BUYER'S PRACTICAL RISK IN DDP (DELIVERED DUTY PAID) OF INCOTERMS 2010 AND IMPORT CLEARANCE PROCEDURES AND CUSTOMS REGULATIONS

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Abstract - Incoterms(international trade rules) is revised every 10 years and Incoterms 2020 is currently under revision. Because of the convenience like a domestic transaction and reduced risk of import customs, buyers prefer to choose DDP terms. As we know, sellers generally have to carefully choose DDP terms because of the risk of import customs clearance, but in recent Australian case showed that the buyer faced with a trouble with DDP terms. In short, Chinese supplier (Sheng Fa) and Australian buyer(SFA) made a contract under DDP terms and Sheng Fa didn't pay duties and VAT, so ACBPS(Australian Customs Border Protection Service) charged unpaid duties and taxes to the Australian buyer based on Customs Act Article 167. Thus, unlike our knowledge that DDP terms are advantageous to the buyer, the buyer also may have such a problem in practice. Because the import clearance is very strict in the U.S., so the U.S. buyers prefer DDP or LDP terms in order to avoid the customs risk. However U.S. CBP(U.S. Customs and Border Protection) doesn't like the U.S. buyers use DDP term due to problems caused with DDP term such as mis-classification of goods, under valuation, under reporting, no contact with IOR, foreign IORs fail to exercise reasonable care, foreign IORs change identities frequently, difficulty in enforcing the law and so on. This study suggests precautions when using DDP terms.

Index Terms - Incoterms 2010/2020, DDP (Delivered Duty Paid), Import Clearance, Customs Regulations

I. INTRODUCTION

Recently, exports based on DDP terms are increasing. Under the DDP terms, the seller should perform import clearance including export clearance and then transport the goods to buyer′s warehouse. So, under DDP, the buyer has the same convenience as the domestic transaction, and because the customs formalities act as an invisible trade barrier, buyer prefers to use the DDP terms in order to avoid customs clearance risks. Table 1 shows the status of denials of import clearance by major countries. The DDP terms have been pointed out that the seller should be prudent when they choose DDP as a trade terms because DDP is the most risky terms of seller; the seller pays the import clearance duty in the importing country and delivers the goods to the nominated(agreed) destination in the importing country. However, recent arbitration in Australia suggests that buyers are also at risk in the choice of DDP terms. Also, U.S. CBP (U.S. Customs and Boarder Protection) is subject to rigorous screening, and U.S. CBP does not prefer U.S. importers to use DDP terms. Therefore, in this study, I would like to discuss the buyer 's customs clearance duty, risk, and risk management when selecting DDP terms. There is little academic research due to the low frequency of use of DDP terms among trade terms. Moreover, it is difficult to obtain case studies because there are not many disputes related to Incoterms as international rules. It is known that DDP terms are the buyer's obligation is the least, but it is still necessary to discuss the matters could be happened. So, in this study, the DDP terms are examined in a practical point of view. In Chapter 2, I review the buyer's obligation of the DDP terms based on Incoterms 2010. In Chapter 3, after analyzing the Australian case, I analyze the customs regulations of the major countries. In Chapter 4, I examine the buyer's customs clearance risk under the DDP terms, and finally I conclude with the buyer's precautions under the DDP terms in Chapter 5.

II. DDP IN INCOTERMS 2010

Definition of DDP Terms

The Delivered Duty Paid (DDP) terms are called the destination terms to deliver the goods by placing them at the disposal of the buyer on the arriving means of transport ready for unloading at the agreed destination within the agreed period under the sales contract. In the case of manufacturing goods, if it is inconvenient to deliver the goods in the intermediate point, the trade partners will use either the EXW or DDP terms. The DDP terms represent the seller's maximum obligation and the buyer's minimum obligation. Under DDP terms, the buyer can avoid cumbersome transport and insurance contracts and also avoid customs duties. Moreover, because the price under DDP includes into the final destination, it is convenient to compare the total price, and the buyer can expect the same effect as domestic delivery because the goods are delivered to the buyer's factory.

A. Obligations of Buyer

Consider the buyer's obligation under DDP terms based on Incoterms 2010. The first obligations as a major obligation are payment (B1) and taking delivery (receipt) (B4); under B1(General obligation of the buyer), the buyer must pay the price of the goods as

provided in the contract of sale, and under B4(Taking delivery), the buyer must take delivery of the goods when they have been delivered as envisaged in A4(Delivery). The second obligation is to provide assistance for information at the seller′s request under B2, B3 and B10; under B2(Licences, authorizations, security clearances and other formalities), the buyer must provide assistance to the seller, at the seller′s request, risk and expense, in obtaining any import licence or other official authorization for the import of the goods; under B3(Contracts of carriage and insurance), the buyer has no obligation to the seller to make a contract of carriage and insurance, but the buyer must provide the seller, upon request, with the necessary information for obtaining insurance; under B10(Assistance with information and related costs), the buyer must in a timely manner provide to or render assistance in obtaining for the seller, at the seller′s request, risk and expense, any documents and information, including security-related information. The third obligation is to notify in time. B7(Notices to the seller) stipulates that the buyer must, whenever it is entitled to determine the time within an agreed period and/or the point of taking delivery within the named place of destination, give the seller sufficient notice thereof.

III. CASE STUDY

A contract was signed under the DDP terms between the China supplier (Sheng Fa Knitting Garment Co. Ltd) and Australian buyer(Studio Fashion Australia; SFA, applicant). The Australian Customs Border Protection Service(ACBPS) conducted a compliance audit of a number of transactions which occurred between 1 January 2011 and 30 October 2012 and in which Studio Fashion has been the purchaser. During the audit period, goods supplied by the Chinese supplier where cleared through Customs in one or other of two ways: (1) An import declaration was communicated to ACBPS by customs brokers apparently acting on instructions and replying on documents sourced from the Chinese supplier- 47 import declarations were communicated to ACBPS by four different brokers and some duty and GST(Goods and Service Tax) was paid in relation to these import declarations. (2) Self-assessed clearances(SACs) were made by freight companies acting on the basis of documents provided, directly or indirectly, by the Chinese supplier- 95 SACs were communicated to ACBPS by freight companies including DHL and UPS for shipments supplied to Studio Fashion, 12 different names were used by the Chinese supplier, and the declared customs value of the goods to which each SAC related was less than $1,000. In its audit, ACBPS compared two prices. The first were those stated in the invoices supplied by the Chinese supplier to Studio Fashion and, as confirmed by its bank transactions, paid by Studio Fashion. The second were those stated in the invoices provided by the Chinese suppler to customs brokers and to freight companies for import clearance purposes; The customs value shown of each of the 47 import declarations made by customs brokers and in each of the 95 SACs made by freight companies during the audit period were too low, customs duty and GST was underpaid in relation to the 47 import entries, and the customs value of the goods, which were the subject of the 95 SACs, had been wrongly declared as not exceeding $1,000. Thus, in each case the customs value of the goods exceeded $1,000 and neither customs duty nor GST has been paid in relation to any of the SACs. Therefore, ACBPS ordered the buyer to pay unpaid duties and GST on behalf of the seller on the basis of the Customs Act Article 167.

In some cases, the seller may not be able to pay customs duties and GST through undervaluation or under reporting. This Australian case is an important case where the buyer is responsible for unpaid duties or GST even DDP terms.

IV. BUYER'S RISK FOR IMPORT CLEARANCE UNDER DDP TERMS

A. USA: ISF(Import Security Filing) Penalties and Fines(19CFR149)

Under the DDP terms, an foreign exporter (shipper) must be an importer of record(IOR) in the United States. IOR is required to obtain Customs Bond by U.S. Customs brokers, which require detailed information such as the type of importing goods, the price, and the frequency of imports. Under the DDP terms, the U.S. importer is not IOR, but if the ISF(Importer Security Filing) is arrived late or improperly written, it will be fined from $ 5,000 per offense to $ 10,000 per shipment. According to recent U.S. CBP tracking, there are problems with IORs, who live in foreign countries, and U.S. CBP does not welcome the use of DDP terms. The problems can be occurred by using the DDP terms are as follows: However U.S. CBP(U.S. Customs and Border Protection) doesn't like the U.S. buyers use DDP term due to problems caused with DDP term such as mis-classification of goods, under valuation, under reporting, no contact with IOR, foreign IORs fail to exercise reasonable care, foreign IORs change identities frequently, difficulty in enforcing the law and so on.

B. Canada: GST(Goods and Services Tax)

In Canada, the use of the DDP terms is not possible if the seller can not obtain import licence and authorizations from CBSA(Canada Border Services Agency). Some taxes, such as Goods and Services Tax (GST), can only be paid by a registered company, so if the seller does not have a route to pay, the use of the DDP terms is not possible.

C. Double Dip Pricing and Mark Ups

The seller is responsible for the shipment under the

DDP terms and the seller is responsible for the costs associated with the shipment. However, there are cases where the seller raises the price to cover customs clearance costs, and then they do not pay duties, taxes and other charges. It is called a double dip price decision and these costs are transferred to the buyer. In some cases, the seller write down a high price in the fare bill and in this type of transaction, the customs clearance and delivery costs may already be included in the commodity cost. Thus, this means that it is difficult for the importer to get the correct price, and the hidden freight and import clearance costs rely on the seller's calculations.

D. Ambiguous Value Chain

The seller and the freight forwarder are responsible for the carriage of the shipment under the DDP terms and will control the entire transportation. However, the buyer may have limited receiving the information for the entire shipping process. In addition, in order to obtain information on the shipment, it is necessary to obtain it from the seller's carrier(seller makes carriage contract), so the buyer cannot expect to get immediate response from the carrier at all. Direct contact for shipment tracking is not possible and the opportunity for the arbitration is lost. Moreover, it is not easy to grasp the information such as the credit, business ability, reputation etc. of the transportation company because there is no information about the company of the transportation of the goods at all, and there is a fear of damage to the goods by using the subprime company with low costs.

E. Delay for Delivery and Clearance Examine

Because the DDP terms are a condition that all costs are included in the price of the goods and the seller manages all the processes, the seller often chooses the lowest service for shipping and customs to reduce costs, and this leads to delayed delivery. When the DDP terms are properly implemented, the seller 's U.S. agent will arrange customs clearance with the seller as IOR, and in this time customs inspection increases. U.S. CBP applies a high risk score to foreign IOR and inbound (inbound import) shipments and strengthen its inspections. As the result, a delay in the receipt of the buyer's goods is caused.

CONCLUSION AND IMPLICATION

In this study, I pointed out that DDP terms, known to be an advantageous trading method for importers, may not be beneficial to imports. This study suggests that importers must pay considerable attention when choosing DDP terms as a trade terms because importer has the obligation of the unpaid customs duty and GST.

The implications of this study are as follows. First, it examines the buyer's obligation under the DDP terms, which is the minimum obligation of the buyer, and examines the risks that the buyer should take. Based on the analysis, this study suggests that the DDP terms may not be favorable to the buyer and advise some precautions when choosing trade terms. Second, trade is based on usages and practices, so there are not many cases related to Incoterms. However, in this study I analyze the Australian case and raise awareness of the use of DDP terms for trade parties. Thirdly, the study of DDP terms under the condition that the seven terms that can be used for all modes of transportation were poorly studied, laid the foundation for future research for Incoterms. Finally, the strengthening of import and export customs clearance is acting as an invisible trade barrier, and the study on DDP terms is necessary.

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