

Discussion on the Applicability of the Sources of Commercial Customary Law

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ABSTRACT

This article deeply discusses the applicability of the sources of commercial customary law. Firstly, it explains the concept and characteristics of commercial customary law. Its concept covers a collection of unwritten behavioral rules in all levels and links of commercial activities. The characteristics include spontaneity originating from practice, universal applicability within a certain range, and flexible adaptability in the face of changes. Then, it explores its applicability from two aspects: international commercial intercourse and domestic commercial practice. Internationally, it can promote the smooth progress of trade, unify trading rules, and enhance transaction trust. It is also an important basis for resolving international commercial disputes. Domestically, it can fill the gaps in domestic laws in emerging fields and special industries, and also adapt to local commercial characteristics and needs. However, its applicability faces many challenges, such as the coordination problem with domestic laws, including legal conflicts and the establishment of coordination mechanisms; and challenges brought by modern business innovation, such as the application of new technologies and business model innovation. Finally, countermeasures are proposed, emphasizing the need to strengthen research and application, establish coordination mechanisms, and improve and innovate rules. Enterprises and legal practitioners also need to strengthen learning and understanding to give full play to the role of the sources of commercial customary law, promote the healthy development of business, and provide legal support for the prosperity of global business.

KEYWORDS

commercial customary law; sources; applicability

Commercial activities are increasingly frequent and complex on a global scale. The application of commercial rules is crucial for ensuring the fairness, safety, and efficiency of transactions. As an important legal source, commercial customary law has a unique position and role in the commercial field. It stems from commercial practice and is a set of behavioral norms and conventions gradually formed in the long-term commercial exchanges. Understanding the applicability of the sources of commercial customary law is of great significance for enterprises, legal practitioners, and all participants in commercial activities. It not only helps resolve commercial disputes but also promotes the smooth progress of commercial activities and meets the special needs of different regions and industries. However, the sources of commercial customary law also face many problems and challenges in the application process, which requires us to conduct in-depth research and discussion.

1 Concept and Characteristics of the Sources of Commercial Customary Law

1.1 Concept of commercial customary law

Commercial customary law is a collection of behavioral rules and conventions that are naturally formed through long-term practical accumulation in the vast field of commercial activities and are generally recognized and consciously followed by extensive commercial participants. It widely covers all levels and links of commercial transactions, including but not limited to the methods of contract formation and clause contents, specific requirements in the performance process, the determination and assumption methods of liability for breach of contract, and the definition of commonly used terms in international trade. Although these rules and conventions are not explicitly recorded in the code in the form of formal legal provisions, they have practical binding force in commercial practice and become the behavioral guidelines that commercial activity participants voluntarily abide by in daily business activities, playing a crucial regulatory role in maintaining commercial order and the normal development of commercial activities(Shang, C. S., & Balde, L. 2021).

1.2 Characteristics of commercial customary law

(1) Spontaneity and practicality

Commercial customary law stems from the forefront of commercial practice. It is a set of behavioral norms spontaneously formed by businessmen in the long-term trading practice to deal with various practical problems and meet the needs of their own business development. It is not formulated and promulgated by the legislature through formal legislative procedures but is continuously evolved and improved in the daily commercial trading activities. This spontaneity enables commercial customary law to closely fit the actual situation of commercial activities and keenly

capture the subtle changes and new emerging needs in commercial practice. For example, in the early development stage of certain specific industries, businessmen gradually formed a set of established practices regarding the inspection time, methods, and quality standards of goods to ensure the timely delivery and quality guarantee of goods. These practices are specific manifestations of commercial customary law and are continuously adjusted and optimized with the development of the industry to better adapt to the needs of actual transactions.

(2) Universality and generality

Commercial customary law has wide universal applicability within a certain commercial field or specific region. It is a rule system commonly followed by numerous businessmen in long-term commercial exchanges and is not restricted by national boundaries. Whether it is a large multinational enterprise or a local small business, it needs to abide by the relevant commercial customary law rules in the relevant commercial field. It is not limited by industries either. Whether it is a traditional manufacturing industry or an emerging technology industry, as long as it involves specific commercial transaction behaviors, the corresponding commercial customary law rules apply. At the same time, the size of enterprises does not affect their compliance with commercial customary law. For example, the "Uniform Customs and Practice for Documentary Credits (UCP600)" in the field of international trade is widely applied by enterprises engaged in international trade in various countries and regions around the world in letter of credit business operations and has become a universal behavioral guideline in international commercial activities. Regardless of where the enterprise comes from and its size, it regulates its own behavior according to this convention in letter of credit transactions to ensure the smooth progress of transactions(Wang, Q. H. 2024).

(3) Flexibility and adaptability

Commercial customary law has a high degree of flexibility and can be adjusted and adapted in a timely manner according to the dynamic changes of the business environment and the rapid development of technology. Compared with relatively fixed and rigid written laws, commercial customary law can respond more quickly and flexibly adjust the rule content in the face of new situations and new problems in commercial activities to better meet the needs of commercial practice. With the rapid rise of e-commerce, the commercial transaction model has undergone tremendous changes, and commercial customary law has also quickly followed up. For aspects such as the signing and performance of electronic contracts, the security guarantee of electronic payments, and the protection of data information, corresponding rules have been formulated and improved to ensure that e-commerce activities are carried out in an orderly manner within the framework of legality and compliance. For example, for the determination of the formation time and place of electronic contracts, commercial customary law has formed different recognition standards from traditional paper contracts according to the instantaneity and cross-regional characteristics of online transactions to meet the requirements of the rapidity and convenience of transactions in the e-commerce environment.

2 Applicability of the Sources of Commercial Customary Law in International Commercial Exchanges

2.1 Promoting the smooth progress of international trade

(1) Unifying trading rules

In international trade, there are differences in legal systems of different countries, which brings certain legal risks and obstacles to cross-border trade. Sources of commercial customary law, such as various trade practices formulated by the International Chamber of Commerce, provide unified trading rules and standards for international trade, reducing disputes and uncertainties caused by legal differences. For example, the "Incoterms" clearly defines the rights and obligations of buyers and sellers under different trade terms, making the formulation and performance of international trade contracts more standardized and convenient.

(2) Enhancing transaction trust

Commercial customary law has high authority and credibility in international commercial exchanges. When both parties to a transaction follow the same commercial customary law rules, it can enhance mutual trust and reduce transaction risks. Because both parties know that the other party will act in accordance with the recognized rules, thereby reducing the uncertainty and worry about the other party's behavior. This trust is of great significance for promoting the long-term stable development of international trade.

2.2 An important basis for resolving international commercial disputes

(1) Application in arbitration

In international commercial arbitration, sources of commercial customary law are often used as an important basis for arbitral tribunals to adjudicate cases. Arbitral tribunals usually respect the commercial customary law rules chosen by the parties for application and the conventions generally followed in relevant industries. This is because commercial customary law is closer to commercial reality and can resolve commercial disputes more reasonably. For example, in

international disputes over contracts for the sale of goods, if the contract does not clearly stipulate the applicable law, the arbitral tribunal often determines the rights and obligations of both parties according to the relevant international commercial customary law.

(3) Reference in judicial practice

In international judicial practice, courts also refer to sources of commercial customary law when hearing cases. Although courts usually give priority to applying their own country's laws, when cases involve international commercial transactions and there are no clear provisions in domestic laws, courts will consider applying international commercial customary law. This helps ensure the fair hearing of cases and also reflects the important position of international commercial customary law in resolving cross-border commercial disputes (Zhang, Y. 2010).

3 Applicability of the Sources of Commercial Customary Law in Domestic Commercial Practices

3.1 Filling the gaps in domestic laws

(1) Emerging commercial fields

With the development of technology and the adjustment of economic structure, some emerging commercial fields such as internet finance and sharing economy are constantly emerging. In these fields, the formulation of domestic laws is often relatively lagging and cannot meet the needs of commercial practice in a timely manner. Sources of commercial customary law can fill these gaps to a certain extent and provide behavioral norms and guidance for emerging commercial activities. For example, in the sharing economy, commercial customary law regarding platform responsibilities and user rights protection is gradually taking shape, providing a reference for the formulation and improvement of relevant laws.

(2) Special commercial industries

Some special commercial industries such as shipping and insurance have strong professionalism and particularity, and domestic laws may not be able to provide detailed regulations for all their specific issues. Commercial customary law plays an important role in these industries. It has formulated a series of conventions and rules according to industry characteristics, such as the use rules of shipping bills of lading and the procedures for insurance claims. These commercial customary law rules can effectively regulate commercial behaviors within the industry and ensure the smooth progress of transactions.

3.2 Adapting to local commercial characteristics and needs

(1) Differences in commercial cultures in different regions

China has a vast territory, and there are differences in commercial cultures in different regions. Sources of commercial customary law can be adjusted and applied according to local commercial characteristics to better meet the needs of local commercial activities. For example, in some ethnic minority areas, there are unique commercial trading habits and methods, and these customary laws play an important role and function in local commercial activities. Respecting and applying these local commercial customary laws helps promote local economic development and national unity.

(2) Special needs of local economic development

The development of local economies may have special needs and focuses. Sources of commercial customary law can provide references for local governments to formulate relevant policies and measures. For example, in some economic development zones or characteristic industrial parks, in order to attract investment and promote industrial development, some preferential policies and management regulations that conform to local commercial habits and industrial characteristics may be formulated. These regulations draw on the concepts and practices of commercial customary law to a certain extent and can better adapt to the actual situation of local economic development (Liu, J. Y. 2018).

4 Challenges and Countermeasures for the Applicability of the Sources of Commercial Customary Law

4.1 Coordination issues with domestic laws

(1) Legal conflicts

There may be conflicts between the sources of commercial customary law and domestic laws. On the one hand, some rules of commercial customary law may be inconsistent with the provisions of domestic laws; on the other hand, the degree of recognition and application of commercial customary law by domestic laws also varies. This legal conflict may lead to difficulties and uncertainties in applying the law in specific cases. For example, in domestic disputes over contracts for the sale of goods, if the parties agree to apply a certain commercial customary law rule but this rule conflicts with the relevant laws of our country, the court needs to weigh how to deal with this conflict when hearing the case.

(2) Establishment of coordination mechanisms

To solve the coordination problem between the sources of commercial customary law and domestic laws, corresponding coordination mechanisms need to be established. This includes clarifying the status and scope of application of commercial customary law at the legislative level and stipulating the principles and methods for resolving conflicts with domestic laws; in judicial practice, strengthening judges' understanding and application ability of commercial customary law, establishing a case guidance system, and unifying judgment standards. At the same time, we can also promote the coordinated development of commercial customary law and domestic laws by strengthening exchanges and cooperation within the legal professional community (Jiang, L. Z. 2022).

4.2 Challenges brought by modern commercial innovation

(1) Application of new technologies

With the extensive application of new technologies such as big data, artificial intelligence, and blockchain in the commercial field, the mode and method of commercial activities have undergone profound changes. The sources of commercial customary law need to adapt to these challenges brought by new technologies and timely adjust and improve relevant rules. For example, in the scenario where blockchain technology is applied to supply chain finance, issues such as how to determine the validity of electronic contracts, the authenticity and security of data need to be regulated and clarified by commercial customary law.

(2) Business model innovation

The emergence of new business models such as sharing economy and platform economy has put forward new requirements for commercial customary law. These business models involve complex relationships among multiple parties, and traditional commercial customary law rules may not be fully applicable to new business scenarios. Therefore, it is necessary to study and formulate commercial customary law rules that adapt to new business models to ensure the fairness, safety, and efficiency of transactions. For example, for issues such as the definition of platform responsibilities and user data protection in the platform economy, in-depth discussions and regulations need to be carried out at the level of commercial customary law.

5 Conclusion

As an important part of the commercial legal system, the sources of commercial customary law have extensive applicability in international and domestic commercial practices. It plays an important role in promoting international trade, resolving commercial disputes, filling gaps in domestic laws, and adapting to local commercial characteristics. However, its applicability also faces challenges such as coordination with domestic laws and challenges brought by modern commercial innovation. In order to better play the role of the sources of commercial customary law, we need to strengthen its research and application, establish a sound coordination mechanism, continuously improve and innovate relevant rules to adapt to the ever-changing business environment. At the same time, enterprises and legal practitioners should also strengthen their learning and understanding of commercial customary law, reasonably apply commercial customary law rules in commercial activities, safeguard their legitimate rights and interests, and promote the healthy development of commercial activities. Only in this way can the sources of commercial customary law radiate more vigorous vitality in modern commercial society and provide strong legal support for the prosperity and development of global commerce.

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