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STRUCTURE AND PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS

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The presented article describes in detail the main conditions, content, obligations of the seller and the buyer, according to the concluded international commercial contracts. International commercial agreements mediate the international business activities of the parties and differ from similar internal transactions, as well as transactions that, although complicated by a foreign element, are concluded with the participation of the consumer.The first stage refers to the period of the emergence of medieval law as a law merchant, representing a set of international trade customs that regulated the political community of merchants who traveled from port to port and from fair to fair. The second stage was marked by the emergence of national legal systems under the influence of the understanding of law as a national phenomenon and the approval of the idea of national sovereignty. The modern thirdstage, was marked by a movement from national isolation to universal unification, which allowed, on the basis of multilateral negotiations, to develop and adopt uniform legal norms.

Keywords*: international commercial contracts, participants in civil law transactions, entrepreneurial activity, trade custom, national sovereignty, foreign economic activity.*

STRUCTURA ŞI PRINCIPIILE CONTRACTELOR COMERCIALE INTERNAŢIONALE

Articolul prezentat descrie în detaliu principalele condiții, conținutul, obligațiile vânzătorului și cumpărătorului, conform contractelor comerciale internaționale încheiate. Acordurile comerciale internaționale mediază activitățile de afaceri internaționale ale părților și diferă de tranzacțiile interne similare, precum și de tranzacțiile carese încheie cu participarea consumatorului. Prima etapă se referă la perioada apariției dreptului medieval ca negustor de drept, reprezentând un ansamblu de obiceiuri comerciale internaționale, ce reglementau comunitatea politică a comercianților, care circulau din port în port și din târg în târg. A doua etapă a fost marcată de apariția sistemelor juridice naționale, sub influența înțelegerii dreptului ca fenomen național și de aprobarea ideii de suveranitate națională. A treia etapă - cea modernă, a fost marcată de o mișcare de la izolarea națională la unificaregenerală, care a permis, pe baza negocierilor multilaterale, dezvoltarea și adoptarea normelor juridice unice.

Cuvinte-cheie: *contracte comerciale internaționale, participanți la tranzacții de drept civil, activitate antreprenorială, obiceiuri comerciale, suveranitate națională, activitate economică externă.*

STRUCTURE ET PRINCIPES DES CONTRATS COMMERCIAUX INTERNATIONAUX

L'article présenté décrit en détail les principales conditions, contenus, obligations du vendeur et de l'acheteur, conformément aux contrats commerciaux internationaux conclus. Les accords commerciaux internationaux assurent la médiation des activités commerciales internationales des parties et diffèrent des transactions nationales similaires, ainsi que des transactions conclues avec la participation du consommateur. La première étape se réfère à la période de l'émergence du droit médiéval en tant que marchand de droit, représentant un ensemble de coutumes commerciales internationales qui régulaient la communauté politique des marchands qui circulaient de port en port et de foire en foire. La deuxième étape a été marquée par l'émergence de systèmes juridiques nationaux sous l'influence de la compréhension

du droit en tant que phénomène national et de l’approbation de l’idée de souveraineté nationale. La troisième étape-la moderne, a été marquée par un passage de l’isolement national à l’unification générale, qui a permis, sur la base de négociations multilatérales, d’élaborer et d’adopter des normes juridiques uniques.

Mots-clés: *contrats commerciaux internationaux, participants à des transactions de droit civil, activité entrepreneuriale, coutumes commerciales, souveraineté nationale, activité économique étrangère.*

СТРУКТУРА И ПРИНЦИПЫ МЕЖДУНАРОДНЫХ КОММЕРЧЕСКИХ ДОГОВОРОВ

В представленной статье подробно описаны основные условия, содержание, обязанности продавца и покупателя по заключенным международным коммерческим договорам. Международные коммерческие договоры опосредуют внешнеэкономическую деятельность сторон и отличаются от аналогичных внутренних сделок, а также сделок, заключаемых с участием потребителя. Первый этап относится к периоду становления средневекового права как права купеческого, представляющего собой совокупность международных торговых обычаев, регламентировавших политическое сообщество купцов, путешествовавших из порта в порт и с ярмарки на ярмарку. Второй этап ознаменовался возникновением национальных правовых систем под влиянием понимания права как национального явления и утверждения идеи национального суверенитета. Третий этап - современный, ознаменовался движением от национальной обособленности к всеобщей унификации, что позволило, на основе многосторонних переговоров, выработать и принять единые правовые нормы.

Ключевые слова: *международные коммерческие договоры, участники гражданско-правовых сделок, предпринимательская деятельность, торговые обычаи, национальный суверенитет, внешнеэкономическая деятельность.*

Introduction

In Ch. II part III of the Vienna Convention deals with the obligations of the seller. According to Art. 30 of the Vienna Convention [7], ***the seller is obliged to deliver the goods, hand over the documents relating to them and transfer the ownership of the goods in accordance with the requirements of the contract***. If the quality of the goods does not correspond to the contract, and it was delivered at the wrong time and in the wrong place when and where the delivery under the contract was provided, delivery still takes place.

If the seller is obliged to deliver the goods to a place other than a certain place, then in the case of carriage of the goods, the place of delivery is the place where the goods were handed over to the first carrier. If, in cases not covered by the previous sub-clause, the contract concerns a product with individual characteristics or a non-individual product that must be taken from certain stocks or manufactured or produced, and the parties at the time of the conclusion of the contract knew that the product was either must be manufactured or produced at a specific place, delivery consists in placing the goods at the disposal of the buyer at that place. Finally, in the absence of the above two conditions, the place of delivery is the place where the seller’s business was located at the time of the conclusion of the contract, based on Art. 31 of the Vienna Convention. Thus, the last is the main rule. It should be noted that the second of the above rules applies to the goods sold during the period of their transit, that is, the delivery is carried out where the goods are located at that time. The rule that the delivery takes place where the goods are at the time of the conclusion of the contract applies only if both parties really knew about this place, so it is not enough if only one of the parties knew about it, and the other should have known.

Main ideas of the research

The delivery date is the date that the contract establishes or allows to define. If such a date or such period is not provided for in the contract, then the delivery must be made within a

reasonable time, in accordance with Art. 33 of the Vienna Convention. ***A reasonable period*** is understood to be such a period which, under the given conditions, is usually acceptable. The rules for the transfer of documents are determined by the provisions of the contract. If the seller handed over the documents earlier than the deadline specified in the contract and there are inconsistencies in them, he may, before the expiration of this period, eliminate any inconsistency in the documents, provided that the exercise of this right by him does not cause unreasonable inconvenience or unreasonable costs to the buyer, based on Art. 34 of the Vienna Convention. It is obvious that the scope of the seller's obligations in structure corresponds to the practice of the states of the Romano-Germanic system of law. The only element of the Anglo-Saxon legal system is the concept of a reasonable time. The item must comply with the contract in terms of quantity, quality, description, containers and packaging, in accordance with Art. 35 of the Vienna Convention. The seller is responsible for the non-compliance of the goods with the terms of the contract at the time of transfer of risk, even if this non-compliance becomes evident only later, as provided for in art. 36 of the Vienna Convention.

The next important issue is related to ***the buyer's right to file a complaint with the seller*** in the event that the goods do not meet the quality requirements of the contract. According to the convention, the buyer loses the right to refer to the non-compliance of the goods with the terms of the contract if he does not give notice to the seller within a reasonable time after it was or should have been discovered by the buyer, in accordance with Art. 43 of the Vienna Convention. If the buyer has not given notice within a reasonable time, he is not deprived of the opportunity to reduce the price or claim compensation for losses, with the exception of lost profits, if he has a reasonable justification for why he did not give the required notice, as stated in Art. 44 of the Vienna Convention. The Convention establishes that in any case, the buyer loses the right to rely on the non-compliance of the goods with the terms of the contract, if he does not give the seller a notice of it no later than within two years from the date of the actual transfer of the goods to the buyer, insofar as this period does not contradict the contractual period of the guarantee. according to paragraph (2) of Art. 39 of the Vienna Convention.

In the event of a breach of contract by the seller, ***the buyer may file a claim*** and no deferral can be granted to the seller by court or arbitration. The buyer can first of all require the seller to fulfill his obligations, based on Art. 45 of the Vienna Convention. This provision, which came from the Romano-Germanic system of law, is mitigated by the requirement of Art. 28 of the Vienna Convention, according to which, if, in accordance with the provisions of this Convention, one of the parties has the right to require the performance of an obligation by the other party, the court will not be obliged to order the performance in kind, unless it would have done so on the basis of its own law in relation to similar sales contracts not governed by this convention. Thus, in the countries of the Anglo-Saxon system of law, the court will not make a decision binding on the fulfillment of obligations. Enforcement can be carried out by replacement or correction, which is the usual solution for the states of the Romano-Germanic system of law, however, the requirements for replacement or correction have significant restrictions.

A replacement can only be requested if the contract is materially violated. ***A breach of contract by one of the parties is material*** if it entails such harm for the other party that the latter is largely deprived of what it was entitled to count on according to the contract, unless the breaching party did not foresee such result and a reasonable person acting in the same capacity under similar

circumstances would not have foreseen it, according to Art. 25 Vienna Convention. Thus, the buyer may not require the seller to rectify the nonconformity under any conditions, but only if this requirement is reasonable in the given situation. It is also difficult to correct and replace the goods and the fact that the claim must be made within a reasonable time. The buyer has the right to demand a price concession. He can reduce the price in the same proportion in which the value that the goods actually delivered had at the time of delivery is correlated with the value that the goods corresponding to the contract would have at the same time, based on Art. 50 of the Vienna Convention. ***Finally, if the contract is materially violated, then the buyer has the right to terminate it.*** A declaration of termination of the contract is valid only if it is made to the other party by means of notice. This means that the Vienna Convention has abandoned the structure of automatic termination of the contract, which creates a lot of uncertainty in the relationship between the seller and the buyer. In addition to the above rights, the buyer may also (subject to the conditions mentioned in Articles 74-77 of the Vienna Convention) claim damages provided for in paragraph (1) of Art. 45 of the Vienna Convention.

The buyer must pay the price for the goods and take delivery of the goods. In cases where the contract was legally concluded, but it does not directly or indirectly establish a price or does not provide for the procedure for determining it, it is considered that the parties, in the absence of any indication to the contrary, implied a reference to the price, which at the time of the conclusion of the contract was usually charged for such goods sold under comparable circumstances in the relevant field of trade, in accordance with Art. 55 of the Vienna Convention. However, you should pay attention to the fact that according to paragraph (1) of Art. 14 of the Vienna Convention, in the absence of a price setting procedure, the contract is invalid. If the buyer is not obliged to pay the price in any other definite place, he must pay it to the seller:

a) at the location of the seller’s place of business; or

b) if payment is to be made against the transfer of the goods or documents - at the place of their transfer, in accordance with Art. 57 of the Vienna Convention.

Do not forget that the unlimited number of contracts devoid of legal consolidation is not an indicator of productive regulation of various kinds of joint relations, but only a clearly built system of chain links of certain types of contracts, where their legal regulation will give an effective result in regulating various kinds of relations. For this, such a principle as freedom of contract was envisaged, representing the freedom to conclude various types of contractual structures regulating public relations that meet the needs of society [5, p. 20].

Content and Structure of International Commercial Agreements

International commercial practice has developed a number of requirements usually imposed on the content and structure of international commercial agreements. International commercial agreements usually contain several sections located in a certain logical sequence, although the content and structure of agreements may vary depending on the specifics of the product and a number of other conditions [2, p. 86].

a) Determination of the parties to the contract

The definition of the parties to the agreement, indicating their full official name and addresses, is located on the first page of the agreement, which indicates its registration number, place and date of signing. The indication of the place of signature is of great importance from the point of view of determining which country’s

law is applicable to the treaty, if any issue is not directly settled therein. In practice, taking this into account, when concluding contracts, for example, with Russian enterprises, Moscow is often indicated as the place of signing, even if the contract was actually signed abroad (as a result, the chances increase in favor of the fact that the jurisdictional body will recognize the Russian right).

b) Subject of the contract

This section indicates that the seller sold, and the buyer bought a certain product, that is, the name of the product, its quantity, completeness, technical characteristics and quality are indicated. The basic conditions are also indicated in the same section. The name of the goods is given, as a rule, in accordance with the customs classification of the country of destination or in accordance with international standards. Quantity is specified in metric units or in other systems and units (for example, bags, bales, barrels, etc.).

Contracts provide for the following ***methods of quality coordination***:

1) conformity of the goods to a certain standard prevailing in international trade;

2) conformity of the quality of the goods to a specific sample

3) using the faq ("fair average quality") indicator.

One cannot ignore such a question as the country of origin of the goods. In Russia, which is a member of the Customs Union, this issue is regulated by the *Customs Code of the Customs Union* 2009 [1](Hereinafter referred to as the CC CU), adopted as an annex to the Agreement on the Customs Code of the Customs Union dated November 27, 2009 as amended by of April 16, 2010 According to paragraphs (1) - (3) of Art. 58 of the Customs Code of the CU, ***the country of origin of goods*** is considered to be the country in which the goods have been fully produced or have undergone sufficient processing (processing) in accordance with the criteria established by the customs legislation of the Customs Union. In this case, the country of origin of goods can be understood as a group of countries, or customs unions of countries, or a region or part of a country, if there is a need to separate them for the purpose of determining the country of origin of goods. The country of origin of goods is determined in all cases when the application of measures of customs tariff and non-tariff regulation depends on the country of origin of goods. Determination of the country of origin of goods is carried out in accordance with international treaties of the member states of the Customs Union, which regulate the rules for determining the country of origin of goods. The determination of the country of origin of goods originating from the territory of a member state of the Customs Union is carried out in accordance with the legislation of such a member state, unless otherwise provided by international treaties.

In confirmation of the country of origin of goods, the customs authority has the right to require the submission of certain documents, which are a ***declaration of origin of goods*** and a certificate of origin of goods in accordance with Art. 59 CC CU. According to paragraphs (1) - (2) of Art. 60 of the Customs Code of the CU, a declaration of origin of goods is a declaration of the country of origin of goods made by a manufacturer, seller or sender in connection with the export of goods, provided that it contains information that makes it possible to determine the country of origin of goods. Commercial or any other documents related to goods are used as such a declaration. If in the declaration of origin of goods information about the country of origin of goods is based on criteria other than those envisaged by international treaties of the Customs Union member states regulating the rules for determining the country of origin of goods, the country of origin of goods is determined in accordance with the criteria defined by these international treaties.

According to paragraphs (1) - (5) of Art. 61 CC CU ***certificate of origin of goods*** is a document that unambiguously indicates the country of origin of goods and issued by authorized bodies or organizations of this country or country of export, if the certificate is issued in the country of export based on information received from the country of origin of goods. If the information on the country of origin of goods in the certificate of origin of goods is based on criteria other than those stipulated by international treaties of the Customs Union member states regulating the rules for determining the country of origin of goods, the country of origin of goods is determined in accordance with the criteria defined by these international contracts. When exporting goods from the customs territory of the Customs Union, a certificate of origin of goods is issued by authorized bodies or organizations of the Member States of the Customs Union, if the specified certificate is required under the terms of the contract, according to the national rules of the country of import of goods, or if the presence of the specified certificate is provided for by international treaties. Authorized bodies and organizations that issued a certificate of origin of goods are obliged to keep a copy of it and other documents on the basis of which the origin of goods is certified for at least three years from the date of its issue.

To determine the country of origin of the goods, ***bar coding*** is used, which is carried out within the framework of the ***International Association of the European Coding System - the EAN Association*** [6].This Association assigns two- or three-digit codes to member states. Thus, the first two or three digits in the 13-digit digital designation of the goods (EAN-13) usually indicate the country of origin of the goods (for Russia, these are the numbers 460–469). The next five or four digits, respectively, designate the manufacturer’s code and are assigned by national authorities, usually represented by the Chamber of Commerce of a particular country. In Russia, these functions are performed by **UNISCAN** (Association for Automatic Identification) at the Chamber of Commerce and Industry of the Republic of Moldova. Five more digits are assigned to the product directly by the manufacturer itself, taking into account its consumer properties, dimensions, design, packaging, color, etc. Finally, the last digit is a check (check number) and is used to check the correctness of reading the bar code by a special device (scanner). Small items may have a special eight-digit shortcode.

c) Product price

The price of the goods is an essential condition of the contract and can be in several forms:

1) ***a fixed price***, which is indicated in the contract and is not subject to change during the entire term of the contract;

2) ***a sliding price***, which is specified in the contract, but may be subject to appropriate adjustments in the event of changes in pricing factors (wages, cost of raw materials and equipment for the production of goods) during the period of the contract. The contract usually stipulates the limits of deviation of the actual price from the contract in one direction or another (for example, ± 15%);

3) ***the price with subsequent fixation***, which is not indicated in the contract, but is determined by the corresponding quoted price of the goods at the time of execution of the contract. Quoted prices are:

• *reference prices,* which are published in price lists, bulletins and other periodicals (real prices are lower than reference prices);

• *prices of international trade statistics*, which are calculated as the total proceeds from the sale of individual goods, divided by their quantity;

• *exchange prices,* which act as real prices of transactions made on the exchange at one time or another;

• *prices of auctions*, which act as real prices of transactions concluded at international auctions [3, p. 87].

d) Terms of delivery of goods

The delivery times of the goods are indicated either in the form of specific dates, or as quarterly, semi-annual, annual, or in the form of a period of time from the date of signing the contract. To avoid disputes, the contract usually includes a clear wording of what is considered the date of delivery of the goods, for example: "The date of delivery is the date of the stamp on the railway consignment note of the border station where the goods are transferred by the railway of the Seller's country to the railway of the Buyer's country".

It is also necessary to make a reservation about whether early delivery is allowed. It is important for the buyer to know the time of the actual shipment of the goods, so that he can take care of the acceptance of the goods. To this end, the contract usually provides for the seller's obligation to notify the buyer of the shipment of the goods. The obligation to send a notice of shipment arises in a number of cases from the trade customs, that is, even when it is not provided for in the contract. International commercial practice also knows such a way of designating a term as immediate delivery. In fact, this means that the delivery must be made within 14 calendar days from the date of the contract. In addition, the Vienna Convention also indicates the possibility of delivery within a reasonable time.

e) Terms of payment

The provisions of the contract on the terms of settlements are drawn up taking into account the prescriptions of international treaties and the current norms of national legislation. The form of insurance of currency risk, the form of settlement (bank transfer, collection, documentary credit) and the form of credit (bank in the form of a check or commercial in the form of a bill), if provided, are indicated. The terms of payment for the loan must be clearly stated in the contract. It also indicates against which set of documents the payment is made (this issue is discussed in detail in Chapter 10 "International Settlement Law" of this textbook).

f) Container, packaging and labeling of goods

The contract should regulate the requirements for packaging, packaging and labeling, the procedure for determining the quantity and quality of goods when they are accepted by the buyer (participation of competent independent bodies or a representative of the seller, forms of documents, etc.), quality guarantees, as well as the timing and procedure for submission and consideration of claims for quantity, quality and delivery time (claims for quality and quantity, for example, must be confirmed by acts of competent and independent organizations or bodies). ***Container*** - external packaging of goods (boxes, barrels, bags, containers). It differs from the direct packaging, in which the goods are packed and which is inseparable from the goods themselves in the trade turnover. ***The marking*** is placed on a container, a tag or the product itself. The following types of markings are used in international trade:

• *commodity* - contains the name of the product, gross and net weight;

• *cargo* - contains the name of the states and points of departure and destination, the name of the recipient, the route, the number of the cargo and its weight;

• *special* - contains the name of the product, instructions on handling it during loading, unloading, transportation and storage (for example, "glass", "do not turn over");

• *transport* - presented as a fraction, the numerator of which denotes the serial number of the package in the lot transported according to one transportation document, and the denominator - the total number of packages in this lot (this marking is applied not by the shipper, but by the carrier).

Marking is applied with indelible paint on opposite sides of the container in the language of the seller's country with translation into the language of the buyer's country.

g) Guarantee of performance of the contract.

The guarantees of proper performance of the contract are provided by the seller and serve as a means of ensuring that they fulfill their obligations under the contract. Typically, such guarantees take the form of bank guarantees issued on the instructions of the seller-principal by the issuing bank in favor of the buyer-beneficiary.

h) Responsibility of the parties to the contract for non-performance or improper performance

To increase the responsibility of the parties for the fulfillment of their obligations, the terms of contracts usually provide for penalties. Penalties by their size and order should stimulate the fulfillment of obligations. For example, the penalty for late delivery may be progressive, that is, increase as the delay increases. At the same time, the penalties should not be ruinous (usually the total amount of the fine is limited to 8-10% of the value of the expired consignment). Unjustified tightening of penalties by buyers often provokes a response from sellers: they include possible penalties in prices. Penalty clauses are usually formed on a mutual liability basis such that, for example, a penalty for late payment by the buyer is included in addition to the seller's late delivery penalties. The inclusion of provisions on penalties in the contract does not remove the issue of compensation for losses (including the issue of the ratio of penalties and losses), which is decided in accordance with the law of a particular country applicable to this contract [4, p. 95].

i) Goods insurance

The problem of indemnification is closely related to insurance. The indication in the contract of the basic conditions (FOB, CIF, etc.) also determines the obligations of the parties for insurance. So, under the terms of FOB, the exporter insures the cargo during transportation to the port of loading and in the port before loading it on board the vessel. Further insurance concerns are the responsibility of the purchaser. In contracts, there are also special detailed provisions on insurance (what is insured, against what risks, who insures and for whom).

j) Dispute Resolution Procedure and Applicable Law

The procedure for resolving disputes between the parties is governed by the ***arbitration clause*** containing the agreement of the parties on the transfer of the disputes for consideration in arbitration, or a ***propheticagreement*** expressing the will of the parties to refer disputes to a court of any state. The applicable law is determined by the parties by pointing to the relevant legal system, and this circumstance serves as the implementation of the principle of autonomy of will in international law, according to which the parties to an international commercial agreement have the right to independently determine the legal statute of their contractual obligations.

Conclusions

In the science of international law, there is no unified definition of the concept of "international commercial agreement". The historical development of the unification of the law of international commercial agreements, which began several centuries ago, encompasses the following stages:

- ***The first stage*** refers to the period of the emergence of medieval law as a law merchant, representing a set of international trade customs that regulated the political community of merchants who traveled from port to port and from fair to fair.

- ***The second stage*** was marked by the emergence of national legal systems under the influence of the understanding of law as a

national phenomenon and the approval of the idea ofnational sovereignty.

- ***The third stage***, the modern stage, was marked by a movement from national isolation to universal unification, which allowed, on the basis of multilateral negotiations, to develop and adopt uniform conflict of laws and substantive legal norms. It is to the third stage in the development of international legal unification of commercial law that the emergence of a uniform understanding of the category of international commercial agreements is assigned.

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