Belt and Road Initiative: Breaches and Countermeasures of International Trade Contract

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Abstract: Belt and Road Initiative is a significant commercial activity led by China; it ties China's economy with Eurasian countries. However, many problems came out with the wider expansion of the range of the Belt and Road Initiative because of the diverse legal systems and customs, and one of the problems was the breach of international trade contracts. This study focuses on a specific kind of breach of international trade contract, which is the contract for international sales of goods due to the non-conformity of goods. Aiming to prevent and solve disputes in trade, it analyzed the Civil Code of the People's Republic of China, United Nations Conventions on Contracts for the Sales of Goods, and UNIDROIT Principles of International Commercial Contracts with supplemented cases. Furthermore, the study finds effective countermeasures to deal with the problems and motivates enterprises to engage in the Belt and Road Initiative actively.

1 INTRODUCTION

In the 21st century, China has shown its strong aspiration in participating and promoting international trade since it has regained its legitimate seat in the United Nations and entered into the world trade system. Belt and Road Initiative (BRI), aiming at developing commercial partnerships with countries along the Silks Roads to broaden China's commercial market, has attracted a great number of foreign companies and enterprises seeking cooperation in China. It is an important commercial initiative that has 151 countries participating (Kovalova & Vartiak, 2024). However, many troubles come out with the increased demand for trades, such as breach of contract. To deal with the potential risks in international trade, scholars and guild experts have raised multiple strategies. For example, a plan for remedy should be written explicitly in the contract if a certain party is in favor of the compliance of the contract (Zuo, 2024). Furthermore, the contractor is supposed to highlight the objective standards for the quality of goods and ensure that the time limit for reporting the substandard quality of goods is rational (Pannebakker, 2024). To mitigate potential risks and protect companies' interests, this study employs a mixed method of textual analysis and case analysis. It includes interpretation of articles from the Civil Code of the People's Republic of China (CCPRC), the United Nations Convention on Contracts for the Sale of Goods (CISG), Principles of International Commercial Contracts (PICC), and analyzing specific cases of non-conformity of goods. It will point out the potential risks of breach of contract and provide applicable countermeasures in the context of BRI.

2 LITERATURE REVIEW

With the expansion of the range of BRI, companies have to face the problems and risks led by breach of contract. To resolve problems and minimize risks, scholars proposed a method of using contractual clauses to reflect sustainable development (Pannebakker, 2024). For example, both parties use codes of conduct as a reference to regulate the standard of performance and prevent inconsistent behavior. Furthermore, Article 1.8 of the PICC regulates that parties are not supposed to have inconsistent behavior that is distinctive from their previous consensuses towards each par-ty. What is more, the aspiration to attain a certain product through exchanging a certain price drives the sale of goods (Latifah et al., 2024). However, problems related to the non-conformity of goods hinder

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international trade. To regulate the international trade contract, especially the contract of sale of goods, the United Nations adopted CISG in 1980. This action secures the international trade of sale of goods and provides legal ground for disputes. Under Article 35 of CISG, courts can seek the foundation for non-conformity through suspicion of non-conformity of goods, which implies that regulating explicit standards for conformity of goods in the contract is necessary (Latifah et al., 2024). Otherwise, courts will find difficulties in identifying non-conformity to support a breach of contract without the standards. Furthermore, non-conformity should be evaluated physically, legally, and conditionally because it is hard to evaluate the conformity of goods such as meat solely based on its physical features; moreover, different states have different standards for this kind of goods, which is related to the health of domestic citizens (Latifah et al., 2024). In addition, "good manufacture practice" (GMP) used to examine medical goods has been applied in a great number of countries (Schwenzer, 2012). It makes the manufacture of medical goods strictly recorded. Although the physical features of the goods are qualified, the goods cannot be sold in the market without the approval of GMP. Furthermore, non-physical features should be included in the contract (Schwenzer, 2012). For example, parties should provide a certificate of origin or standard of quality like GMP, follow a certain trade usage without using child labor, and ensure the goods can be used for a certain purpose. Although the risks in international trade are various, most of them are predictable, and practical methods for companies to avoid them are possible for them.

3 INTERNATIONAL TRADE CONVENTION

3.1 Application situation of CCPRC, CISG, and PICC

CCPRC, published in 2020 and enforced in 2021, is the first law named after a code in the history People's Republic of China (PRC), which aims to protect people's legal rights and interests, adjust civil relations, and ensuring the good order of society and economy. In general, it focuses on dealing with issues with civil activity within the PRC's territory. However, civil activity in the context of BRI involves foreign civil subjects, but CCPRC does not include the provision of applicable law to foreign-related civil relations (Ye, 2024). In a situation where both parties do not decide the proper law in the Sino-foreign trade contract, whether CCPRC can be applied or not becomes a problem. To solve this problem, Article 41 of the Law of the People's Republic of China on the Application of Laws to Foreign-related Civil Relations interprets that the applied law is the law from the resident of the party who can show the feature of the contract when it fulfills the obligations, or the law is most related to the contract. However, this provision does not gain support in the case of Export extilcountertrde, Socie-dadanonima (ES) v. Nantong McKnight Medical Supplies Co., LTD (McKnight). The plaintiff, ES, was a company in Spain, the defendant, McKnight, was a company in mainland China, and ES sued McKnight for non-conformity of goods. In their contract, they did not choose the proper law. McKnight advocated using Chinese laws as the proper law pursuant to the mentioned Article 41. However, the court did not support McKnight's advocacy. The ruling was that the proper law applied was CISG because, first, the place of business of the parties located in the CISG's contracting states, Spain and China, second, the contract did not exclude the use of CISG. In addition, a similar case, Ningbo Laida Auto-mobile Technology Co., LTD v. MaRaMedical-Technical-AidGmbH, also had the same ruling for applying CISG as the proper law, which shows that courts can find support for using Chinese laws as the proper law in a situation where parties do not choose the proper law. However, the use of CISG is still rare in China, and the cases mentioned above are a minority. Most of the courts in China prefer choosing Chinese laws as the proper law according to Article 41 (Liang, 2024). Therefore, there is a problem in choosing the proper law in disputes about Sino-foreign trade.

CISG is an international treaty published on 11 April 1980. As the most influential convention in the world, it has 97 contracting states (Jablan, 2024). Large economic entities such as China, the United States, and the European Union (EU) all adopt CISG and recognize its function to promote fair trade and mitigate international trade barriers with consideration of the differentiation of society, economy, and legal system. CISG is usually applied in contracts where the parties involved are the contracting states. Although the parties do not mention in the contract that CISG is the proper law, it still can be the proper law for the interpretation of the contract. In addition, parties can avoid CISG through Article 6 of CISG, so it is not mandatory for an international trade contract to apply CISG. Sinochem International (Overseas), PTE LTD (Sinochem) v.

Thyssenkrupp Metallurgical Products Gmbh (Thyssenkrupp), a ruling case from the Supreme People's Court of China (SPC) in 2013 when the General Principles of the Civil Law of the PRC was still effective, Sinochem sued Thyssenkrupp for non-conformity of goods. Both of the parties located in the contracting states of CISG, but they decided to consider New York laws as the proper law without mentioning the exclusion of CISG in advance. Although the parties had an early decision on using New York laws to interpret the contract, SPC ruled that CISG is the proper law instead of New York laws, and New York laws could only be used as a supplement for the issues that CISG does not include. However, scholars argued that SPC recognized the effectiveness of New York laws and CISG, but it prioritized CISG and considered New York laws as the supplement, which is a logical mistake reversing the order of using domestic laws and international treaties (Liang, 2024). It is a conflict in the sequential application of domestic laws and international treaties. Logically, domestic laws should be prioritized in situations where the contracts clearly state that domestic laws are the proper laws, but logical mistakes still exist in legal practice.

Compared to CISG, PICC, published in 2016, is not a formal principle. Furthermore, there is a functional difference between CISG and PICC, which is that CISG is limited in lawsuits, but PICC can be applied in arbitration (Bridge, 2014). PICC regulates general rules for international commercial contracts, and parties can use it to interpret the contract in various situations. First, if PICC has been chosen by parties to govern the contract, it shall be applied. Second, if parties reach a consensus on governing the contract by general principles of law, PICC may be applied. Third, if parties do not decide on the proper law in the contract, PICC may be applied. According to the above, PICC seems to be a supplement to domestic laws and international treaties in international commercial contracts, and its supplemental role promotes the development of CISG. However, its limitations in legal practice should not be ignored. For example, PICC cannot be used in European judicial cases, and it cannot automatically be the proper law when parties do not clearly state the use of PICC (Bridge, 2014).

3.2 Articles Related to Non-Conformity of Goods

Non-conformity of goods, its general meaning is that the goods delivered do not comply with the requirements included in the contract. In general situations, the requirements in the contract contain quality, quantity, description, packaging, and any other requirements. Non-conformity of goods, as one of the reasons for material breach of contract, plays an important role in the international trade of sale of goods. However, the specific definitions of non-conformity of goods are various. In legal practice, the determination of it mostly depends on the proper law applied.

CCPRC integrates and perfects the Contract Law of the PRC as a part of it. The third part, named Contracts, has two subparts, including General Rules and Nominate Contracts, and Sales Contracts are contained in Nominate Contracts. Although CCPRC has a clear division of different kinds of contracts, conformity of goods or non-conformity of goods is not written clearly as a separative part. A related article in CCPRC is Article 511 (1), which shall be applied when the contract does not regulate the requirements of goods clearly. Pursuant to Article 511 (1), if the requirements of goods are vague, parties should perform the contract complying with the compulsory national standards; if there are no compulsory national standards, the recommended national standards should be complied with; if there are no recommended national standards, the industry standards should be complied; if there is no national standards and industry standards, customary standards or specific standards indicating the goal of the contract should be complied. It implies that compulsory national standards should be prioritized first, the recommended national standards, industry standards, and customary standards or specific standards indicating the goal of the contract are followed orderly. However, as a Chinese domestic law, it does not deal with problems related to the Sino-foreign contract, and it leads to potential trouble. When Chinese suppliers are involved in an international sale of goods contract in a situation where contracts do not include clear requirements of goods nor the proper law, and the international or foreign standards of the goods are higher than Chinese compulsory national standards, there is a dilemma between choosing the standards because CCPRC does not contain the logic of which standards should be prioritized.

In the case Japon Elektronik Teknoloji Ticaret Limited Sirketi (Japon) v. Qingdao Hisense Import and Export Co., LTD (Hisense), the court found out the facts that Hisense asked Bay Area Compliance Labora-Tories Corp. to test the products, and they passed the tests. However, the products did not pass the test in Turkey, so Japon recalled all the sold products. Although this case happened be-fore

CCPRC came into effect, it reveals that Chinese domestic laws have limitations in dealing with these issues.

Conversely, as a specific treaty aiming at promoting international trade of sale of goods, CISG has a clearer interpretation of conformity of goods. According to Article 35 (1) of CISG, the con-formity of goods contains several features, including quantity, quality, specification, and packaging. First, the quantity should be described in a way of quantitative values, such as identifying a single good and listing the exact number. Second, quality is a general concept, it contains physical quality, chemical quality, and any other types of quality. Furthermore, the quality also contains the procedure of producing goods such as the place of production and the use of labor (Shabani, 2015). Third, the description defines the features of goods. For example, the length and width of bandages. Fourth, the packaging is considered a part of the conformity of goods. In international sales of goods, the packaging needs to ensure that the goods can be protected appropriately. Buyers can re-quire the sellers to print signals or identifications on the packages.

In addition, Article 35 (2) provides a definition of conformity of goods, the goods are suitable for the purpose of goods, and they have the same descriptions; the goods are suitable for the pur-pose of goods when parties conclude the contract; the quality of goods is the same as the sample provided by sellers; the goods are packaged as the same kind of goods or in a manner that the goods can be protected appropriately.

A case ruled by the Supreme People's Court of Zhengjiang determined the non-conformity of goods pursuant to Article 35 (2) in CISG. Ningbo Laida Automobile Technology Co., LTD (Laida) v. MaRaMedical-Technical-AidGmbh (MaRaMedical), the process went through two trials. MaRa-Medical, the plaintiff, sued Laida, the defendant, due to a material breach of contract. The fact is that Laida e-mailed MaRaMedical a formal invoice indicating that Laida sells MaRaMedical 10,000,000 disposable face masks (USD 0.43 per), 500,000 FFP2 masks (USD 1.99 per), a total price of USD 5,295,000, and mentioned that the delivery period is 12 days after the confirmation of advance payment and packaging. On April 7 and 8, 2020, MaRaMedical paid the required ad-vanced payment, required printing CE number on the box of the goods, and highlighted the date of arrival of goods as April 8, 2020. However, the goods were intercepted by Xiaoshan Customs for failure in quality inspection, which led to a delay and arriving 2,764,000 disposable face masks, 60500 FFP2 masks. The court of first instance ruled that Laida return USD 1,271,174.72 and compensate the interests (APR 4.12%) to MaRaMedical. Furthermore, the court of second instance upheld the original ruling. One of the controversies in the case is the printing of the CE number. A product containing a CE number symbolizes that the product is qualified with EU's requirements on safety, health, and environmental protection. Therefore, the masks involved in the case should be qualified with the EU's requirements. The failure to fulfill Chinese standards for the masks, which is the same as the European Union's requirements, is the evidence indicating non-conformity of goods according to Article 35 (2) because the masks cannot fit for the purpose of goods having the same description.

4 REMEDIES AND COUNTERMEASURES FOR BREACH OF CONTRACT DUE TO THE NON-CONFORMITY OF GOODS

In the dispute between Japon and Hisense, Japon recalled the sold products without informing Hisense in advance. Japon and Hisense did not reach an agreement on solving the problem, so they had to go through a judicial procedure. When a breach of contract happens due to the non-conformity of goods, sellers should react immediately and appropriately to mitigate the loss. In a situation where PICC can be applied, buyers cannot avoid the contract and seek further compensation if sellers have fixed the problem of non-conformity of goods according to Article 3.2.4 in PICC. For example, the methods to fix the problem can be proposing an effective plan for repairing, substituting, or making the goods fit the contracts as soon as possible. Conversely, the buyers have the right to performance, so they can require sellers to repair, replace, or other cures of non-conformity of goods pursuant to Article 7.2.3 in PICC. In addition, Article 3.2.15 of PICC interprets that if parties make a consensus on avoiding the contract, both parties need to return whatever they supply. Sellers should refund the payment, and buyers are liable to return the products to sellers, although they are defective.

Another issue in the Japon and Hisense case is the unclear oral contract. An unclear oral contract containing only prices and dates without specifying the conformity of goods can bring potential risks to both parties. From the perspective of buyers, they may face the problem of receiving goods failing to

satisfy their expectations. From the perspective of sellers, they may be disadvantaged when sellers claim that the goods are not complied with because an interpretation prejudicing sellers will not be preferred when sellers provide implicit terms pursuant to Article 4.6 of PICC.

To solve and avoid problems, first, a written contract is better for preventing any existence of unexpected content or missing content. It can ensure certainty and avoid litigation because it provides fixed written evidence (Ni Shuilleabhain, 2005). Second, parties should reach a consensus on the proper law and choose one when concluding contracts. An explicit statement showing the proper law applied in the contract will eliminate misunderstandings regarding the interpretation of terms. Third, parties should determine conformity of goods in advance. Sellers can send buyers samples of goods before concluding contracts. Furthermore, a term including quantity, quality, specification, packaging, description, usage and purpose of goods should be stated in contracts clearly, which ensures buyers receive the expected goods and avoids sellers getting into trouble because of misunderstandings. Fourth, to examine the conformity of goods fairly, a term requiring a third party as the agent to examine goods is supposed to be added in contracts. A professional third party promotes fairness and prevents parties from disagreeing on the conformity of goods. Fifth, in situations with absence of remedies or solutions for the non-conformity of goods, parties ought to discuss with each other and seek a strategy for mitigating and covering the loss instead of terminating contracts without a consensus. The suggestions above are beneficial to fair trade in an international context; they prevent companies from having potential troubles and encourage companies to cooperate, so they are meaningful to be taken into consideration.

5 CONCLUSION

This study research breach of contract caused by non-conformity of goods in the context of BRI, analyzing Article 511 in CCPRC and Article 35 in CISG supplemented with case analysis. It finds out that the missing predetermination of the proper law and terms of conformity of goods in contracts leads to disputes on breach of international contract for sale of goods. To solve the problem, parties should use a written contract including terms related to the conformity of goods, predeter-mine the proper law, and invite a third party to examine goods. What is more, a single legal term may have different definitions due to the differences in legal systems between countries, which makes international trade more complicated than domestic trade. Enterprises should fully understand important terms in international commercial contracts, such as the term that has been highlighted above, non-conformity of goods. Except for the differentiation of the legal system, the distinction of business culture and customs is crucial for enterprises expecting to broaden their market globally. The reason is that in countries following a precedent system, such as the United States, the judge rules the case not solely based on law clauses but in reference to its precedents, culture, and custom. Finally, the trend of globalization is unstoppable, and more international commerce plans like BRI will come out in the future. In the future, more studies focusing on guiding enterprises doing business and solving disputes cross-culturally and cross-nationally need to be conducted.

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