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A Descriptive Study of Two English Versions of the Food Safety Law of the PRC

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Abstract

Few studies on legal translation have been conducted from the perspective of Descriptive Translation Studies (DTS). This study attempts to make a contrastive study of the two English versions of *Food Safety Law of the People's Republic of China* (2009) under DTS. The research reveals the discrepancies at lexical, syntactic and textual levels between the two versions, and these linguistic divergences are attributable to such factors as patrons' ideologies and legal cultures. This research further explores the correlations between ideology and culture and the translation strategies employed by translators, and casts a new insight into translation studies of legal texts.

Key words: Contrastive study; Linguistic divergence; Inducing factor; DTS

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INTRODUCTION

For quite a long time, translation studies have long been prescriptive, to the point that discussions of translation that were not prescriptive were generally not considered to be about translation at all, and research approaches vary, from equivalence cultural turn and Skopos theory, to eco-translatology, etc. (Munday, 2008; Holmes, 1988; Pym, 2010), on various fields, e.g., translation history, sociologies of translation, postcolonial translation, gender studies, etc.

Since its establishment in 1990s, descriptive translation studies (herein after "DTS") has changed the traditional paradigms of translation studies, for it takes the result of translation as fait accompli, and tries to find related social factors which have an effect on the process of translation so as to describe it completely and historically, focusing on the cause of translation and its social effects instead of language itself. As a result, it is widely applied to literature translation (Asman & Pedersen, 2013; Morini, 2014(a), (b); Even-Zohar, 1990; Venturi, 2009; Hermans, 1985; Cummins, 2013; Jiang & Quan, 2015; Li, 2011; Yin, 2014; Jiang, 2007; Zheng, 2010; She, 2011), and translation of advertisement, foreign cosmetic brand names, scenic spots in tourist sites and so on (Ma, 2012; Zhu, 2012). Further, issues, challenges and opportunities posed by the specific nature of research on audiovisual translation (AVT) developed within the framework of DTS is also addressed (Rosa, 2016); and DTS is even employed in quantitative, corpus-based translation studies (Oakes & Meng, 2012).

Regretfully, DTS is rarely applied in legal translation studies. So, it is aspiring and challenging to make such an attempt. In the sections that follow, different from previous translation studies conducted from the prescriptive perspective or under other theories, this study, by adopting a descriptive approach, first conducts a contrastive study of the two English versions of 中华人民共和国食品安全法 (2009) (Food Safety Law of the People's Republic of China (2009), hereinafter "FSL"), retrieved from http://www.lawinfochina.com (hereinafter referred to as "C-version") and produced by Foreign Agricultural Service (FAS) of the Department of Agriculture of the USA (hereinafter referred to as "A-version"), respectively;

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then, the triggering factors for the divergences in the two English versions will be explored.

1. A BRIEF INTRODUCTION TO DTS

The seminal idea about DTS goes back to as early as 1953 when John McFarlane prefigured a number of key points in the descriptive paradigm and proclaims "translation is as translation does", implying a view of translation as a relative, historical concept, forecloses glib generalizations (Hermans, 1985, p.20). However, these ideas about translation were not picked up until the early 1970s, when translating was compared to decisionmaking in formal games, individual translations were understood as reflecting different national or historical poetics and conventions (Levy, 1969). The pioneering work done in the 1950s and 1960s prepares the ground for the proposition of DTS in the 1970s. The term "descriptive translation studies" (DTS) was put forward officially in 1972 by James Holmes whose idea back then was to propose an outline of the basic structure of translation studies as a justified empirical discipline. As one of the two main branches of pure research in Holmes's map of discipline, DTS is further divided into three major kinds of research, product-oriented, function-oriented, and process-oriented. Since the field aimed at describing "the phenomena of translating and translations as they manifest themselves in the world of our experience", DTS is set apart "from any direct practical application outside its own terrain" (Holmes, 1988, p.76). In the 1990s, Gideon Toury developed Holmes's views, and finally constructed the structure of DTS by publicizing Descriptive Translation Studies and Beyond in 1995. He envisages a descriptive and fundamentally target-oriented approach to translation and puts forward that translators often conduct their translation practice under various conditions, i.e., translate texts of different types, and/or for different readers, usually adopt different strategies, and finally produce markedly different products (Toury, 2001, p.54).

The development of DTS has considerably extended the range of the research objects of the discipline to the translation phenomena that were ignored or given even peripheral status in the conventional application-oriented translation studies. More importantly, while regarding translations as "cultural facts" in the target society and attaching importance to the functions, processes, and products that bear on each other, DTS scholars "set translation practices in time and, thus by extension, in politics, ideology, economics, culture" (Tymoczko, 2004, p.25).

The aim of DTS is to describe what translations actually are, rather than simply prescribing how they should be (Pym, 2010). Less prescriptive than its predecessors, DTS sought to establish probable expectations of translation behavior by handling the

practice as an empirical discipline with a hierarchical organization and a structured research program (Cheung, 2013).

2. A COMPARISON BETWEEN TWO ENGLISH VERSIONS OF FSL

As a conditional type of behavior, translation activity involves two languages and two cultural translations, thus breeds an inevitable need to establish the interdependencies between the position and role of translated texts and translational behavior in culture (Toury, 2001, p.56), which enables a comparative research of the linguistic and cultural factors involved in inter-lingual translation. Since the law is a profession of words (Mellinkoff, 1963, Preface), the English versions of FSL are sure to exhibit certain lexical, syntactic and textual features of legal texts. But a further review of both versions shows that their linguistic characteristics are varied in many ways.

2.1 Discrepancies at Lexical Level

Lexical features of legal texts are marked by wide range of vocabulary, large proportion of highly formal words, archaic words, borrowed words, technical terms, collocations of synonyms or near-synonyms, etc. (Mellinkoff, 1963). And these lexical characteristics are very prominent in both versions. But a further review reveals that each version has its own lexical features.

e.g.1: 第一条 为了保证食品安全, 保障公众身体健康和生命安全, 制定本法.

Article 1 This Law is enacted to ensure the food safety and guarantee the safety of the lives and health of the general public. (C-Version)

Article 1 This Law is formulated to assure food safety and safeguard people's health and life. (A-Version)

第八条 国家鼓励社会团体、基层群众性自治组织 开展......

Article 8. The state shall encourage social groups and autonomous grassroots mass organizations to carry out (C-Version)

Article 8. The State encourages social and community groups to conduct educational activities (A-Version)

As is shown in example 1, "公众身体健康和生命安全" is translated literally into "safety of the lives and health of the general public", and liberally into "people's health and life" respectively; while "基层群众性自治组织", a term full of Chinese political and legal characteristics, is also literally translated into "autonomous grassroots mass organizations", and liberally into "community groups", respectively.

e.g.2:第五条 县级以上地方人民政府统一负责......; 县级以上地方人民政府依照......

A local people's government at or above the county level shall undertake...; A local people's government at or above the county level shall.... (C-version)

Local people's *governments* at and above the county level shall take...; the local People's Governments at the county level or above shall, (A-version)

第七条 食品行业协会应当加强行业自律,

The relevant food industry associations shall strengthen the industrial self-discipline, (C-version)

Food industry associations shall tighten the self-discipline of the industry (A-version)

In the example above, definite or indefinite article is preferred in C-version, while collective nouns are preferred in A-version. This tendency is also prominent in the translations of Article 35, 36, 37, 38, 40, 46, etc.

e.g.3: 第六章 食品进出口

Import and Export of Food (C-version)

Food Import and Export (A-version)

In respect to the translation of noun phrases, the two versions also differ. Apart from the use of noun phrase of "n + of + n" construction, for instance, "Import and Export of Food" (Chapter 6) and "a warning of food safety risk" (Article 17), compound nouns is common in C-version, for instance, "食品生产企业" and "食品经营者" are translated into "A food production enterprise" and "A food business operator" respectively in Article 37 and 40; Further, whiz deletion is also used in C-version, for instance, "食品生产经营人员" is rendered as "persons engaging the production or business operation of food"; In contrast, the most frequently used forms in A-version are compound nouns, for instance, "Food Import and Export" (chapter 6), "food safety alerts" (Article 17), "Food producers and traders" (Article 27, 32), etc.

2.2 Divergences at Syntactic Level

The syntactic features of legislative texts include sentence length, nominalization, complex propositional phrases, binomial and multinomial expressions, initial case descriptions, qualifications in legislative provisions and syntactic discontinuities (Bhatia,1993). Both versions represent the basic syntactic characteristics of legal language; meanwhile, they vary slightly in the translation approaches.

e.g.4: 第十一条 国家建立食品安全风险监测制度.......

The state shall establish a food safety risk monitoring system, (C-version)

A national surveillance system for food safety risks shall be established, (A-version)

In this example, the basic sentence pattern "s-v-o" in the ST, an active sentence, is translated into an active one in C-version. Namely, the sentence order in C-version is in strict alignment with that of the ST; In contrast, the ST is converted into a passive one in A-version. This is true with the translation of Article 13, 17, etc.

e.g.5: 第二十八条 禁止生产经营下列食品:......

It is forbidden to produce or engage in business operation of the following food: (C-version)

Production and trading of the following foods are prohibited: (A-version)

The ST is an imperative sentence in a negative format, namely a prohibitory provision in the typical "V-O" pattern. In C-version, the translators add "it" to introduce the notional subject *expressed by an infinitive; while* in A-version, the ST is translated into a typical passive voice structure, featuring accuracy, clarity and brevity of all legal writing.

e.g.6: 第二十九条 取得食品生产许可的食品生产者......

A food producer who has obtained a food production license... (C-version)

Food producers having a food production license.... (A-version)

In respect to "attributive + noun" structure which implicitly serves as a condition for legal action, different approaches are employed, i.e., the structure is translated into an attributive clause in C-version, but into a whiz deletion in A-version. Similar approach can be witnessed in the translations of Article 33, 44, 80, etc.

2.3 Divergences at Textual Level

The property of being a text properly is nothing but the concept of "texture", which can be divided into two types, namely structural nature and non-structural nature (Halliday & Hasan, 1976). The former involves the information flow in sentences concerning the terms "theme" and "rheme", i.e., the semantic relations within a sentence; while the latter refers to the semantic relations between sentences (for example, cohesion). In these aspects, the two versions also differ.

e.g.7: 第八十四条 违法生产经营的食品、食品添加剂货值金额不足一万元的, 并处二千元以上五万元以下罚款;......

If the monetary value of the illegally produced or operated food or food additives is less than 10,000 yuan, the violator shall be fined not less than 2,000 yuan but not more than 50,000 yuan concurrently; (C-version)

Food producer or trader shall be subject to a fine of RMB2,000-50,000, if the total value of the food or food additive is less than RMB 10,000; (A-version)

A legal norm generally consists of three interdependent elements: hypothesis, disposition, and sanction, which are interconnected and may be represented as "If (hypothesis)—then (disposition)—otherwise (sanction)" (Malko, et al., 2016). This typical conditional construction consists of a *protasis* (the if-clause) and an *aposdosis* (the main clause). In the ST, the if-clause is the theme, i.e., the starting point of an utterance (Halliday, 1989, p.64), and the main clause is the rheme, i.e., the part of the assembly of the new information that the text offers (Cummings, 2013). This thematic progression is maintained in C-version, i.e., the sentence structure in C-version aligns with that of the ST, with the conditional sentence pre-posed before the main sentence; compared with C-version, the thematic

progression in A-version is just the other way around, i.e., the conditional sentence is post-posed after the main sentence, resulting in a change of information structure. Similar divergences in the thematic progression or change of information structure are widespread, as can be witnessed in the translations of Article 2, 52, 62, 66, 71, 75, etc.

e.g.8: 第二十八条(五)病死、毒死或者死因不明的禽、畜、兽、水产动物肉类及其制品.

- (5) Meat of poultry, livestock, beasts and aquatic animals that died from disease or poisoning or for some unknown cause, and the products made of *it*. (C-version)
- (5) Meat or meat products of poultry, livestock, animals, or aquatic animals that die from disease, poison, or any unidentified causes. (A-version)

As is mentioned above, cohesion and coherence are sources which create texture in a text, and cohesive devices include grammatical cohesive ties (reference, ellipsis, substitution, conjunction) and lexical cohesion (reiteration and collocation) (Halliday & Hasan, 1976). In the above example, the pro-form "其" in the ST is translated into "it" in C-version, namely, referencing, a grammatical cohesive device, is selected in C-version; In contrast, "其" is rendered into "meat" in A-version, i.e., reiteration, a lexical cohesive device, is chosen. This kind of divergences in the selection of cohesive devices can also be witnessed in the translations of Article 13, 16, 31, 44, 45, 52, 53, etc.

3. ANALYSIS OF THE CONTRIBUTING FACTORS

Translation is not only a transformation, and it cannot be done in a vacuum; rather, it is always conducted within the social and cultural context in which the translator lives. Namely, many factors may intervene and tamper with the reconstruction even of those parts of which they are conscious, as they are translating (Toury, 2001, p.128). A comparison between the two versions reveals that translators are indeed influenced by various factors.

3.1 Varied Patron's Ideology

Ideology refers to ideas, value concepts, and assumptions, whether cultural or political, that are related to the power and authority of persons or institutions in a specific society (Abdulla, 1999, p.1). No one denies that translation is an activity carried out in the service of patronage or control factors, and such control factors often act as a force on the translators to produce translated texts which conform to their patron's ideology (Lefevere, 1992, p.14).

The relationship between patronage and manipulation is obvious in the translation of FSL. In the *Notice on the Translating, Reviewing and Making Final the Formal English Version of Administrative Regulations and Rules of PRC* issued by the General Office of the State Council of the PRC on February 24, 2003, the purpose

for translating regulations and rules is made explicit, i.e., to show the world the achievements made by China in various areas, including economic progress, political reform, cultural development, environmental protection, Party discipline, diplomacy and military reform, etc. In order to promote and exhibit the culture of source-language, the most appropriate translation method is always literal translation, for introducing source-language words, grammar, or syntax into the target-language will no doubt enrich target language. Sometimes, more important than translation per se has been the use and reading of source language texts which will exert substantial influences on the target language. So, literal translation results.

Conversely, A-version is produced to reflect the ideology of a different patron, Foreign Agricultural Service (FAS). This agency is responsible for the overseas programs of the United States Department of Agriculture's (USDA), linking U.S. agriculture to the world to enhance export opportunities and global food security and ensuring relevant foreign policies accessible to and understood by the US food producers and traders. As a result, the paramount concern of the translators is to focus on readability and bias their translation towards the target language community, applying conventional expressions of TL.

Given that the choice of the works to be translated, and the guidelines and goals of the translation activity are set by ideology or patronage, it is no wonder that literal translation is adopted in C-version in terms of translation of terms or words, and replication of the ST syntactic structures is also pervasive in C-version; in contrast, liberal or free translation is preferred in C-version, at lexical, syntactic and textural levels.

3.2 Different Cultures

No matter culture is "the way of life and its manifestations that are peculiar to a community that uses a particular language as its means of expression" (Newmark, 1988, p.94), or "the cultivation of the soul or mind, including behavior such as courtship or child rearing practices material things such as tools, clothing and shelter, institutions and beliefs" (Vermeer, 1989), or "the sum total of the ways of living built up by a group and passed on from one generation to another" (Tylor, 2000), it is a complex whole which includes knowledge, belief, art, law, morals, customs and many other capabilities and habits acquired by man as a member of society (Hymes, 2000). Anyway, culture is the whole behavior model of a society in cultural beliefs, tradition, system and values. A nation has not only its language, but also its own culture, which comes into being under certain natural environment, historical conditions and social reality. Since translation proper is not merely a process of linguistic transfer, but also of cultural transfer, cultural influence will surely be reflected in the translation process.

The influence may be reflected in the translation of terms or expression. Without understanding of meanings of individual forms, one cannot interpret the meaning of the text as a whole (Bake, 2006, p.6). For example, "基层群众性自治组织", a culturally loaded term in Chinese language, is renders into a broad and general term "community group" in A-version, and into "autonomous grassroots mass organizations" in C-version. The latter translation is much close to the original meaning of "基层群众性自治组织" which includes residential committee or village committee, local autonomous organizations with Chinese characteristics.

Cultural influence also can be witnessed by sentence structures or thematic progression. Language is deeply associated with the culture, and translation process also permeates the signs of culture. Compared with A-version, C-version uses less conjunctions, for Chinese is paratactic, clauses are placed one after another, without connecting words (conjunctions) to show the relation between them, while English is more hypotactic, in that coordinating or subordinating conjunctions are used to indicate the relation between clauses. For example, the typical conditional construction in legal norms is "If X, Y shall do/be Z" (Bhatia, 1993), where "If X" stands for the description of case(s) to which the rule of law applies. "Y" is meant to be legal subjects and "Z" the legal actions or sanctions. This typical conditional construction consists of a protasis (the if-clause) and an aposdosis (the main clause). In English and other languages, protases are typically overwhelmingly or mainly initial (Greenberg, 1966, p.84), although the anomalous post-posed if-clauses are a varied lot, sometimes postposed due to syntactic factors, namely, *protases* may be pre-posed or post-posed; In contrast, in Chinese legal norms, except for provisos, protases are conventionally pre-posed. This partly explains why the sentence structures in C-version always align with that of the ST, while in A-version, information structure either align with or differ from that of the ST, as is shown in example 7.

These apart, cultural influences can also be witnessed by the choices between active and passive voices. To westerners, subjects and objects are so clearly divided that active or passive conditions are quite distinct; In contrast, the idea that animate things and nature are united and mixed completely is deeply rooted in Chinese people's way of thinking. So, there is no need for Chinese people to divide active and passive conditions so clearly as westerners do. As a result, Chinese people prefer to use active voice and this preference is reflected in the C-version, which is totally different from the flexible approaches adopted in A-version to deal with active voice in the ST (as shown by e.g.4).

Further, research shows that second language learners may be bothered and influenced by their mother tongue patterns whose negative transfer into their second language may result in errors (Ellis, 1999, pp.301-302),

and differences do exist between translated Chinese texts (TCT) and original Chinese texts (OCT) (Oin & Wang, 2009); meanwhile, research reveals that translational and native texts share certain linguistic features, but only to a certain degree (Lin, 2016). These findings at least partly explain the divergences between A-version and C-version, and shed light on the causes for the errors or ungrammatical expressions in C-version. For example, frequent use of pronoun reference "it" by C-version, which is acceptable in ordinary genres, reveals that the translators ignore or neglect the linguistic features of legal genre where reiteration (i.e. repetition of the same word) is much preferred to ensure precision; in contrast, reiteration, instead of "it", is used in A-version (as shown by e.g. 8) to ensure precision and accuracy, indicating the positive influence of mother language. In addition, wrong use of definite or indefinite article (as is shown in the translations of Article 35, 36, 37, 38, 40, 46, etc.) and word-for-word translation (e.g., "食品中的有害因 素" is translated into "harmful factors in food", "食品流 通" into "food circulation", "食品生产经营" into "Food Production and Business Operation", etc.) in C-version, occur inevitably as a result of the negative transfer of mother tongue patterns into the learner's second language. And these characteristic features tend to distinguish C-version from A-version by native-speakers and give C-version a "non-native" sound (Granger 2004, p.135).

CONCLUSION

This research compares differences between the two English versions of the FSL at various linguistic levels, and explores underlying factors for the discrepancies.

Our study reveals that different patron's ideology or patronage is a major factor for the linguistic discrepancies between both versions. As Lydia Liu (1995, p.26) puts it, "Translation is no longer a neutral event untouched by the contending interests of political and ideological struggles; instead, it becomes the very site of such struggles". Ideology, once a political concept and now indispensable to translation, falls into the domain of translation, and infiltrates into and manipulates the whole process and the final product of translation, involved in various translation process, especially by the selection of translation strategies or method; consequently, literal or liberal translation results respectively in C-version and A-version;

Further, cultural difference is another trigger for the divergences between A-version and C-version. Translation does not occur in vacuum; instead, cultural, social, legal and some other translator-related factors play their parts in translation practice. These findings confirm the findings that negative transfer of mother tongue patterns is an obstacle in translation, and explain why errors occur in C-version and why each version has its linguistic features in respect to word choice, sentence patterns, choice of active voice or passive voice, etc.

Currently, almost all the legal translation studies are conducted from prescriptive approach, while few are conducted from descriptive perspective. By applying a descriptive approach, this study is hoped to cast a new insight into legal translation studies, which in turn will benefit us with a better understanding of different translated versions produced by different translators from different backgrounds.

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