The Price and Determination of the Price in the Sales Agreement

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Abstract: The development of international trade in the current conditions of globalization and the impact of the development of the global economy, but also cooperation and closeness among nations is not left without legal rules designed to underpin the relations of social commerce with foreign elements. One of the relevant dimensions of international trade is the contract for international sales. The performance of the contract for international sales also includes the legal problems that are detected by identifying and enabling precise adaptation clauses to represent the progress of future contractual relations with a foreign element. Specific clauses of the contracts for international sales are of great importance and interest because they cover legal reality in the direction in which the contract is emerging as an effective tool for the achievement of the interests of the parties and the purposes for which they were created. This reality is the reason that has pushed to making efforts in understanding and improvement of specific clauses of the contract for international sales in order to monitor the dynamic changes in the business and legal community.

Keywords: international sales; globalization; contracts; clauses

1. Sales Agreement

The sales agreement is the most important agreement in the field of trade of goods: no sale is not possible without the trade of goods! The basic principle of international sales is the principle of autonomy of the will of the parties, with certain limitations imposed by national law as an expression of the interest of the state to regulate international trade. According to different

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interpretations and different definitions of international trading, it's known as an activity of circulation. (a code for general turnover of goods number 1)

International sales is the core activity of international trade law regulating the direct legal relationships in specific legal actions between the seller and the buyer, as well as certain goods which are subject to a specific contract. (Law on Obligations (Public gazette 18/2001, 78/2001, 04/2002, 59/2002, 05/2003, 84/2008, 81/2009 and 161/2009) art. 442)

With the contract for international purchase or sale of goods, the seller undertakes the foreign buyer to make available certain goods declared to be based on that action purchaser acquires title to the goods. The aim of the activity is to provide transmission or transfer of goods subject to specific contract for purchase and sale of state goods being sold are located in another state. Simultaneously with the signing of the contract, the buyer assumes the obligation to the seller to pay the set price.

International trading exists if the parties compulsory subject who are based in different countries even though the goods subject to the contract of sale is exported to another country or when the offer or acceptance shall be carried out in different countries, i.e. when the goods are delivered to country other than that which is given or accepted the offer.

According to all the foregoing, and in accordance with domestic and international regulations: in a sales contract the seller undertakes item sells to deliver to the buyer so that the buyer acquires the right of ownership, and the buyer agrees to pay the seller the price. (a code for general turnover of goods number 1)

The difference of contracts for internal and international sales only in the element of foreign.

There are two criteria that determine the character of international sales: subjective and objective criteria.

According to the subjective criterion, sales are considered international when at the time of conclusion of the contract, the seller belongs to one, and the buyer of another country.

For international sales in accordance with the objective criterion it is considered the sales in the execution of which led to the transfer of goods from one country to another.

The uniform law on agreements for international sales of corporeal movables from 1964 favored the combined criteria, which considers that the sale is international only when the parties have their headquarters in the territory of different countries, and besides, of course, if possible to perform or transfer of goods across borders or the delivery of it to be over the limit, i.e. to achieve the consent of the will over the border, and allow the delivery to be in another country, and not one in which achieved conformity of the will of trading.

In a contract for international sale the seller commits a buyer from overseas to make available certain goods declared, on the basis of the contract the buyer becomes the owner of the goods.

As a rule, international trade or sale exists if the contracting parties as specific subjects of the contract are registered and are based in different countries and if the declared goods subject to the contract are exported to another country. International trading exists in circumstances where the offer and its acceptance has been made in different states or when the goods are shipped to countries other than those who gave or accepted the offer. (Miodrag, 2007)

The contracts for international trading as a rule are always in alignment with the positive legal system, legal rules and regulations governing the export and import of a specific country. For the implementation of appropriate economic policy states occasionally restricts imports and exports. Similarly, when it comes to the transfer of goods from one country to another, because the goods often has to be carried through the territory of a third country, it can infect restrictions parties to the contract must be respected.

At some time in the conclusion of contracts comes to restriction of the autonomy of the will. Because of the numerous interventions of the state such a thing called "triangular concept of contract for international trading," in which two parties are the usual international agreement (buyer and seller) and the third party is profiled as the country. (Dukoski, 2014)

2. The Price as an Element of the Sales Agreement

The price for international trading is a second important element of the sales contract. **Res per pecuniam aesti matur et non pecunia per rem.** (The items are expressed in money, not money in assets).

Under the definition of price means monetary compensation the buyer gives the seller for the realization of the contract. As a rule, the price is really value expression of a good or service. In fact the practice price coordinating producers and consumers in the market for goods and services.

The price may be fixed or determinable. So the price of a commodity can be specified in a single measure or a lump sum for the entire quantity of the goods or the service. Price is determinable if determined how the cost will be determined, and as a rule at a time when its due time for payment.

As a rule, the price in the international trading should be: serious, initially set accurately and fixed.

The basic terms for types of prices in international trading are:

- Market price, which means the average market price that has in a particular place or market at a time;
- Exchange price is a price on a product that achieved a particular stock at a specified time, which is characterized by the contract, while the average stock exchange price that is received as a mathematical product of the price of the product to more markets;
- The current price is the average market price of a particular product in a specific place and specific time;
- Factory price is the price of the product after the manufacturer sells it;
- Selling price is the price at which the seller regularly sells goods. (Dukoski, 2014)

In international trade agreements, the price normally is determined by a freely convertible currency. The currency in which the price is expressed also called currency of the contract, unlike the currency of payment, which actually indicates the currency in which you paid the agreed price to the seller. (Лексикон права меѓународних привредних односа, 1982)

3. Insurance Clauses in Contracts for International Trade (Mechanisms for Price Correction)

Through numerous agreements for international sales it may occur a situation of disruptive events that are independent of the guilt of the parties to the contract and thus affect the balance which had been agreed during the signing of the contract, resulting in failure or significant threat to the fulfillment of obligation to at least one of the parties. Risks that often jeopardize long-term contracts for international trade can be economic (monetary or non-monetary or commercial nature), political risks and natural disasters.

In order to prevent or stop, currency risks, the parties may state the following contents insurance clauses in the contract: the gold clause, currency clause, a clause which allows fixing the place of payment and so on.

When it comes to the forms of the gold clause, relevant in terms of currency risk hedging is the only clause value of gold. According to clause value of gold, the currency for the price, which is agreed replies that is equivalent to the official gold parity at the time of signing the contract and will fluctuate depending on the evolution of the parity specified at the time of execution of payments of the previously agreed upon price.

Gold ceased to be a benchmark index to its demonetization, mostly because the US stopped supporting the provision of fixed parity of the dollar to gold in 1971. From today's perspective, because the currencies are not expressed through a formal parity with gold, usefulness and use of the gold clause is limited, with a significant preference for the use of other monetary clauses.

Depending on the complexity of the referenced elements, we have the single currency clauses, multi-currency clause which is based on the selection of currencies selected by the parties and multi-currency clause based on institutionalized selection of currencies.

Single clause that includes the single currency according to two categories of coins, one purposed for payment, invoicing, which is by definition more susceptible to fluctuations, and one for reference, calculation and computation, which is more stable. Under this clause, the price of the contract will be determined in the currency of reference (the more stable currency) and will be paid in the currency of payment, depending on exchange rate that is valid for the day of payment.

In international agreements, freedom of the parties to choose the currency in which the payment is being done is part of the substantive and private international law includes a settlement of the will of the parties. Under the principle of uniformity of the contract in the absence of contractual provisions that would be established contrary, all monetary obligations arising from the agreement will be billed in the same currency. If it comes to a situation where compensation is needed between parties to the contract, it is the two debts to be calculated in the same currency as agreed.

As a source that defines the exchange rate between currencies, the parties can opt for the official exchange rate in the country of the debtor Bank accepted on the day the payment. It can be arranged, in a less formal way of spring such as *www.oanda.com/convert* that allows to calculate the exchange rate at any time by accessing the Internet at any of the parties.

If the reference currency which is agreed between the parties is unstable, the real value of money the creditor receiver it is threatened. Therefore, the correlation between the exchange rate of the payment and the average exchange rate fluctuations recommended choice selection of 3 to 5 benchmark currencies that are chosen by the parties.

Unlike the multi-currency clause which is based on the selection of currencies determined by the contracting parties, a multi-institutional clause based on a particular currency does not mean the agreement of the parties for specifying currencies in the selection and calculation of the exchange rate. This role lies with specialized international body. Institutionalized best selection of currencies is represented by Special Drawing Rights - S.D.R. which is part of the International Monetary Fund (IMF).

Under the clause to choose the place of their payment, the contract price is expressed in the reference currency that will be paid in one of the places which are an alternative provided for that purpose in local currency calculated at the exchange rate of the reference currency and the one in which the payment.

The place where the payment itself occurs does not change the contract price, although this is the result of applying the exchange rate between the reference currency and the currency in which the payment is made of that location. In general, the clause to choose their payment shall be determined in favor of the creditor.

Through the choice of the liberating currency, the parties express contractual price in two or more currencies for payment given alternatively, forwarding the fact that on the day when the execution of the payment of creditor chooses which of the contractual currencies for payment will require fulfillment of its claim.

The right of choice of the liberating currency can be specified by the contracting parties and in favor of the debtor. Thus, the parties have the opportunity to provide monetary clause opportunity whereby Lower denominated in multiple currencies, leaving to the debtor's freedom of choice on the day of the execution of the payment.

Other ways to avoid currency risk: selection of payment using the most stable currency of the exporter; or choose a declining currency for payment for the importer; on the date of maturity of the claim debtor sells his debt of certain banks; a group of companies mainly oriented to partially compensate for revenue and expenses in the same currency; a contract that includes a deadline for the payment must be made by the debtor has the option to either hurried or delayed its payment depending on the reference currency and whether it is in the process of growth or decline.

Prevention of non-currency risks can be achieved by inserting a clause for price revision, clause price post-calculation etc. in the contracts for international sales.

The clause for revision of the price allows the parties an automatic recalculation of the agreed price in long-term international agreement for sale if there are substantive changes in the non-currency items through execution risk have no effect on the agreed balance which is determined at the time of conclusion of international trade agreements.

The indexed elements are the index and the index value. With respect to the index value, it should be mentioned that the indexation must be complete before to cover the full cost or part of the price, in which case it is only indexing certain elements of the original cost. When talking about the index, we think of the element (raw materials, labor, etc.) used as the reference benchmark Mortars which determines changes in the index value. Thus, according to this criterion on which both sides agree and as a reference whose evolution determines the index value received, we differentiate between unique clauses indexing, indexing cumulative provisions and general provisions for indexing.

In international trade agreements indexing is free, and all the restrictions that are set by the national legal systems for domestic (national, internal) contracts have no validity.

The index clause removes the principle of monetary nominalism, where the value of the accounting unit is the same regardless of the incurred depreciation (amortization). However, such a clause cannot prevent the possibility of rejection of the selected currency that would be used as a payment instrument and only refers to the level of debt.

The index clause is different from the currency or gold clause in terms of which in itself does not include any metal or buying currencies that could potentially weaken the euro on the stock market. This difference is also done in terms of the referenced elements that disagree countries because the clause review of prices evolve in response to non-currency economic invoices primarily in case of abundance or lack of goods and relative supply and demand.

The clause for overlooking the price should not be confused with the clause for update, where the parties state in the contract that the price will be updated according to an index determined by them. Clause update also helps ease the determination of the contract price, if however it is not in accordance with the rules of the index clause.

The index clause also differs from the clause for post-calculation of the cost even if both have the same purpose, primarily insurance against non-currency risks. The clause on post-calculation will automatically take effect because, unlike the index clause intervention it is required by one of the contracting parties.

The clause on post-calculation of the price is a negotiated instrument that allows to eliminate the risks associated with the development or production costs for paid employees. On that basis, the supplier or provider and the services it receives has the right to determine the final price after the execution of contractual obligations, also taking into account any possible changes that may occur in the price of raw materials and the wages of workers in the period conclusion of the contract and the time of its fulfillment. Very often, countries are opting for insertion costs + compensation clause, under which the final price is made up of raw material costs and costs incurred for planning by the supplier or service provider. (http://phdthesis.uaic.ro/PhDThesis/Boanc%C4%83%20(Boanc%C4%83%20Ivan),%20Marlena,%20Specific%20clauses%20in%20the%20international%20trade%20agreements.%20Abstract.pdf)

4. Conclusion

The dynamic changes that occur daily in the world can often lead to difficulties in meeting certain agreements. This is especially evident when it comes to international sales contracts. Whether it is a force majeure or change in circumstances, it is more than clear that in the interests of the parties that contract remain in effect. Because there are many methods that can be applied, in order to achieve the best deal, which will contain the best terms that will suit both parties.

The sales agreement is the most important agreement in the field of trade of goods: no sale is not possible exchange of goods! The basic principle of international sales is the principle of autonomy of the will of the parties, with certain limitations imposed by national law as an expression of the interest of the state to regulate international trade. According to different interpretations and different definitions of international trading, so it's known as an activity of circulation. The best protection for the parties to international sales contracts of any uncertainty and other problems down the form of clear and precise provisions in it. This form of contract structuring and rounded in all stages of implementation which carry and individual elements of the risk of its failure. Therefore, insurance contracts is an important issue in such transactions, for which it is a particularly important element of international sales. Risks that occur due to their nature cannot be fully comprehensively addressed in any agreement, owing to an unlimited number of issues that may arise. Because this thing is accessed to change the Insurance clauses in contracts for international trade. Specific clauses of the contracts for international sales are of great importance and interest because they cover legal reality in the direction in which the contract is emerging as an effective tool for achieving the interests of the parties and the purposes for which they were created. In order to prevent or stop, currency risks, the parties may state the following contents insurance clauses in the contract: the gold clause, currency clause, clause fixing the place of payment and so on.

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