

Main Risks and Countermeasures in Cross-border E-commerce Logistics Service Contracts

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Abstract: This paper focuses on the risk of cross-border e-commerce logistics service contracts. With the booming development of cross-border e-commerce, the logistics link has become a key bridge, but the potential risks should not be underestimated due to the influence of transnational laws, complex transportation chains and multi-subject cooperation. In actual operation, small and medium-sized cross-border e-commerce sellers often do not sign formal logistics service contracts or improperly set contract terms, which leads to many problems. This paper analyzes the main risks of not signing a contract, disputes over the nature of the contract, the phenomenon of sub-commissioning, and puts forward countermeasures such as cross-border e-commerce sellers should choose the right logistics service providers, and clarify the nature and terms of the contract. These measures can help sellers effectively prevent risks, protect their rights and interests, and promote the stable development of their business. Cross-border e-commerce sellers should take systematic measures to prevent the risks of logistics contracts and ensure the stable development of their business.

Keywords: Cargo Transportation; Agency; Sub-Delegation; Late Delivery; Loss of Goods; Indemnity.

1. Background

Under the booming development of cross-border e-commerce, logistics has become an important bridge connecting sellers and consumers. However, cross-border logistics is affected by the laws of multiple countries, complex transportation chains, and the cooperation of multiple subjects, among other factors, in which the potential risks absolutely can not be ignored [1]. In cross-border e-commerce business, many small and medium-sized sellers have not signed formal logistics service contracts with logistics

service providers. Even if a contract is concluded, the logistics service improper setting of contract terms leads to frequent problems such as difficulty in identifying the identity, ambiguous division of rights and responsibilities, and deadlock in dispute resolution, which exacerbates the uncertainty of cross-border e-commerce seller's business process.

2. Main Contract Risks

2.1 No Contract Signed

When a cross-border e-commerce seller sells goods abroad, the transportation of goods is a key logistics link. In reality, there are many e-commerce sellers did not sign the phenomenon of written logistics service contract, the main reasons for this phenomenon are the small size of the seller, weak legal awareness, delivery of urgent and cross-regional communication and signing of inconvenience, logistics service operators are eager to take orders. The failure to enter into a logistics service contract is prone to cause a lot of problems. Firstly, due to the diversity of stores and business entities of cross-border e-commerce sellers, cross-border transaction behaviors are mostly paid with private or third-party platform accounts, resulting in difficulties in determining the identity of the seller and the identity of the logistics service provider. Secondly, It is difficult to clarify the rights and obligations of both cross-border e-commerce sellers and logistics service providers, especially the identification of lost goods and compensation standards, and the dispute resolution is not clear, which makes it easy to fall into a stalemate in the defense of rights. Thirdly, The partners of cross-border e-commerce often communicate through WeChat, QQ, e-mail, etc. It is difficult to keep communication records for a long period of time, and it is also difficult to restore the facts in the absence of a written logistics service contract [2]. The lack of a logistics service contract makes it difficult for small and medium-

sized sellers to protect their legitimate rights and interests in the event of loss, damage or defective performance of goods, and they can only rely on circumstantial evidence and self-recognition of the other party in litigation, which seriously restricts the development of cross-border sales business.

2.2 Disputes over the Nature of the Contract

Sometimes, cross-border e-commerce sellers and logistics service providers sign written logistics service contracts, but these contracts do not specify the nature of the contract, and sometimes they are considered "contracts for the carriage of goods", and sometimes they are considered "freight forwarding agency contracts". Once a dispute arises, cross-border e-commerce sellers often demand that the logistics service provider assume the carrier's liability on the grounds of the existence of a contract for the carriage of goods, while the logistics service provider defends the contractual relationship of the freight forwarding agent, or the two parties defend each other on the basis of the nature of different contracts [3]. This fuzzy definition of the nature of the contract leads to uncertainty in the application of the law during the dispute resolution process, increasing the legal risks for cross-border e-commerce sellers.

In fact, the contract of carriage of goods and the contract of agency for the carriage of goods are significantly different in nature, and the contract points to different rights and obligations. In the contract of carriage of goods, the cross-border e-commerce seller authorizes the logistics service provider to complete the full set of transportation tasks, and the logistics service provider, as the carrier, is directly responsible for the transportation and safety of the goods, and if the goods are lost, damaged or delayed in delivery and other unforeseen circumstances in transit, the cross-border e-commerce seller can directly claim from the logistics service provider that it bears all the relevant responsibilities. In the freight forwarding agency contract, the logistics service provider only plays the role of freight forwarding agent, not involved in the actual transport business, according to the cross-border e-commerce seller assigned, organization of goods transportation and negotiation with the actual carrier for various matters, if the goods in the transport link occurs in the case of the logistics service provider is not controlled, such as the ship suffered bad weather leading to the

loss of the goods, the cross-border e-commerce seller is difficult to determine that there is an agent of the logistics service provider fault. Therefore, disputes on the nature of the contract are not only related to the application of the law on dispute resolution, but also directly affect the protection of the rights and interests of cross-border e-commerce sellers.

2.3 The Phenomenon of Sub-Delegation

By sub-delegation, we mean that goods are transferred several times to different carriers in the logistics chain, a practice that undoubtedly increases the risk of late arrival, damage or loss of goods. As mentioned above, when a cross-border e-commerce seller enters into a freight forwarding agency contract with a logistics service provider, the logistics service provider is not a direct carrier, but instead subcontracts other freight forwarders or actual carriers to carry out the transportation of the goods, which will bring about many risks[4]. First of all, sub-delegation complicates the transportation chain, and it is necessary to ensure the smooth flow of information between different logistics service providers, otherwise it is easy to lose information or instructions are not transmitted in a timely manner, especially when cross-border e-commerce sellers have the need to intercept the goods or change the shipping address, and so on, the difficulty of information transfer and the risk of delay rises. More seriously, some unscrupulous logistics service providers may take advantage of the complexity of sub-delegation to engage in fraudulent behavior, further exacerbating the risks for cross-border e-commerce sellers. Secondly, the cost of logistics services may increase, as multiple logistics service providers are involved, and multiple sub-commissions will compress profit margins, thus affecting the quality of cross-border logistics services. Finally, the risk of loss of goods is increased. Logistics service providers may lose direct control of the goods after being sub-commissioned as freight forwarders, and once the goods are damaged or lost in transit, it will be difficult to find out the facts and distinguish the responsibility, and the logistics service providers may pass the buck to each other, and the complexity of the responsibility allocation will be increased.

2.4 Risk of Delays and Lost Shipments

Delays in delivery or loss of goods can be

caused by a variety of reasons, ranging from improper handling of the goods during loading, unloading, transportation or warehousing, to theft, improper packaging, inadequate cargo tracking systems and other phenomena, as well as by factors such as wars, natural disasters, extreme weather and customs seizures. The phenomenon of sub-delegation aggravates the risk of late delivery, damage and loss of goods. In cross-border e-commerce cargo logistics, in addition to key logistics nodes that need to be agreed upon, the actual carrier often decides on its own how the goods will be transported and stored, and this logistics information is not adequately synchronized to the cross-border e-commerce seller. In the final distribution, the carrier may change the logistics warehouse without authorization in order to save costs, which breeds the chaos of "distant warehouse and near delivery" and exposes the sellers to problems such as delayed delivery, loss of goods and increased risk of damage.

As one of the conditions for constituting late delivery under article 50, paragraph 1, of the Maritime Law is that the parties must have clearly agreed on the time of delivery, if the parties have not explicitly agreed on it, it will not be recognized as constituting late delivery. The reality to be considered is that cross-border e-commerce logistics services involve long chains, sub-delegation and other issues, and when the transportation time of the goods far exceeds the reasonable transportation time, it is still required that the contract must explicitly agree on the time of delivery in order to determine the carrier's liability, which will lead to an imbalance of rights and obligations of the parties to cross-border e-commerce logistics [5]. In addition, compared with delayed delivery, it is more difficult to determine the loss of goods, because it is difficult for the seller to prove whether the goods are lost or not, and usually can only be based on a reasonable period of time (the period of time of the promised delivery) within the goods were not received to reflect the results of the loss of goods.

2.5 Reparation Issues

For cross-border e-commerce sellers, late delivery and loss of goods will involve compensation, which in turn involves the value of the goods. There are three relevant prices for goods sold across borders, the platform merchandising price, the purchase price and the

logistics bill (customs declaration) price. The cross-border logistics service contract is generally a form contract, and its compensation clause usually calculates the compensation amount in terms of the original price of the freight or a multiple of the freight, or the maximum limit price, and there may be a large gap between this amount and the actual value of the goods. When the cross-border e-commerce seller and the logistics service provider have a dispute over the compensation standard, although the cross-border e-commerce seller may raise a defense that the above format terms formulated by the logistics service provider stipulate an unreasonable amount of compensation, unreasonably exempt or mitigate its own responsibility, and restrict or deprive the other party of its main rights, the logistics service provider may still be able to exempt itself from liability by proving that it has already fulfilled its obligation of prompting or explaining by a reasonable means to exclude liability [6].

3. Response Measures

3.1 Choosing the Right Logistics Provider

The signing of a standardized written contract between the cross-border e-commerce seller and the logistics service provider is the most important thing to reduce legal risks and clarify the rights and interests of both parties.

On the issue of choosing logistics service providers, cross-border e-commerce sellers should uphold a prudent attitude and prioritize cooperation with direct carriers to reduce intermediate links and reduce the legal risks associated with sub-delegation. At the same time, we should choose logistics service providers with good reputation. Logistics service providers with long-term cooperation tend to pay more attention to business reputation and service quality, and can provide more stable services. In addition, for those logistics service providers who have set up subsidiaries or affiliates in multiple countries and regions, try to require the other party to enter into a contract in the name of the company in China, and if the logistics service provider needs to sign an agreement with an overseas company for reasons such as collection of payment, it should require its domestic shareholders or affiliates to provide a guarantee to protect the cross-border e-commerce seller's own rights and interests.

In addition, cross-border e-commerce sellers should also pay attention to the legal provisions of the format terms and conditions. According to Articles 496 and 498 of the Civil Code, cross-border e-commerce sellers need to carefully review the contract terms when entering into a logistics service contract, so as to avoid being in an unfavorable situation due to the form terms; if the logistics service provider fails to fulfill the obligation of prompting or explaining, the cross-border e-commerce seller may claim that the terms be interpreted in its favor [7].

3.2 Determining the Nature of the Contract

In practice, since the logistics service provider prefers to use the contract title of "cross-border goods transportation agency contract", cross-border e-commerce sellers need to clarify the nature of the contract with the logistics service provider in light of the entrusted matters. From the viewpoint of the commercial purpose of the cross-border seller entrusting the logistics service provider, the seller needs more transportation services than agency services, i.e., to deliver the goods to the designated place according to the agreed time, and expects the logistics service provider to be directly responsible for the disputes when they occur. From the point of view of cost calculation and payment method, the content of the contract generally involves "billing according to the weight of the goods", and the name of the fee is "logistics fee", "freight", etc. Therefore, the relationship between the cross-border e-commerce seller and the logistics service provider is more in line with the characteristics of the contract of carriage of goods, and the cross-border e-commerce seller should remove the word "agency" in the title of the contract and change it to a contract for the carriage of goods to prevent the nature of the confusion and to avoid damage to the rights and interests of the seller.

3.3 Provision for Sub-Delegation Authority

In the cross-border logistics service contract clear sub-delegation procedures are cross-border e-commerce sellers to avoid the legal risks of the key links, sellers can be in the contract to make the following clear agreement. Firstly, in principle, the logistics service provider is prohibited from sub-delegation operations, which can effectively reduce the risk of goods transportation due to the increase of intermediate

links, and avoid unclear division of responsibilities and difficulties in tracking of goods due to multi-layer commissioning. Secondly, if it is necessary to entrust other carriers, the logistics service provider needs to obtain the written consent of the cross-border e-commerce seller and provide information about the carrier and the means of transportation, otherwise it is regarded as a breach of contract, and even if the logistics service provider is able to provide evidence such as notification of delivery, customs declaration, etc., the logistics service provider still needs to bear the responsibility for the breach of contract. Thirdly, in the case of sub-delegation without consent, the actual carrier cannot require the cross-border e-commerce seller to pay for logistics services. The logistics service provider shall be liable for breach of contract if it fails to fulfill the obligation of customs declaration and the sub-delegation to a third party results in damage to the goods.

In order to ensure the quality of transportation services, the cross-border logistics service contract should clarify the contractual obligations of the logistics service provider, such as the timely provision of logistics order number to ensure that the seller can query the logistics information in real time, as well as receiving the seller's instructions to intercept the goods in a timely manner and redeliver them to a new address, to enhance the seller's control of the process of transportation of the goods, and to reduce the risk due to the asymmetry of information or improper operation of the logistics service provider.

3.4 Clear Delivery and Lost Goods Standard

In the cross-border logistics service contract, clear goods delivery period can be limited to reduce the impact of delayed delivery, cross-border e-commerce sellers can combine with the actual situation to determine the maximum delivery period of different modes of transportation [8]. Delivery of the recognized standards also need to be clearly defined in the contract, should be set out in detail to determine the specific criteria for delivery, such as the consignee to sign for, or the goods arrive at the designated logistics site and notify the consignee of the specific time after the delivery of the goods is deemed to have been delivered. For example, some e-commerce platforms to online store sellers backstage display receipt of goods

as the delivery standard, while the overseas warehouse in addition to the requirement to provide the number of goods delivered, the name of the same signed receipt, but also to get the overseas warehouse operators to confirm. The detailed specification of the criteria for the

delivery of goods by different modes of transportation can avoid disputes over the delivery of goods. Table 1 shows that the starting time and the maximum period of delivery of goods vary between modes of transportation.

Table 1. Example of Deadline for Delivery

Mode of transportation	Starting time	Maximum period of delivery
Sea transport	from the date of delivery of the goods to the logistics service provider	50 days
Railway transport	from the date of delivery of the goods to the logistics service provider	40 days
Air transport	from the date of delivery of the goods to the logistics service provider	20 days
Postal mail	from the date of dispatch of the goods by the seller	-

It is also important to stipulate the criteria for the determination of lost goods, for example, cross-border e-commerce sellers can agree with the logistics service provider that overdue goods exceeding a specific number of days (e.g., 10 days) will be considered as lost goods. As mentioned above, delayed delivery and loss of goods may be due to customs detention, as the logistics fees charged by the logistics service provider usually include customs clearance costs, customs clearance is the core competitiveness of the logistics service provider, therefore, it is recommended that cross-border e-commerce sellers agree that the customs detention can not be treated as force majeure, and the logistics service provider still needs to take responsibility for the delayed delivery and loss of goods caused by customs clearance problems.

3.5 Contractual Indemnity Clauses

For the compensation standard of delayed delivery and lost goods, cross-border e-commerce sellers can combine the industry practice with the actual situation and make the following agreements in the logistics service contract to reduce the compensation dispute [9]. First, in case of delayed delivery or loss of goods during transportation, the seller shall have the right to recover compensation directly from the logistics service provider, who shall not use the actual carrier's fault as a defense. Secondly, in the event of loss of goods, the seller shall be exempted from the freight charges for the corresponding goods and shall be compensated for the loss of value of the goods in accordance with the purchase price of the goods, and the seller shall have the right to deduct the loss of freight charges and the loss of value of the goods due to the loss of the goods from the unpaid

logistics fees directly. Thirdly, they can purchase insurance for the goods, and further protect the safety of the goods by dispersing the risks through the insurance mechanism [10].

Cross-border e-commerce sellers should immediately file a claim with the logistics service provider via company e-mail, fax, etc. when they find late delivery or lost goods, detailing the quantity of lost goods, logistics costs, procurement costs and other details, fixing the relevant evidence of the core matters, and retaining the procurement contract and payment vouchers. If a settlement is reached, be sure to sign a written agreement and keep the original, and properly handle the handover of logistics personnel.

4. Conclusion

Cross-border e-commerce sellers should take systematic measures such as carefully selecting logistics service providers, accurately identifying the nature of the contract, strictly restricting the authority of sub-delegation, detailing the timeframe for delivery and the criteria for identifying the loss of goods, as well as reasonably setting up compensation clauses, in order to build a solid risk defense system for themselves. In addition, cross-border e-commerce sellers should clearly agree on the applicable law and the competent court in the contract, so as to avoid difficulties in defending their rights due to disputes over the application of law and jurisdiction; and they should also strengthen the understanding of the customs, intellectual property rights and other laws and regulations of the importing countries, so as to make sure that the goods comply with the relevant requirements, and to avoid the withholding of goods due to violation of laws

and regulations, and thus reduce the possibility of losing goods. Through these measures, cross-border e-commerce sellers can effectively prevent the risks in cross-border logistics service contracts and ensure the stable development of cross-border e-commerce business.

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