Наконец, перспективы развития механизмов защиты авторских прав включают необходимость пересмотра и уточнения правовых норм в связи с использованием новых технологий, таких как искусственный интеллект (ИИ) и машинное обучение. С развитием ИИ в сфере создания контента возникает вопрос, кто будет считаться автором произведений, созданных с использованием этих технологий, и как распределить авторские права. Одним из возможных решений может быть признание авторских прав за создателем ИИ-системы или лицо, инициировавшее создание произведения. В то же время необходимо разрабатывать новые правовые подходы к интеллектуальной собственности в контексте автоматизированных технологий, чтобы обеспечить защиту прав авторов и пользователей, а также дать четкие и прозрачные правила для регулирования этого нового направления.

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RESEARCH ON THE RULES OF RISK TRANSFER IN THE PURCHASE AND SALE OF GOODS BY ROAD

Summary: This paper discusses the transfer of risk in the sale of goods by road in modern trade practice, especially under the framework of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Firstly, the article analyzes the background and significance of the trade of goods by road, and emphasizes the importance of unifying the rules of international trade and defining the time point of risk transfer. Then, the article outlines the definition, characteristics and development process of the sale of goods by road, and especially points out the role of CISG in the establishment of international legal framework. The article discusses in detail the specific rules of risk transfer centered on Article 68 of CISG, including the rules of contract establishment transfer, ownership transfer and delivery transfer, and explores the exceptions to risk transfer. Through the case analysis of the Peruvian fish dispute, the article demonstrates the application and interpretation of CISG in actual trade disputes, and emphasizes the importance of respecting the autonomy of the parties and improving the certainty of the application of law. Finally, the article summarizes the influence of the rules of risk transfer in the sale of goods by road on legal practice and international trade, and points out its role in reducing legal barriers, reducing trade disputes and promoting trade development. On this basis, Chinese enterprises should fully understand and apply the relevant provisions of CISG, rationally allocate risks and ensure their own rights and interests.

Chapter I.ntroduction

1.1 Research background

In modern trade practice, in view of the fact that most commodity buyers are not ultimate consumers, but play the role of middlemen, it is increasingly frequent for middlemen to resell commodities in the process of transportation to earn price difference or avoid price fluctuation risks after purchasing commodities. The legal issues related to the transaction of goods in transit mainly focus on the mechanism of risk transfer. According to the United Nations Convention on Contracts for the International Sale of Goods and the legislative practice of most countries, the principle of "risk is transferred to the buyer when the contract is established" is generally adopted, that is, after the sales contract comes into effect, even if the subject matter has not actually been delivered to the buyer, the risk has been transferred to the buyer.

At the time of signing the road goods transaction contract, the goods have been out of the actual control of the seller. Therefore, the damage or loss of the goods in the course of transportation is not directly related to the seller. The seller usually insures the goods when they are delivered for transportation. Once the seller and the buyer sign the sales contract, the relevant goods in transit documents and insurance documents will be transferred to the buyer, so even if the goods are damaged or lost, the buyer can also get insurance compensation.

With the promotion of the "the Belt and Road" initiative, land trade is facing new opportunities for development. Market participants have the need to quickly realize the resale of goods in transportation and the return of funds. At the same time, asset-light enterprises also have the need to expand their commercial scale through financing of goods in transit, which requires a transport document that can represent the goods and be separated from the goods themselves.

1.2 Research significance

1、Harmonizing international trade rules and lowering legal barriers

The United Nations Convention on Contracts for the International Sale of Goods (CISG), as the most widely used contract rules for the international sale of goods in the world, provides a unified risk transfer rule for international trade, helps to reduce the legal obstacles caused by the differences of laws in different countries, and promotes the facilitation and efficiency of international trade.

2、Define the time point of risk transfer to ensure fair transaction

According to Article 68 of the United Nations Convention on Contracts for the International Sale of Goods, the time point of risk transfer in the sale of goods by road is clearly defined as the time when the contract is concluded, unless there are special circumstances requiring early transfer. This provision helps to clarify the rights and obligations of buyers and sellers and ensure the fairness of transactions.

3、Reduce trade disputes and promote trade development

An in-depth study of the rules of risk transfer in the sale of goods by road under the framework of the United Nations Convention on Contracts for the International Sale of Goods will help deepen the understanding of the meaning of the relevant treaties, improve the adjudication methods of disputes in the sale of goods by road, and promote the solution of risk transfer in the sale of goods by road in practice.

4、Respect the autonomy of the parties and apply the rules flexibly

The United Nations Convention on Contracts for the International Sale of Goods (CISG) allows the parties to agree on the point in time at which the risk passes when the goods pass the ship's rail at the port of shipment, based on trade terms such as CIF, CFR, etc. This flexibility reflects the respect for party autonomy, making international trade rules more flexible and able to adapt to the specific needs of different transactions.

5、Improve the certainty of the application of law and reduce litigation costs.

In international trade, especially in the sale of goods, both the buyer and the seller usually buy insurance. In case of cargo damage, either the seller or the buyer, as the beneficiary of the insurance, will eventually claim compensation from the insurance company. Therefore, clarifying the time point of risk transfer will help to improve the certainty of law application and reduce litigation costs.

A thorough study of Article 68 of the United Nations Convention on Contracts for the International Sale of Goods reveals the imperfection of the rules of risk transfer in road goods transactions. This has prompted the international community and national legislatures to review and improve the existing rules to adapt to the development of international trade practices. Clear risk transfer rules enhance the predictability of international trade, enabling buyers and sellers to better assess transaction risks and formulate appropriate risk management strategies, thereby reducing transaction costs and improving transaction efficiency.

To sum up, the study of the rules of risk transfer in the sale of goods by road has an important impact on legal practice and international trade. It not only helps to unify the rules of international trade and reduce legal obstacles, but also helps to clarify the time point of risk transfer, reduce trade disputes and promote the fairness and efficiency of international trade. At the same time, it also promotes the perfection of the international legal system and enhances the predictability of international trade.

Chapter Ⅱ An overview of the sale of road goods

2.1 Definition and characteristics of the sale of goods by road

The general sale of goods refers to the process in which the seller sells to the buyer as the owner, transfers the ownership and pays a reasonable consideration. The sale of general goods is directly or indirectly controlled by the seller when the contract of sale is established, so the transfer of risk when the contract is established is not improper. So, what is the sale of road goods? The sale of goods in transit is also called the sale of goods in transit. Some scholars say that "the sale of goods in transit is the sale of goods in transit. The seller first loads the goods on the means of transport, and then finds a suitable buyer to conclude a contract to sell the goods in transit", which is the sale of goods in transit; Some scholars also say that "the sale of road goods" refers to the act that the owner of the goods first delivers the goods to the carrier for transportation, and then sells the goods in transit to the buyer, including two kinds. One is that the owner of the goods sells the goods purchased by himself and already in transit to the buyer, which is the resale road goods sale,

and the other is that the seller first loads the goods on a ship bound for a certain destination, and then finds the buyer to conclude a contract for the sale of the goods already in transit, which is the sale of road goods sale.In essence, the seller is only responsible for arranging the transportation and delivery of the goods, and does not assume the obligation to transport the goods. A contract for the sale of goods is concluded after the seller has delivered the goods to the carrier so that the goods are in transit. The carrier transfers the goods, but does not change the ownership. Only when the contract between the seller and the buyer is established and delivered, the ownership will be transferred from the seller to the buyer.[1][2][3]

According to the above definition, the author summarizes two major characteristics: first, the subject matter transferred in the sale of goods by road is the goods in transit; second, the transaction of documents. The sale of goods by road is a transaction based on documents. The buyer and the seller can only judge the condition of the subject matter based on the documents, and it is unlikely to know whether the subject matter is actually damaged or lost. This includes bills of lading, insurance policies, etc., which symbolize the transfer of ownership and risk in the goods.

2.2 The Development Course of Road Goods Trading

2.2.1 Early development: the concept of buying and selling goods in international trade

The concept of Sale of Goods in Transit originated from international trade practice, especially in transactions involving bulk materials. This unique trading mode allows goods to be bought and sold in transit, thus significantly improving the efficiency and flexibility of goods flow.With the rise of Maritime Silk Road, the trade demand of spices and commodities such as pepper, cardamom and cinnamon increased, which not only stimulated the development of planting industry in various producing areas, but also promoted the practice of road goods trading. In addition, with the deepening of globalization, the scope and scale of road goods trading are expanding, which is not only limited to the traditional maritime transport, but also extended to air, rail, road and other modes of transport. The popularity of this model makes global supply chain management more efficient, and also provides more trading opportunities and choices for buyers and sellers.

2.2.2 The Establishment of Legal Framework: CISG Convention and Risk Transfer Rules

With the development of international trade, there is a growing demand for the legal regulation of the sale of goods by road. CISG (United Nations Convention on Contracts for the International Sale of Goods) was adopted at the Vienna Diplomatic Conference in 1980 and entered into force in 1988, providing an international legal framework for the sale of goods by road. Article 68 of CISG stipulates the rules of risk transfer in the sale of goods by road, which is a special case of the rules of risk transfer in international trade.Prior to this, Article 99 of the 1964 ULIS (Convention relating to a Uniform Law on the International Sale of Goods) had already provided for the transfer of risk in the sale of goods by sea.

Chapter Ⅲ Legal Framework for the Transfer of Risk in the Purchase and Sale of Goods by Road

3.1 Convention on Contracts for the International Sale of Goods (CISG)

1、CISG Risk Transfer System

The relevant provisions on the transfer of risk have a special chapter in Chapter IV of Part III of CISG, although the United Nations Convention on Contracts for the International Sale of Goods (CISG) does not directly define risk. United Nations Commission on International Trade Law (UNCITRAL)In 1988, a system known as the Case Law on UNCITRAL Texts (hereinafter referred to as "clout") was established to collect and disseminate judicial decisions and arbitral awards related to UNCITRAL legislation in order to promote uniformity in the interpretation and application of relevant legal documents. Caselaw gives a detailed explanation of the Nature of risk. “Chapter IV deal with loss of or damage to the goods sold.… The loss of goods includes cases where the goods cannot be found, have been stolen, or have been transferred to another person. Damage to the goods includes total destruction, physical damage, deterioration, and shrinkage of the goods during carriage or storage. The "loss of goods" referred to in the article covers the following situations: the goods cannot be found, the goods have been stolen, and the goods have

been transferred to another person. These cases are accidental losses that may occur during the transportation or storage of the goods, and these losses are not caused by the intentional acts or negligence of both parties to the contract. As for "damage to the goods", it includes the following cases: total destruction of the goods, physical damage to the goods and deterioration of the goods. Shrinkage of goods during transportation or storage. These circumstances describe the various types of damage that the goods may suffer during transport or storage, which may be due to accidents, natural factors or other causes for which the parties are not responsible. According to the understanding of the above article, we temporarily define the risk as the loss of goods and the damage of goods.[4][5]

2、Article 68 of CISG: Provisions on the rules of risk transfer in the sale of goods by road-the rules of contract establishment are the main rules, and the rules of delivery transfer are the auxiliary rules.

Article 68：The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller. This rule establishes that the risk transfer rule in road goods sale is mainly based on the "contract establishment transfer rule" and supplemented by the "delivery transfer rule". Throughout the development history of CISG, this clause is the result of negotiation and compromise between developing countries and developed countries. At the stage of soliciting opinions, most developing countries, mainly importing countries, advocate the use of the transfer delivery rule. The buyer can not get enough insurance benefits, but the developed countries strongly oppose it. Therefore, the final treaty is established as the "contract formation rule", supplemented by the "delivery transfer rule".

3.2 Provisions of the Laws of Various Countries on the Transfer of Risks in the Purchase and Sale of Goods by Road

3.2.1 Civil Code of the Russian Federation-Rules for the Formation of Contracts

Paragraphs 2 and 3 of Article 459 of the Civil Code of the Russian Federation provide: "The risk of loss or damage to the goods sold in transit passes to the buyer from the time of the conclusion of the contract, if the contract does not provide otherwise or trading practices do not differ otherwise." A clause in the contract that passes to the buyer the risk of accidental loss of or damage to the goods from the time of delivery of the goods to the first carrier may, on request of the buyer, be nullified by a court if, at the time the contract was concluded, the seller knew or should have known of the loss or damage and failed to notify the buyer thereof. "This clause embodies the rule of risk transfer of contract formation, but unlike Article 68 of CISG, it adds the condition of" when there are no other provisions in the contract or when there are no other differences in trading practices ".

In addition, Article 459 of the Civil Code of the Russian Federation also stipulates: "If the parties to a contract for the sale of goods by road agree in the contract that the transfer of risk in the contract for the sale of goods by road shall be governed by the rules of transfer of delivery, that is, from the time when the parties sign the contract for the sale of goods by road." The buyer bears the risk of damage to or loss of the subject matter from causes not attributable to the parties retroactively to the time when the seller delivers the subject matter to the first carrier. However, if the seller has known or should have known that the subject matter of the sales contract has been damaged or lost at the time of concluding the contract with the buyer, but has not truthfully informed the buyer of the situation, so that the buyer who does not know has concluded the contract for the sale of road goods with the buyer against his true intention, the buyer has the right to request the court to confirm that from the time when the seller delivers the subject matter to the first carrier. The buyer does not have to bear the risk of damage or loss of the subject matter. The risk is still borne by the seller: if the buyer does not make the request to the court, it means that he voluntarily

bears the loss. Even if the seller conceals the fact that the subject matter has been damaged or lost when concluding the contract for the sale of road goods, the buyer shall still bear the risk of damage or loss of the subject matter due to reasons not attributable to both parties from the time the seller delivers the subject matter to the first carrier in accordance with the contract. This provision is in line with the basic principle of Art. 68 CISG that in goods sold in transit, the risk passes to the buyer from the moment the contract is concluded. Risk transfer also has a certain retroactive effect, that is, from the time when the seller delivers the subject matter to the first carrier, the buyer begins to bear the risk. The Civil Code of the Russian Federation fully respects the agreement of the parties, and the parties can agree on the transfer of risk, that is, make an agreement contrary to the Convention, or directly choose the trading habits. The risk rule of this article can be summarized as follows: when the parties have no other agreement and trading practices, the risk is transferred from the time of the establishment of the contract, and there is no other risk of damage or loss attributable to the parties. However, like the provisions of Article 68 of CISG, this provision has a drawback, that is, when it is impossible to judge the time point when the risk occurs, or often some risks are continuous, when they continue to occur before and after the establishment of the contract, the main body of the risk is also confirmed, in practice, it is difficult for the parties to determine the degree of knowledge of the goods, so when the above information is not clear. It is difficult to apply this clause.

3.1.3 Article 1529 of the Italian Civil Code-Rule of transfer by delivery

Article 1529 of the Italian Civil Code provides that if the contract of sale is based on the goods to be transported and there is an insurance policy of transportation risk in the document delivered to the buyer, the risk of the goods shall be borne by the buyer from the time when the goods are delivered to the carrier. The provisions of the preceding paragraph shall not apply if the seller knows that the goods have been lost or damaged at the time of contracting but maliciously conceals them from the buyer. This clause mainly emphasizes that the subject matter of the sales contract must be the goods in transit, and requires the seller to have the obligation to insure the goods, the buyer can enjoy the claim for payment of insurance compensation, if the buyer has the right to claim compensation at this time, then it is not improper for the buyer to bear the risk on his own, the buyer is often in a weak position in the sales contract. Because the buyer may sign the contract only on the basis of the documents provided by the seller to judge the state of the goods, It is impossible to ascertain whether the seller is aware of the existence of the goods. If the buyer still bears the risk at this time, it is obvious that the rights and obligations are not equal. However, this provision also has certain limitations, if only in the case of the seller's insurance and not attributable to the seller, the risk is transferred from the time of delivery, when the seller is not insured, after delivery to the carrier, the seller still bears the risk before the conclusion of the contract.

To sum up, the rule that the risk is transferred from the establishment of the contract or the delivery is essentially because the seller is only the shipper rather than person who actually arranges the transportation, so the seller should not bear the risk.

Chapter Ⅳ The Specific Rules of Risk Transfer in the Trading of Goods by Road - Centering on Article 68 of CISG

4.1 Time point of risk transfer

4.1.1 Rules of formation and transfer of contract

In the field of sales contracts, the rules of contract formation and transfer are of great importance. This rule stipulates that from the time when the sales contract comes into effect, the buyer begins to bear the risk of damage or loss of the subject matter caused by external factors that are not the parties to the sale. This rule is widely adopted in commercial practice because of its simplicity of operation, which not only promotes the smooth conduct of transactions, but also effectively promotes the circulation of goods. In the actual operation of international trade, many countries still adopt this rule to deal with the risk transfer in specific sales contracts. Take the contract of sale of goods by road as an example, the contract involves the goods that have not been delivered in the course of transportation, and the time of risk transfer is usually set at the time when

the contract is established. The Civil Code of the People's Republic of China and the Civil Code of the Russian Federation clearly stipulate that in the contract of road goods sale, the transfer of risk should follow the rules of contract establishment and transfer, that is, once the contract is established, the buyer should bear the risk of damage or loss of the goods.

4.1.2 Ownership transfer rules

The concept of ownership transfer rules is of great significance in the contract of sale, which involves the time point when the ownership of the subject matter is transferred from the seller to the buyer. According to this rule, once the ownership is transferred, the risk of damage or loss related to the subject matter is transferred from the seller to the buyer. Therefore, this rule is sometimes referred to as the "owner's risk rule" or the "owner's rule". It can be traced back to Roman law, and in modern times, countries such as Britain and France still follow this principle. The theoretical basis of ownership transfer rule lies in the principle of "unity of rights and obligations", which means that the owner of rights must also bear the corresponding obligations and risks. People who follow this rule believe that the owner has a complete real right to the subject matter, including the right to possess, use, benefit and dispose of the subject matter, so it is reasonable for the owner to bear the loss of the subject matter due to reasons not attributable to both parties.[6]

4.1.3 Delivery transfer rules

The rule of delivery transfer means that when the seller delivers the subject matter to the buyer, the buyer will bear the risk of damage or loss of the subject matter due to reasons not attributable to both parties. One of the theoretical bases of the rule of transfer of delivery is also "the unity of rights and obligations", but compared with the rule of transfer of ownership, it better balances the interests of the seller and the buyer in the contract of sale, and meets the needs of the development of the world economy. At present, this rule has become a common rule of risk transfer in sales contracts in the world. At present, the United States, Germany, China and other countries follow this rule.

4.2 Exceptions to risk transfer

1. The seller did not inform the buyer.

According to the exception provisions of Article 68 (1) of CISG, the principles of fairness and good faith are embodied. In international trade, the basic principle of risk transfer is to transfer risk to the buyer when the contract is concluded. However, if the seller knew at the time of the conclusion of the contract that there was a problem with the goods, for example that the goods were defective or did not meet agreed quality standards, but did not inform the buyer of this information, it was a clear breach of the duty of good faith in contract law. Under this provision, therefore, the risk is not transferred to the buyer, thereby protecting the buyer against the seller's dishonesty. This provision also encourages the seller to make full disclosure of information before the contract is concluded, so as to maintain the transparency of the transaction and ensure that the buyer can make purchase decisions based on complete and true information.

2. The buyer has paid for the goods or provided a guarantee

In international trade, payment for goods or provision of guarantee is regarded as the main obligation of the buyer to perform the contract. If the buyer has fulfilled these obligations, for example by paying for the goods by bank transfer or providing a corresponding guarantee, and the seller has not delivered the goods, then the transfer of risk may be suspended or reversed. This exception is based on the principle of reciprocity of contract performance, that is, the seller should deliver the goods without defects after receiving the payment or guarantee. This helps to protect the buyer's interests by ensuring that the seller does not receive an improper benefit from the buyer's advance payment. If the seller fails to fulfill this fundamental obligation, the buyer is entitled to a refund or rescission of the contract and shall not be liable for any loss or damage to the goods incurred prior to delivery.

3. The buyer refused to accept the goods.

According to Art. 69 CISG, the case involving the buyer's refusal to accept the goods is usually related to the seller's defective performance. The risk shall not be transferred to the buyer if the buyer has legitimate reasons for refusing to accept the goods, such as non-conformity of the goods

with the provisions of the contract, such as serious quality problems of the goods or non-compliance with the specifications agreed in the contract. This provision is based on the principle of reasonable expectation of contract performance, that is, the buyer has the right to expect to receive goods in conformity with the contract. If the seller fails to fulfill this basic obligation, the buyer has the right to refuse to accept the goods without risk. This helps to ensure the fairness of the transaction and prevents the seller from escaping liability by delivering goods that do not conform to the agreement.

4. Unidentified goods

Paragraph 3 of Article 69 CISG refers to the situation where the goods to which the contract refers have not been specifically identified at the time of the conclusion of the contract. In this case, the passing of risk is deferred until such time as the goods are clearly identified and pointed out as being relevant to the particular contract. This exception is based on the principle of certainty, that is, the transfer of risk needs to occur when the specific identity and condition of the goods can be determined, so as to avoid the uncertainty of liability caused by the uncertainty of the goods. This helps to ensure the clarity of risk transfer, prevent disputes arising from the identification of goods, and ensure that the rights and interests of both parties are reasonably protected.

5. Fundamental breach

Article 70 CISG deals with a fundamental breach of contract by the seller, where the buyer may be entitled to avoid the contract and claim damages. In this case, the risk transfer rule is suspended because the buyer is not seeking to perform the contract, but to remedy the loss. This provision is based on the principle of remedy in contract law, that is, when one party breaches the contract enough to deprive the other party of the purpose of the contract, the injured party should obtain appropriate legal remedies. This helps to protect the buyer from a serious breach of contract and ensures that it has access to appropriate remedies to cover losses suffered as a result of the seller's breach.

6. Exceptions under specific trade terms

Article 9 of the CISG allows the parties to agree on the application of trade terms, which may contain risk transfer rules different from those of the CISG. For example, Incoterms rules commonly used in international trade, such as FOB (Free On Board) or CIF (Cost, Insurance and Freight)These terms define the responsibilities and risks of the seller and the buyer during the transportation of the goods. This exception is based on the principle of freedom of contract, that is, the parties have the right to choose the applicable legal rules by agreement. At the same time, it also reflects the wide acceptance and application of standardized trade terms in international business practice, which helps to simplify the transaction process and reduce disputes arising from the interpretation and application of different legal rules.

7. Special agreement of the parties

CISG respects the autonomy of the parties and allows them to change the default rules of risk transfer by special agreement. For example, the seller and the buyer may agree that the risk passes to the buyer under certain conditions, or that in some cases the risk remains with the seller even after the goods have been delivered. This exception is based on the principle of freedom of contract, that is, the agreement of the parties shall prevail over the provisions of law, unless these agreements violate mandatory rules of law. This will help the parties to flexibly arrange the time point of risk transfer according to their specific circumstances and needs, so as to adapt to different trading environments and risk management strategies. Through special agreement, buyers and sellers can better control the transaction risk and ensure the smooth progress of the transaction.

Chapter Ⅴ A Case Study of Risk Transfer in the Purchase and Sale of Goods by Road

5.1 Brief Introduction to the Case of Fish and Meat Dispute in Peru

China Import and Export Trading Corporation (hereinafter referred to as the Seller) v. Shandong Import and Export Trading Corporation (hereinafter referred to as the Buyer) for a dispute over a contract for the international sale of fish meat in Peru.

The case is summarized as follows: In 1996, the buyer and the seller signed a contract No.6001-S, which stipulated that the buyer would purchase 6400 tons of fish from Peru at a price of

690 US dollars per ton CIF (Chinese port), with a total price of 4,416,000 US dollars. The packing requirement is 50 kg per package, and the goods should be shipped before January 31, 1996.The buyer issued a letter of credit on February 17, 1996, valid until March 15 of the same year. On 30 January 1996, the agent of the ship "JIERJI" issued a clean bill of lading, but the ship was detained by the United States Coast Guard for 24 days as unseaworthy while transiting Los Angeles. Due to the extended voyage, the cargo did not arrive at Qingdao Port until June 1996. In March 1996, the letter of credit lapsed because the documents submitted by the seller did not meet the requirements of the letter of credit. The two sides did not reach an agreement on other payment methods, and finally the buyer refused to accept the goods after they arrived at Qingdao Port and declared the contract invalid.

The seller insisted that he had fulfilled his contractual obligations, but the buyer refused to pay because of the change of market price, which constituted a breach of contract. As the buyer refused to accept the goods, the seller had to arrange for the goods to be unloaded, declare to the customs, pay the customs duties and storage fees, resell the goods and claim compensation from the carrier in order to reduce the loss. The seller argued that the above losses were caused by the buyer's breach of contract, and therefore required the buyer to execute the contract and pay for the goods and the losses borne by the seller.

The buyer objected, first, that the contract was actually signed on 6 March 1996 and not on 16 January 1996 as claimed by the seller. Prior to the signing of the contract, the seller had purchased 6,400 tons of Peruvian fish at CFR terms from a United States company. The goods were shipped on January 30, 1996, and the B/L was backdated by the shipping agent on February 1.It was not until February 5, 1996 that the seller provided the buyer with a CIF quotation, and the two parties finally signed the contract on March 6. Therefore, this batch of goods belongs to the typical road goods sale. Secondly, as a CIF seller, the seller did not ensure that the vessel was seaworthy, resulting in an unreasonable extension of the arrival date of the goods, and the whole voyage took 140 days. Therefore, the seller shall bear the risk caused by the breach of contract. Finally, the L/C acceptance documents submitted by the seller did not meet the requirements: the bill of lading was backdated, the charter party and the ship's route information were not provided, and the insurance policy lacked the additional insurance required by the contract. The buyer's failure to pay was therefore due to the seller's breach of contract.

The seller refuted the buyer's claim about the trade in road goods and provided two pieces of evidence: 1. In order to fulfill the contract with the buyer, the seller explicitly required the buyer to be listed as the notified on the bill of lading in the letter of credit issued to the original seller in the United States on January 29, 1996, indicating that the buyer had been identified as the final consignee before loading. 2. Before the formal signing of the contract, the buyer has issued a letter of credit on February 17 and designated the seller as the beneficiary. It can be seen that the two parties have reached a contract before the shipment of the goods, and this batch of goods is not the sale of road goods, but an ordinary transaction.

Moreover, according to the CIF clause, the contract was a contract of shipment, and the risk passed to the buyer when the goods passed the ship's rail. The Seller's responsibility is limited to the provision of transportation arrangement services. As for the selection of vessel, the Buyer or its agent has checked the vessel's registration data at the time of chartering and has no doubt that the Seller's responsibility has been fulfilled. The seller could not guarantee that the vessel was truly seaworthy and that the documentation provided met the requirements of the contract, so the seller was not in breach of contract.

This case was accepted by the China International Economic and Trade Arbitration Commission (CIETAC), which gave priority to China's Foreign-related Economic Contract Law, and applied the United Nations Convention on Contracts for the International Sale of Goods (CISG) when there was no legal provision.

With regard to the signing of the contract, the Arbitration Commission has ascertained the following facts:

1、On February 5, 1996, the seller made an initial offer to the buyer on CIF terms.

2、On 6 February 1996, the buyer requested the seller to provide a draft contract for signature.

3、On 9 February 1996, the seller provided the buyer with a draft contract.

4、On February 12, 1996, the buyer amended the contract and sent it to the seller by fax, and the seller sent it back to the buyer by fax on the same day.

5、On 15 February 1996, the buyer raised an objection to the seller when it discovered that Article 11 of the two originals of the contract was still the seller's draft version of 9 February and not the buyer's amended version.

6、On March 6, 1996, the two sides finally signed a formal contract.

According to Article 7 of China's Foreign Economic Contract Law (promulgated in 1985), which has become invalid, "a contract is established when the parties reach an agreement on the terms of the contract in written form and sign it». If an agreement is reached by means of letters, telegrams or telex and one party requests a signed letter of confirmation, the contract shall be formed only after the letter of confirmation is signed. Therefore, the date of conclusion of the contract was not 16 January, as claimed by the seller, when there was no written agreement between the parties, nor 6 March, as claimed by the buyer, because the amendment proposed on 15 February was an amendment to the signed contract. Therefore, the time when the contract was really established was the date when the two parties signed the contract by fax on February 12. At the time of signing the contract, the goods have been shipped on board the ship, so it is a typical road sale. According to Article 68 CISG: "For goods sold in transit, the risk passes to the buyer from the time of the conclusion of the contract." Finally, the Arbitration Commission ruled that the seller had fulfilled its delivery obligations, the buyer should bear the risk, and the buyer should pay the seller the relevant price and have no right to terminate the contract.[7]

5.2 A Case Study of Fish Dispute in Peru

5.2.1 Summary of dispute focus

The first focus of the dispute: whether the sale of the goods belongs to the sale of road goods?

The core of judging whether the goods belong to the sale of road goods lies in whether the goods are in transit when the two parties sign the contract, in other words, whether the seller has fulfilled the obligation of delivery. In this case, the seller had purchased 6,400 tons of Peruvian fish at CFR terms from an American company before the contract was signed. The goods were shipped on January 30, 1996, and the B/L was backdated by the shipping agent on February 1.It was not until February 5, 1996 that the seller provided the buyer with a CIF quotation, and the two parties finally signed the contract on March 6. Therefore, this batch of goods belongs to the typical road goods sale. The author agrees that the sale of goods belongs to the typical "road goods sale".

The second focus of the dispute is the confirmation of the time of signing the contract and the time of risk transfer.

The seller claimed that the contract was concluded on 16 January 1996, while the buyer maintained that the contract was concluded on 6 March 1996. The determination of this time directly affects whether to apply the risk transfer provisions of CISG Article 68 on the sale of road goods and the time point of risk transfer. As to whether the time of formation of a contract is based on the agreement of the parties or on the time of execution of a writing by the parties, according to article 23 of the CISG Convention: "a contract is concluded at the time when an acceptance of an offer becomes effective in accordance with the provisions of this Convention." That is, the contract is concluded at the time when the acceptance takes effect, and according to article 18, paragraph 2, of the CISG Convention: "An acceptance of an offer is effective when the notice of acceptance reaches the offeror». For the purposes of this Part of the Convention, an offer, declaration of acceptance or any other indication of intention "reaches" the addressee when it is made orally to him or delivered by any other means to him personally or to his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence. Therefore, on the whole, the time of conclusion of the contract is the time when the buyer and the seller reach

an agreement on the main terms of the sales contract, such as price, payment method, quality and quantity of goods, place and time of delivery, scope of liability and dispute settlement.[8]

In this case, the letter of credit issued by the seller to the original seller in the United States on 29 January 1996 had explicitly called for the buyer to be the notifier on the bill of lading, from which it could be seen that the final consignee had been determined to be the buyer before loading. This practice is quite common in practice, because the buyer is usually responsible for customs declaration and other processes, and this change helps simplify the buyer's transaction process. However, it is doubtful whether agreement can be formed and become a necessary condition for the establishment of a contract only when the consignee is the buyer. The author believes that only for the convenience of the buyer's subsequent approval and customs declaration procedures, it can not fully represent the agreement between the two sides. The establishment of a contract requires not only the consensus of the subjective will of both parties, but also the formal satisfaction of specific legal requirements. In this case, there is a dispute between the buyer and the seller about the time of signing the contract, which directly affects the timing of risk transfer. Since the goods had been shipped before the contract was concluded, the risk passed to the buyer at the conclusion of the contract under CISG. This reflects CISG's basic principle of risk transfer in the sale of goods by road, that is, risk transfer when the contract is established, unless there is a special agreement.

When it is impossible to judge the condition of the goods at the time of conclusion of the contract, it is also difficult to judge the time point of risk transfer. Article 68 (2) of CISG clarifies that when there is a real need, the risk can be transferred to the freight carrier, and it is also crucial to clarify when there is a "real need". According to the supervisor, it is necessary to reflect the agreement of both parties on the transfer of risk; The objective theory emphasizes the actual objective situation in the course of transportation, which can also be distinguished from the establishment of force majeure events, or the agreement of risk transfer reflected by a clause in the contract agreement or the behavior of the parties. Moreover, if the parties agree on the application of trade terms, the rules corresponding to trade terms should take precedence. Article 6 of CISG has made it clear that the parties agree on the principle of priority, so the time of risk transfer can not be divided solely by the time of contract conclusion, especially when the duration of risk is unknown. In the above case, the seller's trade documents already contain the insurance policy, and the insurance policy and the bill of lading and other documents are submitted to the buyer through the bank. From an objective point of view, although it is impossible to judge the damage of the goods when signing the contract, the seller has submitted the insurance policy and the bill of lading to the buyer. At this time, it can be concluded that the risk has been transferred to the buyer.

In addition, the buyer in this case also raised the issue of breach of contract by the seller, arguing that the seller failed to guarantee the seaworthiness of the vessel, resulting in the excessive transportation time of the goods. However, under the CIF clause, the seller's responsibility is to arrange the transportation without guaranteeing the seaworthiness of the vessel. This was also taken into account in the arbitration, which concluded that the seller had not breached the contract.

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АЛИМЕНТТЕРДІ ӨНДІРІП АЛУДЫҢ СОТ ТӘРТІБІ

Алименттік келісіміді жасасу арқылы алименттік міндеттемелерін реттеу мүмкіндігі пайда болғанға дейін алименттерді өндіріп алудың сот тәртібі алименттерді алушының өзінің субъективті құқықтарын іске асырудың жалғыз құқықтық тетігі болды. Бұл институттың ұзақ тарихы мен қалыптасқан заң тәжірибесі, сондай-ақ материалдық-құқықтық және іс жүргізу аспектілеріндегі белгілі бір ерекшеліктері бар. Алайда, жинақталған тәжірибеге қарамастан, алименттерді өндіріп алудың сот тәртібін құқықтық реттеу әлі де қосымша талдау мен назар аударуды қажет ететін даулы мәселелерді қамтиды.

«Неке (ерлі-зайыптылық) және отбасы туралы» Қазақстан Республикасының Кодексінің қолданылу мерзімінің он төрт жылында оң және теріс аспектілерді қамтитын отбасылық және азаматтық-процестік құқық нормаларын қолданудың айтарлықтай тәжірибесі жинақталды. [1] Көптеген мәселелер сот тәжірибесі деңгейінде сәтті шешілді, әсіресе «Соттардың алименттерді өндіріп алу жөніндегі істерді қараған кезде заңнаманы қолдануы туралы» Қазақстан Республикасы Жоғарғы Сотының Нормативтік қаулысының арқасында.[2] Осы санаттағы істер бойынша қол жетімді шешімдерді, сондай-ақ сот тәжірибесіне шолулар мен қорытындыларды талдау бізге осындай істердің бірнеше салыстырмалы түрде оқшауланған топтарын бөліп көрсетуге және жүйелеуге мүмкіндік берді. Зерттеу барысында ҚР «Соттардың алименттерді өндіріп алу жөніндегі істерді қараған кезде заңнаманы қолдануы туралы» Қазақстан Республикасы Жоғарғы Сотының Нормативтік қаулысының мазмұнына байланысты кемшіліктер анықталды. Сонымен қатар, сараптамалық пікірлерді талдау негізінде біз осы саладағы құқық қолданудағы ықтимал проблемаларды белгіледік, сондай-ақ оларды шешудің мүмкін жолдарын ұсындық. Зерттеу барысында біз келесі төрт негізгі топқа бөлінген 20 жуық сот шешімдерін зерттедік.

Бірінші топты дәлелдеу мәселелерімен байланысты емес процестік проблемалары бар соттардың шешімдері құрайды. Ең алдымен, ең көп таралған мәселелердің бірі соттылықпен байланысты даулар, атап айтқанда судьялардың істердің белгілі бір санаттары бойынша сот бұйрықтарын беру туралы өтініштерді қабылдауының заңдылығына қатысты даулар болып табылатынын атап өткен жөн. Іс жүзінде судьялар сот бұйрығын беру туралы өтініштерді келесі негіздер бойынша қабылдаудан жиі бас тартты: Қазақстан Республикасының азаматтық іс жүргізу заңнамасының нормаларында көзделмеген талаптарды қою, сол тараптар арасындағы, сол пәні туралы және сол негіздер бойынша дау бойынша заңды күшіне енген сот шешімінің болуы, сондай-ақ құқық туралы даудың болуы. Мысалы, егер борышкер сот шешімі негізінде басқа адамдарға алименттерді төлеп қойған болса, судьялар алименттерді өндіріп алу туралы сот бұйрығын шығарудан заңды түрде бас тартты. Мұндай жағдайларда өндіріп алушыға талапты іс жүргізу тәртібімен дауды шешу үшін талап арызбен сотқа жүгіну құқығы түсіндірілді.[3]

Тараптар арасында алименттерді төлеу туралы келісім жасалған жағдайларда алименттерді өндіріп алу туралы өтініштерді соттардың қарауына байланысты істер жатады. Қазіргі уақытта заң шығарушы алименттерді өндіріп алудың сот тәртібін субсидиарлы тетігі ретінде қарастыруда. Бұл Қазақстан Республикасының «Неке (ерлі-зайыптылық) және отбасы туралы» Қазақстан Республикасының Кодексінің ережелерімен расталады, онда