

The Applicable Law in a Multimodal Transport Contract in China

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Abstract: In China, there are multiple legislations which specially provided for multimodal transport contracts. Among these legislations, which one is the applicable law in a legal problem of a multimodal transport contract. Although there is a theory on the selection of the applicable law, the judicial practice has a different approach in this issue.

Due to the expanding roles of freight forwarders and the use of door to door services for delivery of goods, multimodal transport contracts are commonly used in both international and domestic carriages. These contracts can be classified as an international multimodal transport contract or a domestic multimodal transport contract.

Meaning of Multimodal Transport Contract

The meaning of international multimodal transport is provided by Article 1 of the United Nations Convention on International Multimodal Transport of Goods 1980 (1980 Convention). It defines that: "International multimodal transport means carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country. This operation of pick-up and delivery of goods carried out in the performance of a unimodal transport contract, as defined in such contract, shall not be considered an international multimodal transport." Although a domestic multimodal transport contract also involves the carriage of goods by two or more different modes of transport, the operation of pick-up and delivery of goods is carried out in the same country.

In China, there are several statutory legislations which may be the applicable law in dealing with a dispute in a multimodal transport contract. The most important two legislations are the "Maritime Law" and the "Contract Law". Basically if it is an international multimodal transport contract, the applicable law is the Maritime Law. The rules can be found in Section 8 of Chapter

4 of the Maritime Law. The definition of multimodal transport contract provided by the Maritime Law is similar to that of the 1980 Convention. However, a condition to apply the Maritime Law is that part of the carriage must be in the mode of sea transportation and it has to be an international carriage contract. If it is a domestic multimodal transport contract, the applicable law is the Contract Law, especially the rules in Section 4 of Chapter 17 of the Contract Law. For international carriage of containers, there is a special subsidiary legislation, namely, the Rules Governing the International Multimodal Transport of Containers. It was declared jointly by the Ministry of Communications and the Ministry of Railway in 1997 and contained 43 rules.

The Uniform or Network System

There are two systems to establish the carrier's liability in the loss or damage of goods, namely the uniform and network system of liability. Under the "uniform" system, the same liability regime is applied to the entire multimodal transport, irrespective of the stage at which the loss or damage occurred. Under the "network" system, the liability of the multimodal transport carrier for localized damage (i.e. damage known to have occurred during a particular stage of transport) is to be governed by reference to the international convention or national law applicable to the unimodal stage of transport during which the damage occurred.

In China, the network system of liability is adopted both in international and domestic carriages. The relevant rules can be found in Article 105 of the Maritime Law and Article 321 of the Contract Law. If the goods are damaged or lost when a certain mode of transport is used, the law in relation to that mode of transport shall be applied. For international carriages, the applicable law may be for an ocean transport subject to the Hague or the Hague Visby Rules, for a road transport subject to the Convention for the International Carriage of Goods by Road (CMR), for a rail transport subject to the Convention Concerning International Carriage by Rail (COTIF) and for an air transport subject to the Warsaw Convention. For domestic carriages, the major national laws are the Waterway Carriage Administrative Law, the Road Carriage Law, the Railroad Law and the Civil Aviation Law.

Cases on Applicable Law

Despite the theory discussed above on the applicable law in multimodal transport agreements, how will the Chinese courts decide the issue of the applicable law? In practice, which legislation should be the applicable law in a particular multimodal transport contract is sometimes not an easy question to answer. The following case shows that it could be a difficult issue in deciding the applicable law.

A trading company in Tsinghai (the Seller/Shipper) made a sale contract with a North Korean company (the Buyer/Consignee). The contract was to sell some clothes (the goods) with a value of USD180,000. In order to deliver the goods, the seller acting as the shipper made a multimodal transport contract with a shipping company in Tianjin (the Carrier). During the delivery of the goods to the Carrier, the Shipper made a declaration that the North Korean Buyer was the only lawful Consignee and the bill of lading would be used for negotiating for payment of the goods from the payment bank. After the goods had been loaded on board the ship, the Carrier issued a multimodal bill of lading with an endorsement that it should be used "for negotiable only". The first leg of the carriage was by ship from Tianjin to Dalian. The second leg was by road from Dalian to Dandong. The final leg was by railway from Dandong to Sinuiju in North Korea. In North Korea, the Carrier delivered the goods to the Consignee without the presentation of the bill of lading. As a result, the Seller was not paid by the Buyer. The Shipper thus sued the Carrier for damages for wrongful delivery.

The judgment for the first trial was made by the maritime court. According to Chinese Maritime Law, a bill of lading was a document of title. However, the bill in this case did not have such function. It was only a document for negotiating for the payment of the goods from the payment bank. Thus, after the Carrier had delivered the goods accordance to the agreement of the carriage contract, he would not be liable for any wrongful delivery.

On the appeal of the Shipper, the appeal court overruled the decision of the trial court. The appeal court held that it was a case of multimodal transportation. The goods were finally carried by railway from Dandong to Sinuiju. The consignment note of the railway company provided by the Carrier could only prove that the goods had been carried by railway. It could not prove that

the goods had been delivered to the specified consignee. Thus, the Carrier was liable for damages for wrongful delivery.

The Carrier applied to the Highest People's Court for a re-trial of the case. The court explained that the contract concerned was an international multimodal transport contract. The choice of law clause on the bill of lading was to apply Chinese law. The sea carriage was from Tianjin to Dalian. Since this leg of transport was not international carriage, it was wrong for the trial court to apply the Maritime Law. The applicable law thus should be the Contract Law.

According to the Contract Law, if the goods were damaged or lost in a particular section of the multimodal transportation, the law concerning that section should be applied in relation to the liability of the multimodal transport operator. Since the loss of the goods in this case happened in the delivery section and the last mode of transportation was railway from Dandong to Sinuiju, the law concerning carriage of goods by railway should be applied. The Chinese railway carriage law did not require the carrier to collect the original bill of lading before delivery of the goods. Moreover, the declaration made by the Shipper should be treated as part of the carriage contract. Since the bill of lading was non-negotiable and the Buyer was the only lawful consignee according to the carriage contract, the carrier's duty was to deliver the goods to such consignee. The Carrier did not have a duty to collect the original bill of lading.

The Carrier produced a certificate issued by the railway company which proved that the goods had been delivered by the latter to the Consignee in North Korea. Thus, the Carrier had discharged its contractual duty in delivery of the goods. By the said reasons, the court cancelled the decision of the appeal court and reinstated the decision of the first trial. In other words, the Carrier was not liable for wrongful delivery of the goods.

Different facts from the above case, if the ocean transport of the multimodal transportation is an international one, the applicable law would become be Maritime Law.

In a carriage of dangerous cargo case, a Chinese seller sold fireworks to a German buyer on FOB terms from Beihai Port, China. Antong Beihai Branch Office (the Carrier) agreed to carry the goods in eight containers by road from the seller's warehouse to Beihai Port. The goods would be carried by ship to Hong Kong and then transhipped to another ship to Port of Hamburg in Germany. Unfortunately, a truck collided with a train during the road carriage. As a result the

container carried was lost with the goods inside. Beihai Maritime Court held that it was an international multimodal transport contract. The applicable law should be the Maritime Law. According to Article 105 of the Maritime Law, the liability of the carrier should be based on the relevant law of the mode of the transportation when the goods were damaged or lost. Since the loss of the goods happened during road carriage in China, the law on carriage contracts provided by Chapter 17 of the Contract Law should be applied. The carrier was liable accordance to the rule in Article 311 of the Contract Law.

Conclusion

From the decisions of the above two cases, we can form the following rules according to judicial practices. When an international multimodal transport contract with sea carriage is concerned, the first thing to which to pay attention is whether the sea carriage is international. The relevant law is Article 2(2) of the Maritime Law which provides that all the rules on carriage of goods contracts in Chapter 4 do not apply to sea carriages of goods between ports in China. Thus, all the rules in Section 8 of Chapter 4 concerning multimodal transport contracts are not applying to an international transport contract with domestic sea carriage. That is the rule which is provided by the Highest People's Court in the first case above. The applicable law in this type of case is Contract Law.

However, when the sea carriage leg in a multimodal transport contract is international, the applicable law is Maritime Law. That is the rule set down by Beihai Maritime Court in the second case above.

Finally, from the second case we can see that whether a case is a multimodal transport carriage is depends on the nature of the contract. Thus, if the cargo damage happens in the first leg which is a domestic carriage will not affect the nature of the contract which is in fact an international multimodal transport contract.

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