

The Legal Problems Existing in the Docking of "Belt and Road" with the Free Trade Area and the Suggestions for Its Improvement

Xiangxiu Wang

School of International Law
Shanghai University of Political Science and Law
Shanghai, China

Qianqian Liu

School of International Law
Shanghai University of Political Science and Law
Shanghai, China

Abstract—With the proposal and development of "Belt and Road", the docking between "Belt and Road" and free trade area has become inevitable. At present, China not only probes into the necessity of "Belt and Road" docking with the free trade zone in the theoretical and strategic aspects, but also actively realizes the docking between "Belt and Road" and the free trade area in the actual operation. However, from the perspective of law, there are still some problems in the docking practice, such as the disunity of legal rules, the single dispute resolution mechanism, the lack of legal protection and the imperfection of legal service. In order to realize the better docking of the two strategies in China, more efforts should be made in innovating the legal rule system, perfecting the dispute resolution mechanism, perfecting the legal safeguard measures and perfecting the legal service system.

Keywords—the Belt and Road; free trade zone; docking; law; perfection

I. INTRODUCTION

On September 7, 2013, President Xi Jinping elaborated on the concept of the Silk Road Economic Belt in Kazakhstan. On 3 October of the same year, during his visit to Indonesia, President Xi Jinping also proposed an initiative to build the "Maritime Silk Road of the 21st Century." on 5 March 2015, In the government work report, Premier Li Keqiang clearly proposed to promote the construction of the Silk Road Economic Belt and the 21st Century Maritime Silk Road, and to build a comprehensive pattern of opening to the outside world. At the same time, it also stressed that we should actively promote the construction of China (Shanghai) free trade experimental area, China (Guangdong) free trade experimental area, China (Tianjin) free trade experimental area, and China (Fujian) free trade experimental area, To form a distinctive frontier of reform and opening up. The state calls on all parties to do a good job of research and work on the docking of Belt and Road with the Free Trade Zone to promote economic development. Then, on March 28, 2015, China released its vision and actions to promote the construction of the Silk Road Economic Belt and the 21st Century Maritime Silk Road. At this point, Belt and Road as an important national development plan was formally established. However, because "Belt and Road" is a new development strategy put

forward by the state in recent years, the current academic circles mainly explain and analyze the relevant theories of "Belt and Road" and the free trade zone separately. There is little research on the docking between "Belt and Road" and the Free Trade area. The existing research results are usually only from the perspective of international politics and national strategy, and rarely from the perspective of law to explore the results of the two docking research

II. THE NECESSITY OF CONNECTING "BELT AND ROAD" WITH THE FREE TRADE AREA

The proposal of "Belt and Road" is based on China's current economic reform. After decades of reform and opening up, China's economy needs to change from the processing and re-export of commodities in the past to a higher level of capital export. In terms of exports, it is no longer just an export trade of semi-finished goods in the past, But to export China's domestic excess capacity, industrial upgrading. Experts on the world economy pointed out that the proposal of "Belt and Road is to meet the needs of the current world economic development, and that China, as the world's second largest economy, is qualified and able to play a role in it; Secondly, China's domestic industrial upgrading and the transition from "bringing in" to "going out" urgently need the support of China's new development strategy¹. However, the domestic situation in China is complex, and the level of economic development in various places is uneven. It is not feasible to adopt a comprehensive reform method. However, the construction of the free trade zone is just a pilot way to carry out small-scale reforms, For China's late comprehensive economic transformation to provide the first experience. In the actual operation of the free trade test area, the main purpose is to eliminate trade barriers, lower investment barriers, improve trade facilitation and freedom into operational objectives, and build institutions accumulated in practice, Rule-making and legal service experience can provide effective guidance for Belt and Road's construction. In addition, the number and regional scope of regional free trade zones established by China in cooperation with other countries are constantly

¹ Liu Xuying. Using Belt and Road to conceive the Strategy of docking Free Trade Zone[N].International Business News, 2015-05-11(A02).

expanding, and more and more countries cooperate with China. It has become a consensus among countries to facilitate trade and investment by granting low or duty-free tariffs to member States through signed free trade agreements. These free trade zones can provide a good foundation of consciousness and economic basis for the implementation of Belt and Road in China.

The mainstream point of view in academic circles is that "Belt and Road" should be taken as the outline and free trade area as the aim to realize the docking between "Belt and Road" and the free trade area, to promote the development of "Belt and Road"². On the one hand, the development of the free trade zone provides support for the promotion of "Belt and Road." the Shanghai Free Trade pilot Zone, which has now been built and operated more successfully, has accumulated a lot of successful experience in realizing the liberalization and facilitation of trade and investment. On the other hand, the promotion of "Belt and Road" can provide the impetus for the development of the free trade zone. According to the central document, China has set up the third batch of free trade pilot parks in seven provinces and cities. The seven provinces and cities are located just near the planned route of "Belt and Road." The promotion of "Belt and Road" will provide more opportunities and policy support for the development of these seven free trade test parks.

III. THE LEGAL PROBLEMS EXISTING IN THE DOCKING BETWEEN "BELT AND ROAD" AND THE FREE TRADE AREA

The docking between Belt and Road and FTA is actually a kind of cooperation. Ideally, the FTA can provide investment and trade management experience and financing services in the process of construction. "Belt and Road" provides support for the construction of international and domestic free trade zones, promotes the construction of more international free trade zones by promoting negotiations with high-level officials of the countries along the route, and establishes more domestic free trade zones through radiation, Promote domestic industrial upgrading and economic transformation. However, these are the ideal conditions when the two are connected. In reality, "Belt and Road" itself still has many shortcomings. China is not very mature in the construction system of the international free trade zone and the domestic free trade zone, According to the actual situation at present, there are still some problems in the docking of the two. According to the status quo of the docking between Belt and Road and the Free Trade Zone, the following four problems need to be paid more attention to and taken systematic measures to solve.

A. The Rules of Law Are Not Uniform

No uniform legal rules in the docking process for the practice of the economic and trade exchange brings great legal risk. In the process of promoting the Belt and Road, because of the rule of law is not uniform, China enterprises are facing considerable investment risk and compliance risk. There have been cases in which the overseas investment of Chinese enterprises does not meet the requirements of the relevant laws

of the host country or violates the relevant laws and regulations and cannot proceed smoothly. With the acquisition of the Oregon wind farm project by the Sany group in 2012 as an example³, the Sany group, Affiliated company in the United States, Rawls Company, bought four wind farms in Oregon in the United States in March 2012. The investment project is legal, But the U.S. foreign investment committee CFIUS demanded that Rawls company stop work immediately on suspicion of threatening U.S. security. On September 28, the same year, U.S. President Barack Obama issued an executive order banning Rawls Company of Sany Group from building wind power projects, citing threats to U.S. national security. After the project was banned, it caused a great loss to the Sany Group, and the previous investment could not be recovered, resulting in the loss of more than US \$20 million to the Sany Group. The damaged Sany Group later sued Obama and CFIUS in federal court in Washington, suing him for suspending Sany Group U.S. wind power plant project on grounds of threatening national security. This case is a typical example of the risks faced by Chinese enterprises in investing abroad, and the unification of legal rules is an important feature of the case, except for the complicated political considerations included in the case. The different views of the country on some things and the different legal rules have caused difficulties for the enterprises to invest abroad in a large extent, making the "going out" enterprises face a great deal. In addition, after Chinese enterprises enter the host country market, the laws and regulations that violate the relevant laws and regulations of the host country, especially the local environment, labor and human rights, make Chinese enterprises face a great deal of serious compliance risk. According to the information provided by the authoritative research institute, the Chinese Enterprises have shown that The world bank blacklist from 2009 began to have Chinese enterprise figure, the list of Chinese enterprises and individuals as of August 18, 2016 has nearly 60, these enterprises in the punishment was prohibited to undertake the project funded by the world bank within the time limit, this situation actually is not conducive to China enterprises "going out". "The Belt and Road" along the part In a high-risk area for the financing of terrorism, the environment of the country, the laws and regulations of labor is very complex, increasing the difficulty of enterprise compliance. "The Belt and Road" proposed focus is the hope that through this platform to strengthen economic and trade exchanges between different countries, encourage mutual investment and trade between countries from China. The point of view, Chinese hope to use this platform to promote the ability of "going out" enterprises engaged in overseas investment activities to earn foreign exchange, can be in the rule of law to encourage enterprises to "going out" at the same time not unified and cooperation countries present China, for enterprises "going out" brought great risk. At present "Belt and Road" In advance of the process is not only the absence of problems with countries along the relevant legal rules unified, and international trade and domestic trade in the related legal rules on the same lack of current, no relevant documents show "The Belt and Road" unified legal rules in the process of

² Lai Manrong. The study of the "Belt and Road "and docking FTA Strategy[J].Chinese collective economy, 2015(33).

³ Sany group Top 10 news events of 2015[Z/OL]. Sany Group official website, <http://www.sanygroup.com/xmt/4957.html>.access time: 2017-04-09.

implementing measures. It does not formulate unified legal rules on investment, trade, labor, human rights, environment and other issues. Enterprises invest abroad, foreign enterprises invest in China and cooperate with each other in different countries, There will be many difficulties in each other's enterprises, which cannot achieve the goal of investment and trade facilitation

B. Imperfect Dispute Resolution Mechanism

In the process of promoting "Belt and Road" and developing with the free trade area, due to the great differences in national systems, cultures, civil litigation systems and so on, disputes will inevitably arise in the process of investment and trade. After the emergence of these disputes, its solution has become the focus of attention of enterprises. According to relevant reports, China has more than 20,000 enterprises in overseas investment in more than 90% of losses⁴. Foreign investment projects that have been negotiated by Chinese companies have been blocked by host governments, including in Greece, Mexico, France and some Asian neighbors. Take the Mexican government as an example, In November 2014, the Mexican government ordered the cancellation of the bid for the first high-speed rail project between Mexico City and Cretallo built by China Railway Construction. In 2015, the Mexican government again suspended the Sino-Mexican joint venture "long City of KanKun," Mexico's argument is that the project violated environmental laws and long-overdue fines. A spokesman for the Longcheng project in kanKun said it would appeal against the Mexican government's order. After the emergence of overseas investment, enterprises are generally required to protect their rights and interests first by seeking judicial relief in the host country. For investors who are not familiar with the litigation system of the host country and who are legally prescribed, the litigation costs are high and the risk of losing a lawsuit is also greater. Their legitimate rights and interests may not be properly protected. In the course of carrying out "Belt and Road" and developing free trade zone, it is not only the disputes between enterprises but also the disputes between countries. Disputes between countries belong to international disputes, and the important way to resolve international disputes is WTO dispute settlement mechanism. However, the dispute settlement mechanism, which has been explored by the western developed countries according to its practice from the beginning, is relatively unfamiliar to most developing countries, and is often in a weak position when they are used to protect their rights.

At present, whether it is the construction of "Belt and Road", the construction of an international free trade zone or the construction of a domestic free trade zone, there are relatively few related systems involved in dispute resolution. When disputes occur, it mainly relies on some traditional dispute resolution methods of domestic judicial or commercial arbitration to solve international investment and trade disputes, which cannot meet the requirements of convenience and freedom in the efficiency and quality of dispute resolution.

⁴ More than 20 thousand enterprises in China have invested more than 90% overseas losses.[Z/OL].world wide web, <http://finance.huanqiu.com/roll/2015-02/5630116.html>. Access time: 2017-04-07.

Whether it is the promotion of "Belt and Road" or the development of the Free Trade Zone, the emergence of international disputes is inevitable, and the current dispute resolution mechanism cannot meet the needs of protecting the legitimate rights and interests of both sides. There is also a need for better dispute resolution mechanisms.

C. Inadequate Legal Safeguards

In the process of connecting "Belt and Road" with the Free Trade area, the legal protection measures of national rights and interests and the rights and interests of enterprises participating in overseas trade and investment are still slightly inadequate. In the process of promoting "Belt and Road" and in the process of construction of the free trade zone, there is no mention of establishing a perfect legal protection system, including providing a unified platform of legal inquiry or other legal security rules for enterprises outside the territory and in the region. Enterprises in foreign investment or foreign trade will be unable to use the law to protect their rights and interests when they encounter disputes because of legal obstacles. On the one hand, because of the defects of the enterprises' own legal knowledge reserves, they will not understand the relevant laws and regulations of foreign countries. On the other hand, the national level in providing legal protection for enterprises to promote the law and national protection is not enough. Many enterprises have responded to the national policy call by actively investing abroad with state policy support, according to relevant data showing that from January to August 2016, China's domestic investors have made non-financial direct investment in nearly 6000 foreign enterprises in about 160 countries, with a cumulative foreign direct investment of 775.12 billion yuan, an increase of 53.3 percent over the same period last year⁵. However, while enterprises are "going out", they are also suffering from huge investment risks. Examples include the 2012 Sany acquisition of the Oregon wind farm project and the 2014 China-Mexico high-speed rail project, as well as the 2015 Sino-Mexican joint venture "Longcheng in KanKun". On the one hand, the failure of these projects is due to complicated political factors, on the other hand, China is promoting international cooperation, and the process of enterprises "going out" has not done a good job of legal safeguards. In carrying out the relevant international trade policy, the state should strengthen the inquiry platform and special explanation of the legal system of the cooperative country. Especially when it comes to labor, environment, and human rights protection in some countries, special instructions should be made for enterprises, so as to provide a better reference for enterprises to invest and trade abroad. In addition, in international trade or investment, because the standards of examination established in the current international convention are different from those established by Chinese judicial confirmation, the conciliation statement, the conciliation statement or the award obtained by negotiation, conciliation or arbitration shall not be fully recognized by another State after the enterprise disputes with the enterprise of other countries

⁵ Illustrations of China outward Investment in the first eight months[Z/OL].China Belt and Road net, <https://www.yidaiyilu.gov.cn/jcsj/dsjkydy/1411.htm>.access time: 2017-04-09.

and is prevented from being enforced in such a way that its legitimate rights and interests are not protected. In order to protect the legal rights and interests of relevant enterprises, China should take some measures to coordinate judicial review and enforcement.

D. Legal Service Mechanism Vacancy

In the process of connecting "Belt and Road" with Free Trade area, there are still gaps in providing legal services for domestic and foreign enterprises. The reason for the lack of legal services is, on the one hand, the inadequacy of the judicial services, the judicial system is unable to provide good judicial protection to enterprises involved in international investment and trade due to their inadequate understanding of international rules and extraterritorial laws when providing legal services to enterprises involved in international investment and trade. On 7 July 2015, the Supreme people's Court issued a typical case of the people's Court providing judicial services and guarantees for the construction of "Belt and Road". In total, there were nine cases, which can also be seen from such a move by the Supreme people's Court. In view of international trade, the judicial service foundation of China is relatively weak, and it is still in the initial stage, overseas investment and trade involve a wide range of laws, nine cases simply cannot sum up all the situations; on the other hand, China has not established a special network of foreign legal service personnel. At present, China has fewer top experts in international law than in Europe and the United States. In terms of talent training in law schools, the training of international law students is also relatively inadequate in the direction of civil law, criminal law, and procedural law, the existing institutions and talents engaged in the study of the direction of international law have not formed a unified network, so enterprises cannot find the corresponding legal service institutions or legal service personnel in the first place when disputes arise in international investment or trade. In the protection of rights and interests will lag behind or be at a disadvantage.

IV. CONCLUSION

A. Innovation of Legal Rules System

In the process of linking "Belt and Road" with Free Trade area, it is very important to innovate the legal system. On the one hand, there are many countries involved in the route of "Belt and Road", and the political, cultural, economic and ecological differences in each country have created a legal system, legal principles, and legal rules with local characteristics; on the other hand, In the course of Belt and Road's promotion and the development of the free trade zone, China will inevitably involve the disputes between China and other countries due to investment or trade. To solve the economic disputes, such as investment and trade, it is necessary to use the law as a means. In order to innovate the legal rules and regulations system, first of all, we should make an overall plan for the development of China's current foreign trade, and pay attention to the objectives, ways and means of improving the level of liberalization and facilitation of China's investment, trade in goods and services, and facilitation,

Strengthen cooperation in the areas of intellectual property protection, environmental and labour standards, sanitary and quarantine measures, trade technical standards and other areas of coordination and recognition. Strengthening bilateral or multilateral negotiations with cooperating countries, signing relevant legal and regulatory agreements, promoting the establishment of new rules for international trade, establishing unified investment and trade standards, lowering the threshold for investment entry, and taking into account the national conditions of each country. According to the different national conditions of each country, special clauses and cautionary clauses should be set up, and a high level, multi-level and wide legal regulation system should be established hand in hand. In formulating laws on investment, trade and labour, environment, and human rights, which are closely related to both, they not only pay attention to countries along "Belt and Road", but also harmonize the relevant provisions with the international free trade zone and the domestic free trade zone, only by effective unification of the three can the freedom and convenience of investment and trade be realized in a wider region. In order to ensure the scientific nature of the new legal rules, the relevant legal experts and scholars are organized to demonstrate and vote on the important articles in the stage of formulation and argumentation, and after the parties have negotiated and deliberated, they have worked out a complete draft. Successful legal rules are published on the official website.

B. Perfect Dispute Resolution Mechanism

To promote the further development of the docking between "Belt and Road" and the Free Trade area, we must speed up the pace of building a pluralistic dispute resolution mechanism, combine judicial relief, mediation, arbitration and consultation to establish a sound dispute resolution mechanism. On November 4, 2002, the leaders of China and the 10 ASEAN countries jointly signed the Agreement on the dispute settlement Mechanism of the Framework Agreement on Comprehensive Economic Cooperation between China and ASEAN, which entered into force on January 1, 2005. The agreement marks the start of the china-ASEAN Free Trade area dispute settlement mechanism. The mechanism is very similar to the WTO dispute settlement mechanism in the system design, it adopts the steps of consultation, mediation and adjudication, but the procedure design of the mechanism shows the tendency of weak judicature. In addition, China can also introduce an interim arbitration mechanism. Temporary arbitration does not need an arbitration institution. It can directly use existing arbitration rules in arbitration, which can reflect the autonomy of the parties to the greatest extent, and the arbitration method is more flexible and efficient, and can be more convenient for the parties to resolve disputes. China's free trade zone should speed up the establishment of commercial mediation, commercial arbitration, temporary arbitration and other related mechanisms with commercial organizations, develop diversified dispute settlement mechanisms, and provide impetus for the development of "Belt and Road" and the free trade zone.

C. Perfect Legal Safeguard Measures

In view of the lack of understanding of extraterritorial laws by Chinese enterprises, China may try to establish a unified platform for the identification of extraterritorial laws and a platform for the identification of Chinese translated laws, and to establish an information base for the relevant national legal systems and legal provisions along the route of Belt and Road. Before enterprises reinvest or participate in international trade, the relevant trade laws and regulations of relevant countries can be identified in advance, and the risk of enterprises investing or trading abroad can be reduced. On the other hand, when Chinese enterprises have disputes with other countries' enterprises or governments, they can also take timely measures to safeguard their legitimate rights and interests through extraterritorial laws. Such an extraterritorial legal identification platform will also help Chinese domestic judicial staff to improve the level of extraterritorial laws. In order to further strengthen the legal support for China's international trade, China should strengthen the formulation of laws and regulations related to foreign trade in domestic legislation to provide a more solid legal basis for the protection of the rights and interests of enterprises.

D. Perfect the Legal Service System

The perfection of legal services should not only strengthen judicial services, but also strengthen the reserve and application of international investment, trade, taxation, dispute settlement and other relevant international economic law expertise and extraterritorial legal knowledge of judges in China's judicial system, to improve the level of legal and case studies of judges, as well as to strengthen the guiding case studies of the Court in relation to international trade and investment, and to strengthen the level of judicial service. In addition, China should further increase the training of legal personnel, especially foreign legal personnel. It is necessary to set up the entry threshold for the training of law talents, strengthen the training of international law students in special political and legal schools, strengthen the study of international law, and train foreign legal talents. We can introduce excellent scholars and experts from abroad and select excellent teachers of international law to teach for students of international law and strengthen the study of theoretical knowledge. At the same time, the school, the law firms that specialize in foreign legal affairs and state organs develop the linkage mechanism of personnel training, set up the students' practice platform, and transport outstanding talents for the foreign legal affairs of the country. At the same time, through the way of market regulation, excellent foreign legal service institutions can be cultivated by the survival of the fittest, and more policy support will be provided to the law firms specializing in foreign legal services, thus providing convenience for enterprises to seek high standards of legal services.

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