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A Study on the Risk Prevention of "OBOR" Enterprises in International Sales of Goods

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ABSTRACT. *There are many multinational enterprises in the process of "One Belt One Road",and thousands of contracts for the sale of goods are signed every day. Risks exist at any time and any stage in sales of goods. OBOR countries have different coping style and different regulation toward potential risks in international sales of goods. Provisions on the risk transfer of the seller and the Buyer under the contract for the sale of goods determine which party to bear the risks. From both parties' perspective, it will provide better help to the OBOR enterprises legal risk prevention strategy by Studying the risk transfer mechanism in the contract of international sale of goods.*

KEYWORDS: *One belt one road, Contract of international sales of good, Risk prevention*

1. Introduction

With the China's "One Belt One Road" (OBOR) policy and the operation of Asian Infrastructure Investment Bank(AIIB) in recent years, a new international order is under way[1]. [1]There are a large number of countries and regions along the OBOR,and these countries have many different ways of coping with OBOR. From the perspective of law and economics[2], every country and region have the different expectation for the new international environment[1].

While "One Belt One Road" is in the process, and Asian Infrastructure Investment Bank is expanding its member states. Opportunities and challenges coexist in the OBOR. Most of the countries along the line hope to benefit from a new organization or policy[3]; meanwhile, they also seek to avoid risks. Different countries have different coping style[4]. From this perspective, the author wants to divide these countries into two categories, one group is risk-prefer country, and the other is risk-avoid country. For the both categories, the risk prevention of enterprises in international sales of goods is always the vital focus.

2. Classification of Risk Prevention in Goods Risk Buying and Selling by

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Enterprises in Different Countries Along the Obor Line

According to a field research by CF40[5], a Chinese think tank, along the line and related neighboring countries can be divided into four types:Resource upstream type, process and component upstream type, parallel competition type, stagger competition type. However, it is a pity that this think tank just samples from Asian countries along the route, so the author would change it and conclude by myself

The first category is resource upstream countries, such countries are represented by Mongolia, Kazakhstan, and Indonesia. The export of oil and mineral resources plays an important role in the economic system of this type of country, and the main export target is China. Thus, China’s economic slowdown and structural adjustment have a negative impact on the economics of these countries as a whole. Most countries concerned is how to achieve diversification of production structure, Chinese as the world's manufacturing superpower can help these countries to explore the path of industry diversification, make good use of resource price decline in the time window, complete the monotonous resource economy to a more diversified economic transformation task[6].In addition, they have loan demand in difficult economic times, it will have a great market if the developed countries’ enterprises are willing to provide RMB denominated loans[5].

The second category is the upstream country of technology and components, represented by Japan, South Korea, and Singapore. In the international industry chain, such countries are in the upper reaches of China. In the short run, the added value of these countries' exports will fall as China's exports slow down, But in the medium to long term, such countries can be rearranged in Asia or the world to adapt to China's new normal situation.

The third category is parallel competition country, the delegates are Thailand, Malaysia, and Mexico[7].These countries and China are at the same stage of development, and their overall comparative advantages are similar to that of China. Even so, there is still a mismatch between China and the industries of these countries, and companies can look for opportunities for investment in complementary industries.

The fourth category is staggered competition countries, and we divide these countries into two kinds deeply, the first kind is developing countries along the OBOR, and the other is developed countries along the OBOR. Represented by Vietnam, Bangladesh, India and Sri Lanka[7], these countries have lower levels of development than China. Under the background of rising labor costs in China, industries with comparative advantages, such as low-end textile and cheap electronic products, need to withdraw from China. Such countries can take advantage of this opportunity to undertake the transfer of industries, thereby benefiting. Developed countries usually need to make a choice according to the best interests of the countries themselves. For example, the China Development Bank and the French National Investment Bank jointly invest in China - France SME fund and the China-European train will soon be opened to traffic[8].

For the countries’ enterprises along the one belt one road, OBOR is both the

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challenge and chance. Since each country has its own laws, the laws relating to the risk transfer is different, and the divergent laws will lead to the mess and problems among the business partners. Therefore, it requires more people to study the risk transfer mechanism of international goods trading[9]. Next, the author will introduce the risk prevention and Countermeasures of the enterprises.

3. Risk Prevention of Global Enterprises in the International Sale of Goods

3.1 Risk Prevention of Seller Enterprises

The prevailing view in today's international trade is that “delivery” is used as a standard for risk transfer. If delivery is used as a division point for the risk transfer of goods, the risk of loss of or damage to the goods before the delivery of the goods shall be borne by the seller; once delivered, this risk is transferred to the buyer. However, when and where the delivery is completed is a problem that the enterprise must pay attention to, which depends on the contract. “Therefore, the two parties in the contract on the delivery time, place, delivery behaviour, breach of contract, etc., these important factors affecting the risk of the transfer of goods should be defined in advance. If the contract is not clear, it is easy to trigger a contract dispute”, even may cause risk transfer “turn back”[10]. I will discuss four of these factors below:

The first factor is the time and place of delivery of the goods, which requires that the seller strictly abide by the contract. When the contract is not scheduled, the Seller shall perform the obligation of delivery in strict accordance with the chosen, legal or optional trade terms. Specific provisions refer to specific laws(Because different countries differ).

Secondly, the diversity of goods delivery behaviour leads to the complexity of goods risk transfer.[13] Traditionally, the seller's delivery behaviour is the actual delivery of the goods to the buyer. However, in current transactions, in particular among bulk traders, face-to-face delivery between the seller and the buyer is not required, instead, the seller delivers the goods to a carrier first, then the carrier delivers the goods to the buyer. This delivery relationship between the buyer and the seller is complicated due by the accession of a carrier. Another example of the diversity of delivery behavior is the bill of lading, which substitutes physical delivery of goods with the seller’s delivery of a document document[11]. Upon the delivery of such a good document, the goods are considered delivered from the seller to the buyer. In accordance, the risk of the goods is transferred from the seller to the buyer.

The third factor is the requirement of specific goods. Most laws require the goods to be specified when considering the risk transfer. Moreover, the specific cargo is the premise of risk transfer theory. For example, in CISG, or in the Incoterms 2010, the goods must be the products referred to in the contract. Therefore, as a buyer, the goods must be specified. For instance, buyer can mark specific in the goods, such as brush the head; separate the goods from other goods; pile up separately; make the goods specific utilizing the bill of lading; notify the

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buyer of the goods and make the goods specific.

Fourth, under normal circumstances, after the delivery of the goods, the risk shall be borne by the buyer, but if the seller defaults, the risk will be returned from the buyer to the seller[12]. This is known as the risk of rotation. In the transaction process, to avoid the risk of rotation, the seller should avoid the breach of contract. How to avoid the risk of rotation? This question is not only considered as a problem of avoiding risks but also the embodiment of the principle of good faith in commercial transactions.

Furthermore,the buyer's default will also affect the seller's bearing on the risks of the goods. As stated above, the laws of many countries require that, even if the buyer refuses to accept the goods at the agreed time and place, the risk of the goods shall be transferred to the buyer from the date of the agreement or the date of the expiration of the agreed period. However, the risk of the goods will not transferred to the buyer just for the buyer’s default. The seller need to constitute two conditions,one is the seller has gone through a “reasonable time”, the other is that it must be “the insufficient part of the seller’s own insurance”[13].Therefore, for the seller's enterprises, the seller cannot afford to Underestimate or neglect the buyer defaults since the two conditions need to be attained first. Otherwise, the seller's business may suffer from the risk of self-commitment.

3.2 Risk Prevention of Buyer Enterprises

In countries where delivery is used as a point of risk transfer, the risk of the goods is transferred to the buyer from the seller's completion of delivery to the buyer's acceptance of the goods. The buyer's risk begins with the receipt of the goods until the goods are exhausted or the goods are resold to the third party. Thus, the time range for the buyer to bear the risk of the goods is relatively long. Therefore, buyers must pay great attention to avoid unnecessary risks.

Typically, the risk of the goods is transferred from the delivery to the buyer. However, there are some exceptions[14].The buyer may not be able to deliver the goods within the agreed time or period at the agreed place due to the buyer's breach of contract or the buyer's non-assistance. So, even if the delivery behaviour has not yet occurred, many laws and international practices, such as CISG, Incoterms, also set from the agreed date, or the date of expiration of the agreed period since, damaged goods, transfer the risk of loss from the seller to the buyer. This is also called “forward shift of risk transfer” in theory. Therefore, in the course of the transaction, the buyer enterprise needs to fulfil the acceptance obligation in strict accordance with the contract, and also notify the seller of the relevant delivery time, place, and assist the seller in handling the relevant import and export procedures. This is not only a risk avoidance requirement for the buyer but also a requirement for good faith and assistance in the sales contract[15].

In modern trade, the delivery of documents has become a popular means of business. However, when the delivery of the document makes the ownership of the goods separate from the actual possession, the buyer cannot know the details of the

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goods in the first place. Especially in road freight transactions, many buyers and sellers have never touched the goods before they complete the transaction[16]. In the process, once the goods have been damaged or lost and whether this damage or loss occurred before delivery or not, a large amount of controversy will arise. In the case of the seller and the buyer, by the principle of good faith transactions, there is no breach of contract or no assistance in any transaction. However, since the buyer has never touched the goods throughout the process, but the goods have been resold by the seller, this behavior will result in an eventual loss of goods and an uncertain time of occurrence. As a buyer enterprise, though there are many inconveniences in the delivery of documents, as long as the buyer receives the timely inspection and the carrier carefully examines and issues a clean bill of lading when receiving the goods,thereafter it can avoid unnecessary risks as much as possible.

4. Conclusion

Also, business participants in international transactions need to avoid further risks, including market risks and financial risks, which were discussed previously. And the actual risk and legal risk should be the main problems in the international trade, to which people need to pay attention.

Therefore, the enterprise should start from their interests, taking into account the risks, in which under the law is the smallest, which is the basis for selection of applicable law[10]. At the same time, the risk is only one of the factors governing law considerations; we must combine the jurisdiction and other factors, the convenience of the transaction from the overall consideration, for review the law. And the author genuinely hopes that this article can make some contribution to these considerations.

References

[1] Li Yu-bi&Wang Lan(2017), “The Belt and Road” in the construction of legal risk identification and Countermeasures, Journal of Chinese Academy of Governance,no.2, pp.77-81, p.127

[2] R Posner(1977), Economic Analysis of Law, 2nd ed, pp.75-76

[3] Bao Yuncheng(2015). The legal thought of “The Belt and Road construction,China Front Press.

[4] Qian Hongdao(2006), Economic Analysis of law. Beijing, Tsinghua University press.

[5] Available at:http://money.163.com/16/0222/16/BGEMQ08100253B0H.html.

[6] Wanglinggui(2015),OBOR- From foreign think tank,Economic Press, pp.114-115.

[7] Xinghua Chen(2015), ASEAN national legal system, She Hui Ke Xue Press, pp.187-285.

[8] Available at:http://www.ccdi.gov.cn/toutu/201705/t20170516_128263.html.

[9] Liu Yang(2016). The effect of fundamental breach on risk burden--centered on the interpretation of Article 148 of the Contract Law. Journal of East China

ISSN 2616-5902 Vol. 2, Issue 3: 93-98, DOI: 10.25236/AJBM.2020.020313

University of Political Science and Law,vol. 19, no.6, pp.174-189.
[10] JI Yue(2013), The risk transfer of international sale of goods, East China University of Political Science and Law.
[11] Ole Lando(2000), Principles of European contract law, Parts I and II, Kluwer Law International, pp.165-166.
[12] Hocker(1989),, Contracts: Commentary and Materials, 6th edition, pp.320-321.
[13] Laurence P. Simpson(1965), Contracts, 2nd edition, West Publishing Co., pp.115-117.
[14] Hugh Collins(1986), The Law of Contract, Weidenfeld and Nicolson, pp.212-214.
[15] Chitty, Joseph(1994) . Chitty On Contracts, Volume 1, 27th edition, London Sweet&Maxwell, pp.134-135.
[16] Huber(2002), Der Nacherfiillung sans pruch im neuen Kaufrecht, NJW, pp.174-175.