

At the same time experts warn that the good indicators hide serious problems. Experts specify that the present growth continues to follow the account of increase in deliveries of the Russian energy resources. And it is not a unique problem. "Lately annual level of a gain of a trade turnover of the Russian Federation and China made approximately 30 %. This year decrease in rates is observed", told the head of the Russian-Chinese centre of economic cooperation Sergey Sanakoev to "RBC daily". "Unfortunately, even this growth is provided not simply by increase of energy deliveries, but also a rise in prices for raw materials. It is necessary to pay attention not to increase in volumes of trade, but to the share increase in export to China of technical machinery and hi-tech production" (URL: <http://www.ecolife.krsk.ru/content.asp?id=391>).

The reason of such position, to the opinion of the president of the Institute of an energy policy is an active lobbyist policy of the Chinese authorities and the extremely passive behavior of a Russian side.

Thus, accurate strategy of the state which would allow using possibilities of China in interests of the country is necessary to Russia. To reach this purpose – it is necessary, in the first, to stop expansion of Chinese-dealers on the Russian market, to expand the markets and capacities, actively involving investments from China, to be fixed in these markets at the expense of own technological innovations. For this purpose it is necessary:

- to master narrow niches of specialized hard to copy technologies;
- to think out the ways of protection of technical decisions;
- to load Chinese orders for accessories, transforming them from competitors into contractors;
- to buy the Chinese industrial actives [2].

Development of the international relations between Russia and China is inevitable and the main task of these relations is – to combine economic possibilities with strategic interests of both countries, observing rules of law of both parties.

Researches and conclusions of the given work give possibility of application of its positions in activity Chinese and Russian legal and the physical persons connected by the foreign trade relations.

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ANALYSIS OF RISKS OF THE FOREIGN TRADE TRANSACTIONS BETWEEN RUSSIA AND CHINA

The foreign trade transactions in the system of economic activity between Russia and China are considered. Recommendations about conducting the foreign trade transactions with China with the purpose to increase the efficiency of it are resulted.

Keywords: risk, foreign trade transactions.

The urgency of the given work is defined by an imperative need of a deep research of the foreign trade relations and communications between Russia and China with the purpose to increase the efficiency of bilateral cooperation. The object of the given research work – risks of the foreign trade transactions. The practical importance of the work consists of the specific proposals and recommendations on conducting effective communication with the purpose of realization the successful foreign trade transactions between Russia and China.

The favorable geographical position, developed logistical network, availability of customs coordination are among the reasons of the effective business cooperation between Russia and China. But along with the establishment of good neighboring cooperation there are a lot of legal risks which Russian companies can face conducting the foreign trade activity with China. The knowledge of the legal aspects of

foreign trade of China will allow to avoid unjustified and unexpected expenses (see in the figure).

Legislative difference of the partner countries. One of the most serious legal risks which are commonly faced by businessmen from different jurisdictions – is the difference of the legislation of the countries regulating common legal issues. Searching for the profit the business partners from different countries do not pay much attention to the initial stage of relations – to a stage of coordination of terms of the contract. A lot of ridiculous problems outflow difficulties and unexpected consequences in mutual relations.

Reliability of Chinese parties. "The allowing order of conducting business for the enterprises existing in China essentially narrows a circle of the subjects, having the right to conclude transactions of the international purchase and sale. Therefore it is necessary to check a legal status of the enterprise of the foreign counterpart both its financial and

commercial reliability, and also correctness of registration and the level of authorities of representatives of the foreign counterpart to carry out negotiations and sign contracts according to constituent documents and powers of attorney” [1]. Recently it was a severe requirement because this could directly influence the decision of the Russian Tax Inspection on compensation of the export VAT.

Features of the international trading contract. The foreign trade contract of purchase and sale is the commercial document concluded between the parties on which the seller is obliged to give the goods in the property of the buyer, and the buyer is obliged to accept and pay for it. An indispensable condition of the contract of purchase and sale is transition of the good property right from the seller to the buyer. The contract is made in writing in two languages, each of which is valid.

If negotiations are conducted in different languages, common language problem is an important stage of negotiations. Knowledge of foreign language is not the only problem. It is very important to choose a well prepared translator, possessing equally good both foreign, and a native language, possessing high language culture and ability to feel the language nuances which misunderstanding can lead to serious problems. Good knowledge of a foreign language, on the contrary, will simplify procedure of the coordination and signing of the foreign trade contract; will gain the partner marking aspiration of the co-operating party to find common language.

Divergence of legislative bases. “In Chinese legislation, for example, there are no legal definitions of such terms as the offer and the acceptance that threatens with possible negative consequences. Chinese legislation does not contain also instructions, allowing finding distinction between the offer and an offer call.

It is not recommended for the Russian enterprises to conclude the international contract of the purchase and sale by fax. The matter is that, applicable to such agreements the Viennese convention of 1980, understands as the written form only messages on telegraph and the teletype, and the higher judicial body of Russia considering economic disputes, in one of the decisions has defined that if the Convention names only two above-stated means of telecommunication the fax does not belong to this list” [1].

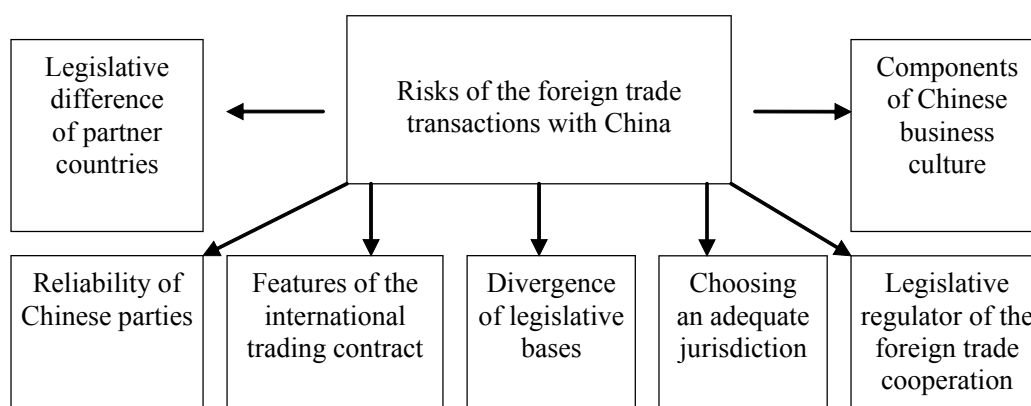
Choosing an adequate jurisdiction. Choosing an inadequate jurisdiction for the resolution of dispute, no less

than the inadequate applicable substantive law, can lead to unexpected expenses for suits, the sum of expenses can considerably exceed the sum of loss. That is why the development of as much as possible correct formulation of the arbitration disputes and the reservation on an applicable law is, perhaps, among the key points of the contract’s terms. At the initial stage of creation of the text of treaty provisions it is necessary to reflect the consequences of a choice of this and the country of the applicable law. It is also necessary to check up the contract’s positions on conformity to norms of an applicable law which will be selected in case of conflict occurrence between the contract parties. To carry out the dialogue with the foreign counterpart it is possible only with the assistance of experts in this sphere. Therefore at a stage of the contract’s coordination and concluding the terms of the agreement it is expedient to involve professionals.

Legislative regulator of the foreign trade cooperation. The modern trade basic legal regulator between the different countries cooperation are – INCOTERMS 2000 (the international rules of interpretation of trading terms) and the Convention of the United Nations of 1980 on international contracts of the purchase and sale of the goods. However, recent times the trade between the countries entering the “socialist” camp was regulated by the universal conditions of deliveries (CUD) which had an interdepartmental character. Such document was also signed by the USSR and Peoples Republic of China (CUD USSR–PRC).

“The first edition of this document has been accepted in 1950. It was corrected in 1957 and in 1970. The last edition which has come into power since July, 1st, 1990, essentially differs from previous (CUD USSR–PRC) and has features of the international interdepartmental agreement which was signed by the authorized bodies of each country. The operating text of CUDUSSR–PRC covers the important questions of trading practice: basic conditions and terms of delivery, quality and quantity of the goods, transport instructions and notices on deliveries, order of payments, sanctions, claims, the bases of clearing of responsibility, arbitration” [1].

The question about whether CUD USSR–PRC has kept powers accordingly the subject of application and at absence of the consent of the parties of the contract is open. The matter is that “...assignment of Russia concerning this document has not been issued, and in interstate agreements which Russia and China have concluded in 1991 and the next



Risks of the foreign trade transactions with China

years, the relation to it is not expressed. So, the attitude towards CUD USSR–PRC has facultative character, anyway the priority is given to the rules of the Vienne convention of 1980” [1].

Now, the contracts are basically formed on the base of conditions of Incoterms 2000, which allows unifying the external economic relations not only between the Russian and Chinese business partners, but with the partners from other countries.

Components of Chinese business culture. The role of national traditions. Planning a business trip to China or concluding business relations with the Chinese partners it is necessary to pay attention to a number of customs of conducting business activity with the Chinese partner:

1. The organization of business meetings.

Planning a visit to the business partner from China, or arranging the business meeting it is necessary to know that in China, as well as in other countries, the working day begins at 8:00 o'clock in the morning and lasts till 17:00, from Monday till Friday. A lunch break, as a rule lasts from 12:00 till 14:00. Actually everything is “closed” during this period, including the lift and telephone services.

Chinese are very responsible celebrating the national holidays, such as: new year, May, 1, or and other state holidays. Throughout a week, during celebration any of these holidays all firms and enterprises do not work.

2. Conducting business dialogue.

Referring to somebody it is accepted to use a professional rank or a post with a surname, for example: Director Van or General Chen. If the person has no title – the madam, etc. plus a surname.

Negative answers are considered as impolite. Instead of “it is impossible” use “I will think about it”. The same concerns, if the same is addressed to you. When the Chinese partners politely speak “no problems” or “it is not a serious problem”, that means that the problems exist and you should learn more about potential questions which can arise» (URL: http://www.chinadata.khv.ru/scit_ma.htm).

It is necessary to know that in Chinese business culture the collective thinking prevails, therefore, do not hurry the Chinese

partners to momentary decision-making, it is necessary for them to consult and think once again about everything.

The strong accent in Chinese business culture is paid to hierarchical relations. If among the delegation there is no vip persons the decision or the answer to your offer will not be accepted before delegation departure.

3. Business gifts.

“The today’s official policy of Chinese business culture forbids to present gifts as the gesture of illegal action. Therefore, if you wish to present a gift to your business partner it is necessary: to make it in confidential atmosphere; in a friendship context, instead of business” [2].

“Traditions of gifts acceptance in China consist in refusal of a gift reception three or even more times before its final acceptance. Chinese do that not to seem greedy. When the gift is accepted, the one who presented should express gratitude. The wrap should be red, which is considered as a happy color in China. Pink, gold, silver papers – are possible to use for gift packing. Yellow, white, black or dark blue colors are unacceptable, as far as they have a negative connotation in Chinese culture” (URL: http://www.chinadata.khv.ru/scit_ma.htm).

If a party from Russian follows all traditions of the Chinese business dialogue the Chinese party will respond to such co-operation with a successful reply and expectedly conclude a business agreement.

In the conclusion, it is important to notice once again that the important problem of Russia and China is harmonious character of mutual cooperation based on their cultural identity.

Russia and China are the two countries, each with the unique history, culture, traditions and specificity, therefore the most effective possibility of mutually advantageous coexistence should be carried out taking into account legislative rules of both countries, and the standard international bases.

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