"Dimitrie Cantemir" Christian University
Knowledge Horizons - Economics
Volume 5, No. 3, pp. 98–101
P-ISSN: 2069-0932, E-ISSN: 2066-1061
© 2013 Pro Universitaria
www.orizonturi.ucdc.ro

International Commercial Contracts

Mihai Dorel VLAD

Faculty of Law and Administration, "Dimitrie Cantemir" Christian University, E-mail: vladmdorel@yahoo.com

Abstract *International trade in the last two decades has witnessed a great development in the various fields. Modern international trade is to not only the exchange of tangible goods and capital transfer and exchange service called invisible trade. This includes services such as international transport of goods and passengers, telecommunications, international tourism, international insurance and reinsurance services performed in ports and international airports, maintenance representations economic, diplomatic, consular and foreign military and their staff.*

Key words:
Agreement, trade, international relations, commercial sale.
JEL Codes:
L14

1. Introduction

International trade agreement will be made between two or more participants in international trade (legal subjects belonging to the international legal order, or as subjects belonging to national legal systems) in different countries in order to create, modify or extinguish legal relations international trade. He is one of the most important legal institutions of international commercial law and acts as the primary legal instrument of making international economic and trade exchanges. I belong to the sphere of international trade agreement: sale of international trade, international trade mandate, commission international transport of goods and people, international security, etc.. Generalizing we say that the scope of international trade contract includes any agreed trade agreement with foreign relations or foreign markets. International trade agreement is distinguished from contracts between participants in internal trade through internationality element which, together with attribute merchantability, defining its specifics and bounding it to the other contracts covered by the general rules of the common law.

Issues of internationality in a commercial contract determine that removal under exclusive contract to the court system of substantive law creating the vocation to bear the incidence of multiple legal systems. Although free trade provides global benefits, eliminating a barrier to trade on a property affects shareholders and employees of national and international industry producing that good. (Douglas A. Irwin, 2010)

2. Specific International Trade Contracts

Citation counterparties to foreign law may be novel because private international law allows them (based on Art. 73 of Law no. 105/1992) such freedom. Therefore, the parties will not set its own legal, only one derivative. The concept of "autocracy contractual" no law or contract which supports learning contract to generate obligations simply by existing independently of any legal system is now obsolete. Trend in legal doctrine to reject the theory of "contractual autocracy" or the contract without law, it was considered that the parties reach an equivalent result if you use the model contracts or international commercial usage or if, in cases of dispute to arbitration in equity. But contracts of any type are not broken legal system and assume the existence or location indexes they comprise rules that are integrated in content "lex mercatoria". Regarding the connection contract with lex mercatoria, it only demonstrates that, in fact, the contract has its support in other sources of law than national legal systems.

The principle of autonomy of will (Radulescu, 2011) occur laws enshrined in the overwhelming majority of countries, without check, however, the claim that it would be a universal principle. Also, although it develops rules containing different from one country to another, I think he can articulate the principles of lex mercatoria in the system. In virtue of the Principle of autonomy of will, the parties designate the lex contractus election jurisdiction clause. Thus there are two contracts. First, the parties agree that the applicable law of the contract. Second, international trade agreement itself is subject to applicable law. The

www.manaraa.com

two contracts may be governed by different laws. Terms of adaptation to the new circumstances of the contract are part of insurers and option terms of the long-term contracts, some common to all contracts of this kind, others only on certain contracts, the distinction between them being given the specific benefits that are obliges parties and other elements or circumstances that require such solutions. (Romain & Welch, 2003)

They are known as extension clause or clauses of contractual relations option as it gives one or both parties the right to elect. There are also clauses: competing offer, most favored customer clause, clause first refusal hardship, the force major clause. Clause competing bid is commonly used especially in long-term international contracts that the supply of raw materials or sale and purchase, and is usually in favor of the buyer (client or service), so it can be eligible for best occurs during the execution of the contract in the international market, but also for the seller to take advantage of any increase in value of the goods covered by the contract. In the latter case the seller has the right to require the buyer to pay the price the seller would get the same goods from other customers.

Clause competing bid is contractual stipulation entitling one contracting party, in the event that a third party makes an offer to contract on terms more favorable than those in the contract being performed, request modification of this contract within the meaning of the third party offer. If the other party refuses to align to the new contract, it may be suspended or terminated directly or as a result of a judgment judicial character. (Scurtu, 2003)

For the purposes of this clause is necessary to assess how favorable the offer third party, which involves comparing the deals with the pending execution. Also competing bid must come from third known and serious, able to meet its commitments and not simply offer convenience, references and reputation, reliability, good faith and loyalty third party bidder is designed precisely to remove offers inconclusive or artificial.

Comparing the terms of the tender with the contract may be achieved through direct negotiations between the parties or by calling an independent and competent third party which may be a technical expert or an arbitrator. This latter solution is preferable because sometimes providing third party promissory supply is not always possible due to third party opposition bidder who is interested in his offer secrecy, so it is necessary to resort to a neutral third party who can keep confidentiality. An example of such a clause may be: if during the execution of the contract the buyer shall notify the seller received a competing offer received from a known supplier and serious contract containing a price lower than all other factors remain equal to the contract, the seller will have within 10 days of receiving written notification from the buyer to accept the competing offer. In the absence of an agreement between the seller and buyer, the latter will be released provided (obligation) to purchase from Seller, this contract finally taking on the expiry of 10 days.

Failure to comply with this clause penalties are set by the parties, as in the example above, joining them possibly penalties arising from the laws that organize contractual liability. The parties may also agree that this clause does not take effect until after a certain period of time after termination. Similarly, the clause may entitle them to invoke a beneficiary wider sympathetic to but not directly to customers or its competitors. Clause competing offer can be combined with most favored customer clause. Most favored customer clause is contractual stipulation that the seller or supplier of goods or services is obliged to pay each other's contractor (purchaser or beneficiary) the most favorable conditions that would give any other contract partners on the same subject. (Costin & Deleanu, 1997)

The purpose of this clause is to adjust long-term contracts to market conditions, to avoid the creation of one of the contractors, an unfavorable situation in relation to competing third. From this point of view the most favored customer clause is similar to clause competing bid, with the distinction that if the purchaser latter clause align in his favor based on the terms of the contract offer that he himself received from a third (competing offer), while if clause, the contract is in line with the conditions on which the seller has agreed to a third party (most favored customer). The effects of this clause occurs, usually automatically once they have been granted more favorable to a third party, the old obligation lapsed, the parties may also adapt the contract to provide the most favorable conditions not to do automatically but through negotiations, on demand promise.

When adjustment is made by contract negotiations, the parties may agree that the more favorable alignment to be done either retrospectively once the third party has begun to benefit from more favorable conditions are only for the future, from the moment when the negotiations, possibly from when the arbitration judgment was decided to adapt the contract. Called preemption clause, clause first refusal contractual stipulation that one called promisor, undertakes to the other contractor named beneficiary, to give preference to any other customer in the event that they decide to enter into future a particular contract, and if a beneficiary refuse the offer, promisor can remain free to deal with any other client. This term is often commonly used in commercial practice as expressed by the Anglo-Saxon name of "The First Refusal clause", but it

www.manaraa.com

is common international practice and Romanian firms. (Popescu & Flondrea, 2000)

In legal doctrine took shape two different views with regard to the legal classification of first refusal clause. Thus, some authors believe that this is a contract clause adaptation to new circumstances with the most favored customer clause and the clause competing bid, while others fall into what they call the group to continue the contractual clauses together unilateral promise to contract to contract and promise bilateral pact preference. First refusal clause expresses a pre-contract unilaterally affected by a condition precedent that the parties simply potestative determine future contract conditions, which determine their subsequent contract negotiation stage, something that is one of the main differences between the present and the promise clause to unilaterally contract. (USITC 2004)

Regarding the effects of first refusal clause, promissory obligation to give preference there that the condition precedent was not completed (pendent conditional).

However beneficiary may assign its right to claim promissory correlative obligation to a third party under the same conditions as unilateral promise, but with a reservation: practice shows that there is intuitu personae and ability assignment rule is the exception, while the promise Unilateral Romanian law applies. In lex contractus and unless the parties expressly confers jurisdiction referee he could not judgment that takes place international commercial contract between the promisor and the beneficiary, even if promissory expressed willingness to contract with a third party. However the beneficiary may request a contract between promisor ban and third, by way of an injunction under the provisions of art 581 Code of Civil Procedure. (Sorop, 2005)

The diversity of national tax systems, tax policies, features and the use of taxes and levies as levers for stimulating or limitation to the emergence of economic double taxation, whose effects are not only negative. (Radu, 2012)

The literature (Radulescu, 2012) has shown that in international practice there are three types of definitions of force major. Thus, it is firstly a synthetic definition, according to which the force majeure means unforeseeable and insurmountable circumstances that prevented from performing the contract.

Under Article 79 of the UN Convention on Contracts for the International Sale of Goods of Vienna, "a party is responsible for failure of any of his obligations if he proves that the failure was due to an impediment beyond its control and that it could not expect reasonable of her to take into account when concluding the contract, to prevent or overcome or prevent or to overcome the consequences. (Popescu, 1983)

Likewise is the case of force majeure as defined in the CMEA General Conditions of Delivery, from 1968 to 1975, which provides: "The force majeure means circumstances that occurred after the contract as a result of extraordinary events, unforeseen and unavoidable for a party." On the other hand, an analytical definition that is that it lists all imaginable circumstances could be considered force majeure.

This definition, characteristic of the Anglo-Saxon, is reflected in the contents of general conditions developed under the aegis of the Economic Commission for Europe of the United Nations, for example, the general conditions for supply and installation of equipment materials import and export. Circumstances that may constitute force majeure vary depending on the contract. In general, the list includes various situations, such as natural disasters, acts of public power, armed conflict or other serious conflicts, serious labor disputes, transportation difficulties, supply, use of energy restriction, etc. Circumstances of force majeure shall not be treated include: lack of capacity of producer organizations, lack of storage of the beneficiary, the subcontractor delayed delivery of parts, temporary incapacity of workers. Finally, a mixed definition, which includes both a summary and a listing, forms exempli gratia of the main cases of force majeure. The definition that best covers the variety of situations that may be considered as the major force characteristics is the latter, being the most common in practice.

Hardship (unpredictable) is encountered or known Romanian doctrine under two forms namely "hardship" or "substantial hardship" form derived from English, i.e. "unpredictability clause" (clause d'imprevision) coming form from French. It\'s called hardship contractual stipulation that allows modifying the content of a contract if, during its execution, some events arise that affect the contractual balance, substantially changing the data elements that the parties had in mind when contracting, creating one of consequences for both parties in the execution of their duties onerous that it would be inequitable to bear alone. Essential is that these events occur or arise through no fault of any of the contract which, whatever it was reasonable and prudent, they would not have foreseen at the time of concluding the contract.

Hardship is a creation of the Anglo-Saxon practice, used by the parties joining in the dominant trend insurance contracts trade stability by promoting legal mechanisms likely to allow their adaptation to dynamic market situation. In light of the new legal techniques, the content is never final contract, he may be reinstated concerned the procedure complex renegotiation of any disputes, the parties imagined.

www.manaraa.com

3. Conclusions

As far as international trade is beyond purely private interests to express the interests of the states, in turn, contracts by which the international economic cooperation beyond the scope of civil law to borrow the characters and functions of public law. Amplification and diversification of trade relations and international economic cooperation in the modern era have generated profound changes in the international trade law governing these relationships.

Most commerce law international experienced a renewal process materialized through both its traditional institutions adapt to the exigencies of modern economic life, and the emergence and expansion of new legal instruments, perfectly compatible with the needs and interests of the subjects\' current business relationships.

International trade is known from ancient times, carried on between different local communities first, then developing it along the pathways of communication and geographical basins, using different exchange values. Promote exchange of goods and the emergence of money determined new mutations in the design and execution of business operations.

References

1. Douglas I. International Trade Agreements, in The Concise Encyclopedia of Economics, http://www.econlib.org/library/Enc/InternationalTradeAgreements.html

2. Legea aplicabila contractului de comert international, http://www.avocatura.com/academica/referat301-legea-aplicabila-contractului-de-comert-international.html

3. Wacziarg, Romain, Karen H. Welch. (2003). *Liberalizarea comertului si crestere economică: Noi dovezi*, Cambridge, Mass, 2003.

4. Scurtu S (2003). Dreptul comerțului internațional, Universitaria Publishing House, Craiova, p. 115.

5. Costin M, Deleanu S, (1997). Dreptul Comerțului Internațional, Partea specială, Lumina Lex Publishing House Bucharest.

6. Popescu T, Flondrea I. (2000). Dreptul Comerțului Internațional, Constanța, pp. 131-132.

7. SUA, Comisia pentru comert international, Efectele economice semnificative ale restrictiilor de import din SUA, USITC publicatia nr. 3701, iunie 2004.

8. Radulescu D. (2012). *Uniunea europeana – de la traditii la drepturi fundamentale*, ProUniversitaria Publishing House, Bucharest.

9. Sorop A. Clauze de adaptare a contractului de comert international la noile împrejurari, http://drept.ucv.ro/RSJ/Articole/2005/RSJ34/0116SoropAlex.pdf

10. Tudor R. Popescu (1983). Dreptul Comerțului Internațional, Didactică şi Pedagogică Publishing House Bucharest.

11. Rădulescu D.M. (2011). *Elemente fundamentale de drept*, Universul Juridic Publishing House Bucharest

12. Radu M. (2012). International Double Taxation, in Procedia Social and Behavioral Sciences, 62– 402, p. 488.

www.manaraa.com

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.

www.manaraa.com