5%), followed by 13 cases in 1999 (16.0%), 11 cases in 2002 (13.6%), and 9 cases in 2003 (11.1%). In terms of variables for typifying, there were 25 cases where a seller accepted flexibility (30.9%), 12 cases where a seller rejected flexibility (14.8%), 36 cases where a seller broke mutuality

<sup>4</sup> Difference test using studentized residuals that divide residuals by standard errors.

(44.4%), 14 cases where a buyer accepted flexibility (17.3%), 16 cases where a buyer rejected flexibility (19.8%), and 44 cases where a buyer broke mutuality (54.3%).

#### 4.2. Result of Typifying Trade Claims

This study conducts cluster analysis using relational variables developed for typifying trade claims to classify international commercial disputes. First, to determine the number of clusters, hierarchical cluster analysis is used. The variation in coefficients in the agglomeration schedule is used to stop clustering, and the Euclidean square distance is used for cluster distinction. Results from applying the average linkage method show that the increase rate<sup>5</sup> was the highest from the 77th to the 78th stage with 18.05%, so clustering was stopped at the 78th stage<sup>6</sup>. Accordingly, the number of clusters minimizing dissimilarity was found to be four. Next, K-means cluster analysis is conducted by applying 4 clusters obtained from the hierarchical cluster analysis. Table 2 presents the resulting clusters based on relational variables. Cluster A is 23 cases (a buyer's break of mutuality, a seller's acceptance of flexibility). Cluster B is 27 cases (a seller's break of mutuality, a buyer's acceptance of flexibility). Cluster C consists of 12 cases (a seller's break of mutuality, a seller's refusal of flexibility). Cluster D has 19 cases (a buyer's break of mutuality, a buyer's refusal of flexibility). The differences between clusters were verified using Fisher's Exact Test, and show that clustering was completed to allow differences to arise at 99%. Clusters A and D contain claims arising from a break of mutuality by a buyer, while cases in cluster A involve the seller's acceptance of flexibility and cases in cluster D involve the seller's refusal of flexibility. In comparison, clusters B and C consist of claims in which a seller breaks mutuality, while the buyer accepts flexibility in cluster B and cases in cluster C involve the seller's refusal of flexibility.

**Table 2.** Results of Cluster Analysis

Relational variables	Cluster A	Cluster B	Cluster C	Cluster D	Fisher's exact Test
A seller's acceptance of flexibility	1	0	0	0	75.355***
A seller's refusal of flexibility	0	0	1	0	57.009***
A seller's breach of mutuality	0	1	1	0	86.877***
A buyer's acceptance of flexibility	0	1	0	0	29.506***
A buyer's refusal of flexibility	0	0	0	1	27.452***
A buyer's break of mutuality	1	0	0	1	80.983***
No. of cases	23	27	12	19	

**Notes:** 1. Fisher's Exact Test conducted due to the existence of low expected frequency.

2. \*\*\*  $p < 0.01$ .

3. The seller loses a case when he breaches mutuality and vice versa.

<sup>5</sup> Coefficient increase rate =  $\{(\text{Coefficient from the current stage} / \text{Coefficient from the last stage}) - 1\} * 100$ . Higher coefficient increase rate means higher similarity between elements in each cluster and higher dissimilarity between clusters.

<sup>6</sup> Result of the hierarchical cluster analysis is omitted for the sake of brevity.

### 4.3. Comparison of Characteristics of Trade Claim of Each Cluster

#### 4.3.1. Comparison of Filing Parties

ANOVA is conducted to examine whether there is a significant difference in parties filing claims depending on the type of dispute. Because Levene's test rejects the equality of variances at 99% with the test statistic of 16.181, the study applies Dunnett's correction to investigate the differences between the categories of dispute. Results show that there is no significant difference between cluster B and cluster C, or between cluster A and cluster D. But there is a significant difference between cluster B and cluster A with D at the 99% level, and between cluster C and cluster A with D at the 95% level. In other words, a buyer is usually the party filing a claim in clusters B and C, while a seller is usually the party filing a claim in clusters A and D. These results are summarized in Table 3.

This means that the seller files a claim in cases where the seller accepts flexibility when there is a breach of the contract by the buyer or where the buyer rejects flexibility when there is a breach of the contract by the seller. On the other hand, the buyer files a claim in cases where the buyer accepts flexibility when the seller breaches the contract or where the seller rejects flexibility when the buyer breaches the contract. This is because the buyer breaks mutuality in clusters A and D and the seller breaks mutuality in clusters B and C. However, the buyer files a claim less often in cluster C (a seller's refusal of flexibility) compared to cluster B (a buyer's acceptance of flexibility).

**Table 3.** Comparison of Parties Filing a Claim

Item	Cluster A	Cluster B	Cluster C	Cluster D	Levene's Test	Post hoc (F value)
ANOVA results	1.0870	2.000	1.6667	1.1053	16.181***	
Frequency (%)						
Seller	21 (91.3%)	0 (0.0%)	4 (33.3%)	17 (89.5%)		B>A,D***
Buyer	2 (8.7%)	27 (100.0%)	8 (66.7%)	2 (10.5%)		C>A,D** (56.953***)
No. of cases	23 (100.0%)	27 (100.0%)	12 (100.0%)	19 (100.0%)		

#### 4.3.2. Comparison of Claim Causes

This study compares the causes of the claims. Table 4 presents the results of the comparison of claim causes by cluster. For cluster A (a seller's acceptance of flexibility), payment was the most frequent reason for a claim (52.2%), followed by the refusal of product acceptance (30.4%), letter of credit (8.7%), delivery (4.3%), and product nonconformity (4.3%). For cluster B (a buyer's acceptance of flexibility), the proportion of product nonconformity cases is 59.3% and delivery is 40.7%. For cluster C (a seller's refusal of flexibility), 66.7% of cases resulted from product nonconformity, and 8.3% from product acceptance, letter of credit, payment, and delivery. For Cluster D (a buyer's refusal of flexibility), cases with payment were the most frequent (47.4%), followed by letter of credit (31.6%), product acceptance (10.5%), delivery (5.3%) and product nonconformity (5.3%).

Based on the results, the characteristics of each cluster are summarized as follows. First, cluster A represents cases in which the seller accepted flexibility at first by allowing extension of payment date and product acceptance date, but the seller later filed a claim because the buyer did not fulfill their obligations. Cluster B is mainly related to goods. In this cluster, a

claim is filed because the buyer had tried to provide the seller opportunities to fix the issues related to nonconformity or transfer of goods, but the seller did not fulfill their obligations. Cluster C shows that reasons such as seller obligations like product conformity and buyer obligations like refusal of acceptance, unissued letter of credit, and nonpayment occur together. Cases in which the seller rejects flexibility regarding product nonconformity occur when the seller rejects requests of makeup for the nonconformity by the buyer. The seller defends against the buyer's nonconformity argument with the inspection period, product inspection location, and procedures<sup>7</sup>. Cluster D mainly consists of claims filed because the buyer rejects requests from the seller regarding revisions in the letter of credit or the contract or issues related to nonconformity in documents and delivery of goods and does not make a payment or issue a letter of credit.

**Table 4.** Comparison of the Causes of Claim in Each Cluster

Cluster Causes		Cluster A	Cluster B	Cluster C	Cluster D
Refusal or Failure of Product Acceptance	n	7	0	1	2
	%	30.4%	0.0%	8.3%	10.5%
Refusal of Payment	n	4	0	0	4
	%	17.4%	0.0%	0.0%	21.1%
Issuing L/C	n	2	0	1	6
	%	8.7%	0.0%	8.3%	31.6%
Nonpayment	n	8	0	1	5
	%	34.8%	0.0%	8.3%	26.3%
Delay or Failure of Delivery	n	1	6	0	1
	%	4.3%	22.2%	0.0%	5.3%
Refusal of Delivery	n	0	5	1	0
	%	0.0%	18.5%	8.3%	0.0%
Product Nonconformity	n	1	16	8	1
	%	4.3%	59.3%	66.7%	5.3%
Total		23	23	27	12

#### 4.4. Strategic Management of Trade Claims under the Relational Perspective

##### 4.4.1. Strategic Response to Trade Claims

The results of this study show that the seller and the buyer require different responses to trade claims. From the buyer's perspective, as shown in cluster A and C, the seller tends to accept flexibility in cases related to the payment or acceptance but reject flexibility when the requests from the buyer are related to product nonconformity. This means the buyer can prevent filing a claim by requesting flexibility from the seller when the buyer is expected to have difficulty fulfilling his obligations related to payment or acceptance date. But after

<sup>7</sup> The six cases in cluster C related to product nonconformity are CISG Case numbers 770, 858, 862, 863, 977, 1102 made available by UNCITRAL. In summary, case 770 and case 977 involve a seller's refusal of flexibility on buyer's request for making up a nonconformity after the inspection period. Case 858 is a seller's refusal on making up a nonconformity after the transshipment. Case 862 is a seller's refusal after a change in the inspection location. Case 863 is a seller's refusal because of involving a third party. Case 1102 is a seller's refusal on the buyer's request for a discount based on nonconformity.

asking for flexibility from the seller, the buyer should fulfill the obligation because Table 2 indicates the buyer is likely to lose the case when it fails. On the other hand, if there are disputes regarding the statute of response, inspection location, and procedures in case of nonconformity, an appropriate management strategy is asking for flexibility and preparing to file a claim at the same time due to the lower likelihood of the seller to accept flexibility (Cluster C). When the issue is related to the supply of goods from the seller, accepting flexibility and preparing to file a claim at the same time is more desirable, as shown in Cluster B. This is because a claim will eventually be filed by the buyer as shown in Table 3 and the seller becomes the party at fault as shown in Table 2. Cluster D indicates that when the issue is related to revisions in the letter of credit or the contract, nonconformity in documents and the transfer of goods, accepting flexibility and preparing to file a claim at the same time is appropriate. This is because a buyer's refusal of flexibility regarding these issues leads the buyer to be the party at fault, as shown in Table 2.

**Table 5.** Trade Claim Response Strategy

Claim Type	A buyer's strategies	A seller's strategies	Expected Results
Refusal or Failure of Acceptance or Payment	Asking for flexibility from the seller, then active effort to fulfill obligations	Accepting flexibility and preparing to respond to a claim at the same time	If the seller accepts flexibility and the buyer fails to complement, the buyer is likely to lose the case.
Delay in Delivery Product nonconformity	Accepting flexibility and preparing to file a claim at the same time	Asking for flexibility from the buyer, then active effort to fulfill obligations	If the buyer accepts flexibility and the seller fails to complement, the seller is likely to lose the case.
Statute response, Inspection location and Procedures related nonconformity	Asking for flexibility from the seller and preparing to file a claim at the same time	Accepting flexibility and preparing to respond to a claim at the same time	If the seller refuses flexibility, the seller is likely to lose the case.
Issue or Revise L/C Nonconformity in Documents	Accepting flexibility and preparing for responding to a claim at the same time	Asking for flexibility from the buyer and preparing to file a claim at the same time	If the buyer refuses flexibility, the buyer is likely to lose the case.

From the seller's perspective, while the seller accepts flexibility regarding the supply of goods as shown in cluster B, claims can be filed by the buyer at the end. Also, as shown in Table 2, the seller is usually the party at fault in cluster B. Therefore, when there is an issue related to the supply of goods and the buyer accepts flexibility, the seller has to fulfill the obligations more actively. Furthermore, when an issue arises regarding the inspection location, statute of response, and procedures related to nonconformity, it is more desirable for the seller to accept flexibility because the seller is usually the party at fault in cluster C, as shown in Table 2. When a dispute is over the payment date or acceptance date as in cluster A, it is desirable for the seller to accept flexibility and prepare to file a claim at the same time. When a dispute is about revisions in the letter of credit or the contract, nonconformity in documents, and the transfer of goods, it is suggested that the seller ask for flexibility from the buyer and prepare for filing a claim. Table 5 summarizes the above discussion.

#### 4.4.2. Strategic Claim Management

Strategic management of trade claims based on analysis results is as follows. First is the introduction of trade management from a relational perspective. From a relationship perspective, trade is defined as a common economic goal when exporters and importers work together to successfully carry out a contract, which was entered into to enhance corporate performance by strengthening the competitive edge of the enterprise (Bodlaj et al., 2017; Dweyer et al., 1987; Lambe et al., 2000; Leonidou et al., 2014). From the traditional perspective, it is difficult to actively respond to the mutuality and flexibility norms required from the relational perspective. To overcome this, it is necessary to revise the job description for the trade management of firms and to educate managers on relational perspectives. In particular, since the trade contract is a stage of the establishment of the contract and details are finalized through implementation, efforts are required for continued management of the transaction after the establishment of the contract. Therefore, it is deemed that the introduction of trade management reflecting the relational perspective will contribute to achieving the originally expected benefits and gaining competitive advantage through trade.

The second is the use of the flexibility-mutuality framework in trade claim management. It is critical to prevent the occurrence of trade claims for a firm because it induces direct loss. However, perfect prevention of disputes is impossible given the high level of uncertainty in international trade due to its internationality, cultural differences, long distance, and long duration. Given this difficulty, the application of flexibility can be an effective means to prevent disputes because it allows for fixing the issues before they end with a claim being filed or allows for revisions of the contract when there are expected issues and provides additional opportunities for the parties to fulfill their obligations. Therefore, in the case where a dispute arises in international commercial practice, the practitioners can evaluate whether the issue harms expected benefits from the trade and whether they will apply flexibility so that they can pursue mutual benefits by preventing disputes and completing transactions. To make this happen, trade should be viewed as an organic symbiotic relationship in which the seller and the buyer have a mutual social goal, and this should be recognized as an exchange relationship created to complete a project through collaboration.

Finally, active use of the CISG and UNDRUIT Principles as a governing law in trade practices is required. The CISG and UNDRUIT Principles permit changes to the contract even after an agreement. Trade is highly likely to result in circumstances in which it is difficult for the contracting parties to fulfill their obligations due to unforeseen circumstances in the course of the performance of the trade contract. If the CISG and UNDRUIT Principles are the applied law, then the contract can be maintained by allowing the changing environment to be reflected in it. This will contribute to enabling firms to generate stable and predictable international commerce.

## 5. Conclusion

This study is designed to typify trade claims based on a relational perspective and to extract the implications for claim management. The sample consists of 81 Chinese cases applying the CISG. For the analysis, cluster analysis is conducted after the coding is completed using content analysis. Also, to compare the characteristics of different clusters, the study uses ANOVA and cross-tabulation of clusters and the causes of claims. Trade claims are divided into four clusters depending on whether or not flexibility is accepted and which party violates mutuality. There is also a difference between the claimant and the cause of the claim, according to the cluster.

The implications of this study are as follows. First, trade claims are the subject of management from a relational perspective. The analysis result shows that trade claims are divided into four types according to relational perspective. Cluster B and C involve more cases in which the buyer is the party filing a claim compared to cluster A and D. Regarding the causes of claims, cluster A mainly deals with the buyer's payment and acceptance of goods, cluster B deals with the supply of goods from the seller, cluster C deals with product nonconformity, and cluster D deals with revisions in the letter of credit or contract, nonconformity in documents, or the transfer of goods. The expected results of claims can vary with the decision of the parties regarding the other party's nonfulfillment. Therefore, this study suggests that the buyer and the seller should employ different management strategies depending on the type of trade claim.

Second, the continuation of the relationship between exporter and importer is affected by the other's acceptance of flexibility. When one party is in a situation where the contract cannot be fulfilled, the transaction can be completed if the other party accepts flexibility and allows the party experiencing difficulty to complete the contract under revised terms. Clusters A and B correspond to this. Thus, there is low a possibility that claim is filed when flexibility is accepted, but the likelihood of a claim is very high when flexibility is rejected. This confirms that trade is a collaborative mechanism between exporter and importer (Bello et al., 2003). By embracing flexibility instead of filing an immediate claim, traders can achieve their intended economic goals. But acceptance of flexibility is influenced by trust in the other party (Chumpitaz and Paparoidamis, 2007). Trust has been identified as a catalyst for an effective cooperative framework between buyer and seller. Therefore, building trust with the trading partner is an effective claim management method.

The contributions of this study are as follows. First, this study extends the theoretical discussion on trade claims by applying relational contract theory. Prior studies on trade claims have been primarily based on traditional contract theory, which assumes that trade is simply a mutual fulfillment of obligations related to the transfer of goods and making a payment, which imposes limitations on reflecting the relational trait of modern international commerce. The relational perspective views the mutual agreement made at the time of entering into a contract as a part of the process of establishing, executing, and finishing the contract and that the content of a contract is gradually completed as the contract progresses (Ivens, 2005; Macneil, 1980). Therefore, under the relational perspective, one party can accept flexibility regarding another party's non-fulfillment or request for revisions and continue the exchange relationship. This view not only allows for a better explanation of circumstances in real trade transactions, but can also be found in the CISG. Provisions on the concept of fundamental breach (Article 25), response duties for requests for revisions in a contract (Article 29), and rights to the cure for a lack of conformity in the delivery and products (Article 33 and 37) are all associated with the relational perspective (Yu Cheon and Hwang Yun-Seop, 2018).

The second contribution is the quantitative analysis of trade claims. Prior case studies on trade claims have mainly been qualitative research. This study quantifies trade claims using content analysis based on the grounded theory and conducts an empirical analysis while validating statistical reliability using Krippendorff's Alpha. Specifically, cluster analysis is used to typify 81 CISG-applied cases and ANOVA is employed to compare the characteristics of different clusters statistically. This approach contributes to expanding the method of trade claim research (Holsti, 1969; Weber, 1990).

Finally, the study contributes to international commercial practice by typifying trade claims and presenting options for strategic management. The seller and the buyer require different responses to trade claims. To manage trade claims strategically, firms should introduce a



relational perspective, such as the flexibility-mutuality framework, to trade management. Additionally, the CISG and UNDRUIT Principles enable firms to generate stable and predictable international commerce.

While this study makes the aforementioned contributions, there are several limitations. First, the interpretation of analyzed data is limited. In this study, the data is classified using the content analysis of CISG cases, but the analysis does not include any part of the transaction that may have existed but did not appear in the case files. Also, some cases involved several rounds of flexibility requests and acceptance, but to simplify the framework, this study only captures flexibility related to a break of mutuality. Finally, because the analysis in this study is based on CISG cases from China, so any generalization of the results should be done with the caveat that no other countries were involved in the cases reviewed. Therefore, future studies will need to include and analyze more claims cases. And it is necessary to conduct further research on trade claims with Korean firms by major trading partners and compare the results. It will provide useful implications in the context of the Korea trade.

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