

The Problem and Countermeasure: Research on the Construction of Arbitration Mechanism in China International Logistics Innovation

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Abstract: Compared with market economy countries where the arbitration system on international logistics is well-developed. With China's entry into the WTO and the implementation of the one belt one road mechanism, the construction of the arbitration system develops rapidly. On the one hand, both the theoretical circle and practice circle are faced with shortage of the supply of the experts on domestic and international logistics arbitration, rules and regulations, research on Non-domestic arbitral awards in Public International Law and Private International Law, and research on the rules of Chinese arbitration and International arbitration. On the other hand, rules of international arbitration on Logistics are not pay enough attention to. Therefore, suggestion: strengthen the supply of talents as well as rules and regulations, deepen the cooperation between judicature and arbitration in logistics, reinforce the collaboration between mainland and Hong Kong, Macau and Taiwan, enhance the association between Chinese arbitration and international arbitration on Logistics.

1. The status quo of the construction of arbitration mechanism in China International Logistics

1.1 The demand-side of arbitration mechanism in China International Logistics and the status quo of studying of arbitration mechanism

Since the reform and opening up and the joint of WTO, especially the promotion of One Belt and One Rode, the international logistics is frequent daily, the volumes of trade have doubled, and the commercial disputes are more. it is more stressed the function of the arbitration of international logistics, especially as to the settling the international economic disputes. This demand-side of arbitration of international logistics makes the relevant departments, ventures, arbitration industries and legal professions of china realizing the significance of the promotion of the going abroad of logistics enterprise, the development of the domestic arbitration and legal profession, and better protection for the party's legal interests. Under this circumstance, it is more and more active to concern, learn and study the specialized knowledge about the arbitration of international business,

and discuss the rules and methods of the arbitration institutions of business at home and abroad.

It can't deny that there is gap between this demand-side of international logistics arbitration and supply-side studied by the logistics arbitration institution. It embodies that the insufficient of the professional person and rules and regulations, and the insufficient study of the foreign arbitral decision included by international public law and private law, and the insufficient study of commercial arbitration rules at home and abroad.

In China, as to the units, there are some good units on studying the commercial arbitration, such as CIETAC, Institute of International Law of Wuhan University, University of international Business and Economics, China Arbitration Law Society. And there are contributions of other units or scholars.

For example, Professor Weidong Zhu, devoting himself to studying the international private law, international commercial arbitration, and international trade law, has a reputation at home and abroad on the settling disputes for foreign civil and commercial cases in Africa, and dissolution of Africa internal conflict of laws, and on the study of settling disputes mechanizes of foreign civil and commercial case between Africa and China. He also put forward that China should expand cooperation in civil and commercial case and criminal fields together with other countries along the One Belt and One Road. He also propose to establish the multilateral mechanism of settling arbitral dispute, and of assistance of civil and commercial case and criminal justice(Ting,2017).

And for example, Professor Xuefeng Wang of Shanghai Maritime University., who not only has the long term practices in maritime department and international logistics enterprises, but also owns the theory in university research department. He also has put forward the idea of establishment the hardware and software environment of arbitral center of international logistics in hanghai(Xuefeng, Feng, Binggui, 2006), he put forward opinions for that idea (Xuefeng, Hongda, Ming, 2008).

1.2 The status quo of practice of supply

Compared with market economy countries where the arbitration system on international logistics is well-developed, China starts late, yet it strives to become a leader. Such as the arbitral committee of international economic and trade of China as first institute of new China , over 60 years ,from 1980 has found branches in Shenzhen, Shanghai, Tianjin, Chongqing, Hangzhou, Wuhan, Fuzhou. The Hong Kong arbitral center was found in 2012. Until now, the parties to case involved hundreds of countries and regions, the decisions obtained admits and apply in hundreds of countries and regions. We should say that it's power of international influence is strengthening(Chenjie, 2017). In addition, in recent years, the commercial arbitration industries of Chinese mainland are trying to go out to exchange with commercial arbitration industries of Hong Kong, Macao, and foreign countries. In general, China makes progress rapidly in recent years, which more and more emphasize the practical operation of international logistics arbitration, no matter from the coastal of Shanghai, Zhejiang, Liaoning, Tianjin, to middle Chongqing, Henan, Hubei, etc. or from the State Council to related departments.

However, there are some problems to be solved, such as the problem that the Chinese arbitration industries are large but not strong and the situation of scattered and disorder are salient; The international logistics arbitration of China is in early stage and the international competitiveness is weak; the international popularity and reputation should be improved; especially the status qua of supply services can't meet the need that increasing right and interest protection of international logistics.

Such as China in central Asian countries, Many contradiction and conflict are appearing with the quickly increase of the China-invested enterprises, employees and overseas Chinese. A coal mine invested by Chinese located in Alai district, Osh southern of Kyrghyzstan, owns 40 coal mining

equipment, from which 90% of Osh mine come. However, over 200 trucks from China were stuck and couldn't arrive the destination when local residents demanded the government to nationalize the mine and block the road, which brought damages to the wholesalers, retails and trucks owners came from China. The reasons of such thing derive from the local complex politics, ethnic background and narrow localism (Xinzheng, 2015). It also includes some common problems during the production and operation of China-invested enterprise in overseas that only emphasize production and overlook the exchange with the government and local resident, especially the function of safeguard rights in accordance with law and the international commercial arbitration. Meanwhile, from the other side, it show that the international commercial arbitration including international logistics of China can't meet the need of international trade and logistics of China.

2. The problem exist in building of international logistics arbitration mechanize of China

2.1 “Three insufficient supplies”

The first is that the insufficient of professionals of international logistics arbitration and of supply of rules and regulations; the second is that insufficient study of Non-domestic arbitral awards; the third is that insufficient dissemination of rules, theories and functions at home and abroad.

Nowadays, the arbitration industries in China are large but weak. It refers to many businesses and fields but exist scatter and disorder. It has many employees but lack the professionals especially the experts. These insufficient supplies can't meet the requirement of prosperity.

As to logistics enterprises and employees, the concept of safeguard rights in accordance with law should be enhanced. Because many persons working on logistics lack knowledge of settling disputes and don't familiar to the relief produces, and have weak legal concept of risk prevention, they don't know how to dissolve the disputes occurred in parties.

For example, The Maritime Silk Road proposed from One Belt and One Road in china. It covers long coastal line and includes increasingly prosperous maritime trade. So it better shows the significance of international maritime arbitration. Parties will chose international maritime arbitration not the litigation because of its advantage of small suit and big arbitration, but the degree of China stress it is not high enough. As said by Professor Chaowu Song that, from 1958, maritime arbitration of china has developed over half a century. But, in general, the speed of development is slow and the quantity of case is small every year. It has a great gap with London as the center of international maritime arbitration, which inconsistent with the status of power country in shipping (Nanqian, Yuxiao, 2017).

2.2 “One overlook”

So far, China pays attention to the rules of international logistics arbitration not enough. Its mechanism should be improved and its core business should be adjusted. There is no specialized institution in Mainland of China at present. The Court of arbitration of One Belt and One Road was established in Beijing on October 28th, 2016. Its current emphasis is put on the dispute settlement of both Chinese enterprises. It aims at the basic construction of countries included in One Belt and One Road invested by Chinese enterprises. The arbitrators and members of the expert advisory committee are most major in engineering construction(Xuezhong,2016). That is to say, its businesses not involve the international logistic arbitration.

It is obvious that China pays attention to international maritime arbitration not enough, because china is influenced by traditional terrestrial power long term, which emphasizes the terrestrial power and overlooks the maritime power. Because the tradition of mainland center country since

the period of Xia, Shang, Zhou, and the policies of Maritime Prohibition and Seclusion in Ming and Qing dynasty, the arisen mechanism in modern just aim on the domestic civil disputes not the foreign. In China, the origin of quell of litigation in folk is long. It is most prominent that the disputes are settled by patriarchal clan; Guild dissolve disputes adopted the methods of public discussion with penalty, board meetings. From the view of simple commercial regulation published in 1904 by the government of Qing Dynasty, and commercial law and enforcement of commercial law in early republic of China, they clearly stipulated that the commercial committee's term of reference usually in industrial and commercial disputes and commercials (Chenlin, 2002), not involve maritime and international logistics.

Take the mechanism of disputes settlement of China-AFAT as an example. Not only there isn't special logistics agreement in whole district, but also lack of special treaties or agreements among countries. And the related principles and rules of the agreement are not specific. The composition, applicable procedure and scope of arbitral tribunal are limited. Especially, it is still vague of how to dissolve the logistics disputes (Ping, Peng, 2014).

3. The countermeasures and proposals

3.1 China should strengthen the supply of professionals and rules and regulations, and involve the formulation rules of international logistics arbitration

First, the supply of professionals should be strengthened. The international logistics arbitration was set by people, not the God, so China should involve into the formulation of rules positively. There shouldn't be the situation "seeing things but not people" in China. We should "not only see things but also people". The former means that emphasis the logistics trade and volume, and the latter means that we should not only pay attention to the logistics trade and volume, but also emphasize the cultivation of lawyers and arbitrators, so that we may have the ability to participate in the formulation of rules of international logistics arbitration. These are the necessary conditions for a big trading nation into the power trading, also are the proper posture and portion for a big nation into power in charge.

Second, the supply of law should be strengthened. It includes two aspects: first is that we should revise the current regulations of arbitration in time, and improve the regulation and system of the international commercial arbitration, especially the logistics. Second is that we should strengthen the study of rules of international logistics arbitration and legal norm, that comparative analyze other countries' rules of logistics arbitration, especially the countries along with OBOR, make the key points of selection arbitration institute, place, applicable law, rules, enforcement of decision, and risk assessment, that borrow other countries' advanced and beneficial arbitral system in open way, meanwhile, improve our nation's logistics arbitral system and participate in the formulation of rules of international logistics arbitration.

3.2 China should strengthen the cooperation between logistics arbitration and judicial, mainland and Hong Kong, Macau and Taiwan, and China and foreign country

Arbitration is the patron saint of International Logistics, together with judicial system is the internal need of arbitration mechanism and also the international trend. There are many relations between arbitration and judicial system, so we should positively participate in the cooperation mechanism of arbitration and judicial system, not avoid it. It also is the requirement of strengthening the supervisory mechanism of commercial arbitration, and connecting with international practice. Hong Kong, Macau and Taiwan hold a unique position in the reform and opening up, so the cooperation with them is part of the cooperation with foreign countries.

Now, the judicial cooperation with other countries along with OBOR more attention to the criminal justice field, not the civil and commercial fields. It provides large space for international commercial arbitration included China to development.

Take Central Asia and Eastern Europe as example. Central Asia and Xinjiang of China are interdependent and linked by river and mountain, the logistics quantity doubled with the efficient operation of freight trains Chongqing-Sinkiang-Europe, Zheng-Sinkiang-Europe, but the trade disputes were more. Every country hope to establish a peaceful, stable, and safe operation environment. So, China should respond actively to communicate in national level, establish and improve the cooperation environment between arbitration and judicial which include the coordination mechanism of international logistics arbitration.

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