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Comparative Analysis of Liability for Breach of Contract under Obstacles to Performance of International Trade Contracts

-- Based on Typical Cases between China and RCEP Member Countries

Xinyue Fang*

College of Law, The University of Melbourne, Xi'an 710076, Shaanxi, China
*Corresponding Author Email: xinyfang2@student.unimelb.edu.au

ABSTRACT

The entry into force of the Regional Comprehensive Economic Partnership (RCEP) has injected new vitality into intra-regional trade, but it has also brought to the fore disputes arising from contractual performance obstacles. This article focuses on the differences between China and RCEP member countries in the identification and assumption of liability for breach of contract arising from contractual performance obstacles in international trade contracts. Through comparative legal research and analysis of typical cases, this article reveals that the strict conditions and procedural requirements of China's Civil Code regarding core impediments such as force majeure and hardship differ significantly from the flexible contract interpretation of Singapore's common law, the emphasis on the obligation to renegotiate in Japanese precedent, the cautious application of frustration in Australia, and the limited provisions of Vietnamese statutory law. Typical cases further demonstrate that, with regard to liability, China emphasizes actual performance and damages, while common law countries rely more on damages as a remedy and Japan emphasizes negotiated settlements. The study suggests that within the RCEP framework, there is an urgent need to strengthen legal coordination, promote unified contract terms, improve alternative dispute resolution mechanisms, and enhance corporate legal risk awareness to promote regional trade stability and efficient dispute resolution, providing practical guidance for businesses in the region.

KEYWORDS

International Trade Contract; Performance Barriers; Liability for Breach of Contract; RCEP; Comparative Law; Chinese Law; Force Majeure; Hardship.

1. INTRODUCTION

With the full implementation of the Regional Comprehensive Economic Partnership (RCEP), trade and investment activities between China and its 14 member countries have significantly deepened, accelerating the integration of regional supply and value chains. As the cornerstone of transactions, the smooth performance of international trade contracts is crucial to regional economic prosperity. However, the uncertain global political and economic environment, frequent natural disasters, public emergencies, and differences in national policies and regulations have significantly increased the risk of encountering obstacles in the performance of international trade contracts. Once such obstacles occur, they can easily lead to contract breaches and, in turn, complex cross-border disputes. Against this backdrop, accurately identifying the nature of contractual obstacles, rationally defining liability

for breach of contract, and seeking effective remedies have become major challenges facing businesses, legal practitioners, and policymakers in the region.

Compared to traditional bilateral trade agreements, while RCEP has established a vast unified market, it has not achieved unification or deep coordination at the private law level. The diverse legal systems of the member countries, encompassing civil law, common law, and mixed legal systems, have led to significant differences in the elements of obstacles to performance, the standard of proof, the legal effects, and the specific means of assuming liability for breach of contract. These differences not only increase the complexity of contract negotiation and clause design, but also lead to conflicts in applicable law and unpredictable outcomes during dispute resolution, increasing transaction costs and risks. Therefore, systematically comparing the legal rules and practices regarding breach of contract liability under contractual impediments between China and major RCEP member countries, deeply analyzing their causes and impacts, and exploring feasible paths for coordination has important theoretical value and urgent practical significance. This study aims to provide an analytical framework and practical reference for this purpose.

2. COMPARISON OF TYPES OF IMPEDIMENTS TO CONTRACT PERFORMANCE AND LEGAL FRAMEWORKS

Imperfections to the performance of international trade contracts refer to circumstances where, not due to the debtor's intent or negligence, performance is rendered completely or partially impossible, delayed, or the cost or significance of performance changes dramatically. Within the RCEP region, the main types of impediments include: 1) Force majeure: objective circumstances that are unforeseeable, unavoidable, and insurmountable. 2) Hardship/Change of Circumstances: fundamental changes in the basis of the contract that were not foreseeable by the parties, resulting in exceptionally difficult performance, or loss of anticipated benefits, though possible. 3) Legal Impediments: newly enacted laws, regulations, or policies during the performance process that directly prohibit or substantially hinder contractual performance. China's Civil Code clearly stipulates force majeure (Articles 180 and 590) and change of circumstances (Article 533). Force majeure requires the "three nos" requirement, resulting in partial or full exemption from liability. Change of circumstances emphasizes the need for "non-commercial risk" and the unjust nature of continued performance, resulting in renegotiation or requesting a court to modify or terminate the contract[1].

Comparatively, RCEP member countries differ significantly. Singapore, a common law country, does not have codified force majeure or hardship clauses, relying entirely on specific contractual provisions. If no such provisions are in place, the common law principle of "frustration of contract" applies, or a term is implied through contract interpretation. Japanese law, influenced by German law, does not explicitly provide for change of circumstances in its Civil Code, but case law and doctrine widely recognize that when the basis of a contract undergoes an unforeseen fundamental change, the parties have an obligation to renegotiate and may ultimately resort to court to modify or terminate the contract. Force majeure provides for exemption from liability, either by contract or by law (Articles 415 and 541). Under Australian common law, "frustration" applies to extreme circumstances, automatically terminating the contract and exempting liability. Hardship generally does not constitute a ground for exemption unless the contract contains a specific "hardship clause." Vietnam's Commercial Code provides for force majeure (Article 294), with similar requirements to China's, resulting in delay or exemption of liability. However, there are no general provisions regarding changed circumstances, making it difficult to address in practice. This diversity of legal frameworks is the root cause of subsequent differences in liability determination.

3. DETERMINATION AND ASSUMPTION OF LIABILITY FOR BREACH OF CONTRACT DUE TO OBSTACLES TO PERFORMANCE UNDER CHINESE LAW

Chinese law adopts a strict statutory approach to determining liability for breach of contract due to obstacles to performance of a contract, particularly setting clear thresholds for core obstacles. According to Article 590 of the Civil Code, force majeure must simultaneously meet the three elements of unforeseeability, unavoidability, and insurmountability. The party claiming force majeure exemption bears a heavy burden of notice and proof, requiring prompt notification to the other party to mitigate losses and providing valid evidence such as official certification within a reasonable period. The legal effect is partial or full exemption of liability for breach of contract based on the impact, excluding monetary debts, and the contract can be terminated. Article 533 provides for a change of circumstances regime, which applies only when the underlying conditions of a contract have significantly changed since its establishment. Such a change must fall within the scope of non-commercial risks that the parties could not foresee at the time of the contract, and continued performance would be manifestly unfair to one party. This regime does not automatically exempt the parties from liability, but rather imposes an obligation to renegotiate. If negotiations fail, the parties may request a court or arbitration institution to modify or terminate the contract, and termination generally does not incur liability for damages.

With regard to liability for breach of contract, Chinese law emphasizes actual performance and statutory compensation. If no impediment to performance exists, the breaching party is subject to strict liability. The preferred remedy for the non-breaching party is to demand actual performance. If actual performance is impossible or unnecessary, damages are awarded, following the principle of full compensation (Article 584) to compensate the non-breaching party for all losses, subject to the foreseeability and mitigation rules[2]. The liquidated damages regime is widely used (Article 585). If the agreed liquidated damages are lower than or excessively higher than the actual losses, the court may be requested to adjust them. In practice, when facing international disputes, Chinese companies often face challenges such as high standards of proof, cumbersome procedures for notarization and authentication of foreign evidence, and uncertainty in the recognition and enforcement of foreign judgments/awards in China.

4. ANALYSIS OF BREACH OF CONTRACT LIABILITY RULES AND PRACTICES IN MAJOR RCEP MEMBER STATES

Breach of Contract Liability Rules and Practices in RCEP Member States exhibit significant diversity. Singapore, as a representative of common law, is centered on freedom of contract and damages-centeredness. The validity of force majeure depends entirely on the clarity and completeness of contractual terms. If a term is ambiguous or missing, the common law doctrine of "frustration" must be invoked, which has a very high threshold for application. Once frustration is established, the contract automatically terminates, the obligations of both parties are discharged, and payments already made are generally recoverable. Damages are the primary and most important remedy for breach of contract liability, intended to restore the economic position of the non-breaching party to the condition that the contract has been performed as agreed. Specific performance, as an equitable remedy, is awarded only when damages are insufficient and the court deems them fair and reasonable. Contracts often specify in detail the calculation of damages and the maximum liability limit.

Japanese law is unique in its ability to reconcile statutory law with commercial realities. While there are no codified general provisions for change of circumstances, courts have developed extensive precedent based on the "reform of circumstances principle." When maintaining the validity of the original contract is manifestly unfair due to circumstances not attributable to the parties, the parties' obligation to renegotiate is recognized. If negotiations fail, the court may directly modify or terminate

the contract based on the principle of fairness. Force majeure is handled according to the agreement or the exemption provisions of the Civil Code. Regarding liability, actual performance is a key right of the creditor. Damages are based on the principle of substantial causation, and the creditor has an obligation to mitigate losses. In practice, Japanese companies prioritize long-term relationships and tend to prioritize seeking flexible solutions through negotiation when performance obstacles arise. Litigation is often considered a last resort.

Australian law strictly adheres to the common law tradition. "Frustration" is the primary legal mechanism for dealing with significant external events, but its application is extremely strict, limited to events that make performance impossible or fundamentally alter the nature of the obligations. "Hardship" circumstances such as general market fluctuations and increased costs generally do not constitute frustration. If a contract contains a "hardship clause," it may trigger renegotiation. Frustration automatically terminates the contract, releasing both parties from future obligations. Payments already made can be recovered under the Federal Refund Act and other provisions. The core remedy for breach of contract is common law damages, calculated based on the foreseeability rule[3]. Actual performance is also an exceptional remedy. It is worth noting that the Australian Consumer Law and other laws strictly regulate unfair terms in certain contracts, which may affect the effectiveness of exemption clauses.

Vietnam, a civil law country, provides for force majeure in its Civil and Commercial Codes. The requirements are similar to those in China, resulting in a delay or exemption from liability, but requiring timely notification and proof. The law lacks clear general provisions regarding changed circumstances, making it difficult to address in practice and leaving judges with considerable discretion. Actual performance is the principle of liability. Damages cover both direct losses and partial loss of profit, but judicial practice tends to be more conservative in favoring profit. The law clearly caps liquidated damages to prevent excessive liquidated damages from becoming a tool of oppression.

5. ANALYSIS AND COMPARATIVE IMPLICATIONS OF TYPICAL CASES

A selection of typical dispute cases between Chinese and companies from various RCEP member countries clearly illustrates how legal differences collide in practice. Case 1: A Sino-Vietnamese Agricultural Product Contract and the Determination of Force Majeure. Chinese company A imported agricultural products from Vietnamese company B under a standard force majeure clause. Due to rare flooding, Vietnam was unable to deliver the goods and asserted a force majeure exemption. China questioned whether the floods were "unforeseeable" in the region and requested sufficient official disaster certification and evidence of "unavoidable and insurmountable" impacts on production facilities. The dispute focused on the standard for proving force majeure and whether common local disasters met the "unforeseeability" requirement. This case highlights that even with contractual clauses, disagreements can arise regarding the specific interpretation of force majeure and the fulfillment of the burden of proof. The discretion of Vietnamese courts or arbitral tribunals is crucial.

Case 2: A Sino-Japanese Equipment Supply Contract and the Application of Change of Circumstances. Japanese company C supplied precision equipment to Chinese company D under a contract that lacked an explicit change of circumstances clause. During the contract period, the procurement cost of key imported components increased dramatically by 200% due to the exporting country's new trade control policies. The Japanese side claimed a change of circumstances and demanded price renegotiation or contract termination. China argued that this was a normal commercial risk and that Japan should bear the risk. The core of the dispute was: Is the policy change a "non-commercial risk"? Does the sharp increase in costs constitute "manifestly unfair"? Chinese courts have historically been cautious in applying Article 533 of the Civil Code regarding change of circumstances, particularly when it involves commercial risks. Under Japanese law, this situation may trigger the obligation to renegotiate under the "reform of circumstances principle." This case

demonstrates the difference in the strictness of the elements constituting a change of circumstances between China and Japan, as well as the importance Japanese law places on the renegotiation process.

Case 3: A Sino-Australian Mineral Contract and the Defense of Frustration. Australian company E has long exported minerals to Chinese company F, and the contract is governed by Australian law. Due to a prolonged international conflict, the main shipping route was blocked, and the cost of alternative routes tripled. The Australian side claimed frustration and demanded termination of the contract. China argued that performance, while more expensive, was still possible and therefore did not constitute frustration, and demanded continued performance or compensation. Under Australian common law, a mere increase in performance costs rarely constitutes frustration. The dispute revolves around the strict interpretation of the term "fundamental change in the nature of the obligation." Australia's chances of success are low unless the contract includes a specific hardship clause. This case highlights the high threshold for frustration of a contract under common law and the importance of a clear hardship clause for cost-sensitive long-term contracts[4].

Case 4: A Sino-Technical Services Contract and the Calculation of Damages. Singaporean company G provided IT services to Chinese company H under a contract containing a LAD clause (agreed damages for delay). The Singaporean company suffered significant delivery delays due to a non-compete lawsuit filed against a key member of its technical team. China sought substantial delay damages under the contract. Singapore argued that the personnel lawsuit was an unexpected event and that the amount claimed by China far exceeded its actual losses. The dispute arose as to whether the personnel issue constituted a contractually exempted event. Could the LAD clause's amount be reduced by the Singaporean courts as punitive liquidated damages? The Singaporean courts would examine whether the amount represented a genuine anticipation of potential losses or was intended to be a deterrent. This case demonstrates the balance between freedom of contract and substantive fairness under Singaporean law.

6. COORDINATION PATHWAYS AND RISK PREVENTION RECOMMENDATIONS UNDER THE RCEP FRAMEWORK

To address the challenges of diverging rules on liability for contractual obstacles within the RCEP region and promote trade facilitation and efficient dispute resolution, coordinated efforts are needed at multiple levels. Regarding legal coordination and convergence, while achieving unified contract law in the short term is unrealistic, RCEP member states can actively promote consensus on model laws or guiding opinions. For example, these could establish relatively clear regional guidelines on the core elements of force majeure, basic requirements for notification and proof, and the applicable principles for changed circumstances/hardship. Courts and arbitration institutions in various countries are encouraged to refer to principles that reflect international commercial practice, such as the United Nations Convention on Contracts for the International Sale of Goods, in their adjudications. Furthermore, mechanisms for mutual recognition and enforcement of judicial and arbitral awards among member states should be deepened to enhance the certainty and efficiency of cross-border enforcement[5].

In terms of contract design and risk management, businesses are the front line of risk prevention. International trade contracts must include clear, specific, and actionable force majeure clauses. In addition to listing typical events, they should clearly define the constituent elements, the time limit and method for notification by the affected party, the types of required supporting documents, the legal effects, and subsequent procedures. For contracts with long lifespans and that are susceptible to market fluctuations, effective hardship/renegotiation clauses should be actively considered, clearly defining the triggering conditions, initiation procedures, negotiation deadlines, and solutions if negotiations fail. Furthermore, precise damages calculation mechanisms (LADs) and liability caps are essential, and attention should be paid to the reasonableness of their amounts to avoid being deemed punitive and invalidating. Jurisdiction and applicable law clauses also require careful drafting.

Regarding dispute prevention and resolution, alternative dispute resolution (ADR) mechanisms should be vigorously developed and promoted within the RCEP region. The inclusion of mandatory prior negotiation or mediation procedures in contracts is encouraged. The RCEP already includes dispute resolution mechanisms, and future exploration could explore the establishment or strengthening of mediation platforms to support private commercial disputes. Industry associations can play a key role in developing industry-wide contract templates, terminology interpretations, and dispute resolution guidelines. For businesses, enhancing awareness of cross-border legal risks and building capacity are crucial. This includes strengthening understanding of the basic contract law systems of trading partners' countries, conducting specialized legal due diligence before signing major contracts, establishing real-time monitoring and contingency plans for contract performance obstacles, and ensuring strict adherence to contractually agreed notification and certification procedures when obstacles occur, as well as properly preserving relevant evidence.

7. CONCLUSION

There are systematic differences between China and RCEP member countries in their rules and practices regarding breach of contract liability for contract performance obstacles. Regarding the identification of obstacles, Chinese law sets high thresholds and specific procedures for force majeure and changed circumstances. Singaporean and Australian common law rely heavily on contractual clauses, and the common law definition of "frustration" is extremely strict. Japan has developed a flexible "change of circumstances principle" and an obligation to renegotiate through case law. Vietnam, on the other hand, lacks clear rules regarding changed circumstances. Regarding liability, civil law countries like China and Vietnam place greater emphasis on actual performance, with damages guided by the principle of reparation. Common law countries like Singapore and Australia, on the other hand, default to damages as the primary remedy, with actual performance limited. Japan places particular emphasis on negotiated settlements. Typical cases clearly demonstrate how these differences lead to legal conflicts and uncertain outcomes in cross-border disputes, such as the need to foresee localized force majeure risks, the demarcation between "commercial risk" and "non-commercial risk" in changed circumstances, the stringent standards for contract frustration, and the reasonableness review of LAD clauses.

These differences are rooted in the varying legal traditions, judicial philosophies, and economic development stages of the member states. They profoundly impact transaction costs, risk allocation patterns, and dispute resolution efficiency within the RCEP region. To foster a more stable, efficient, and predictable regional trade legal environment, it is necessary to explore a path of gradual harmonization while respecting the judicial sovereignty of each country: promoting the development of regional guidelines or best practices on the concept of core performance barriers; encouraging the adoption of model international commercial contracts that incorporate clear, detailed, and balanced force majeure, hardship, and damages clauses; vigorously developing and prioritizing alternative dispute resolution (ADR) mechanisms such as mediation, with renegotiation as a precondition; and continuously strengthening cooperation on the mutual recognition and enforcement of judicial and arbitral awards among member states. For businesses, enhancing awareness of cross-border legal risks, prioritizing applicable law and clause design during contract negotiations, and establishing contract performance risk monitoring and response plans are key to mitigating risks and safeguarding their rights. Only through a multi-pronged approach, including harmonizing legal rules, improving contract autonomy, and optimizing dispute resolution mechanisms, can the trade and investment potential under the RCEP framework be maximized.

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