

# The Role of Alternative Dispute Resolution (ADR) in Dispute Settlement of Logistics Activities

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## ABSTRACT

The Alternative Dispute Resolution (ADR) provides a non-litigation settlement mechanism for the parties of logistics activities. The advantages of ADR are highlighted in logistics dispute resolution due to the characteristics of logistics dispute and the difficulties faced in the litigation procedure. In the dispute resolution process, ADR means a simple, cost-efficient, and convenient method for the parties involved to settle disputes quickly, flexibly, and friendly. With its legitimacy and rationality, ADR should be the preferred choice for the parties involved in logistics dispute resolution.

**KEYWORDS:** *Alternative Dispute Resolution (ADR); logistics activities; litigation procedure; dispute settlement*

**How to cite this paper:** Gao Quan "The Role of Alternative Dispute Resolution (ADR) in Dispute Settlement of Logistics Activities" Published in International Journal of Trend in Scientific Research and Development (ijtsrd), ISSN: 2456-6470, Volume-5 | Issue-3, April 2021, pp.518-521, URL: [www.ijtsrd.com/papers/ijtsrd39925.pdf](http://www.ijtsrd.com/papers/ijtsrd39925.pdf)



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## I. INTRODUCTION

Alternative Dispute Resolution (ADR), as a concept that originated in the United States, initially refers to any means of dispute settlement out of court, which was developed gradually in the 20th century. It has now been cited as a general term of non-litigation dispute resolution procedures or mechanisms that prevail among countries all over the world.[1]Due to the differences in cultural traditions and legal systems, countries have different interpretations of the concepts and connotations of ADR in theory, and the institutional design and operational modes of ADR vary from country to country in practice. In China, ADR typically includes arbitration, reconciliation, and mediation. Compared with litigation resolution, the non-litigation resolution is more convenient for the parties to resolve disputes at low cost in an efficient, quick, simple, flexible, and friendly way on the basis of voluntary action, which has its own legitimacy and rationality.

The emergence and development of ADR provides a mechanism for out-of-court settlement, which relieves the pressure over judicial system, reduces the cost of dispute resolution, improves the efficiency of dispute settlement, alleviates social conflicts, and promotes social harmony to a certain extent. Therefore, with the increasing popularity of ADR, people will be more inclined to resolve disputes through ADR procedures, and ADR will become one of the most important ways to prevent, alleviate and resolve conflicts and disputes around the world.

At present, China's logistics industry is experiencing rapid development, transformation, and upgrading, so logistics

services are moving towards modernization, specialization, integration, and internationalization. However, there are more and more disputes of rights and interests in logistics activities. Objectively speaking, dispute resolution in logistics activities requires diversified resolution mechanisms to meet the different needs of all parties. Especially, we live in a society with rule of law which requires not only strengthening the judicial authority in solving disputes of logistics activities, but also paying more attention to the role of the non-litigation dispute resolution mechanism mainly from civil and social forces, thus bringing more choices to the parties involved in disputes and helping them solve these disputes in a timely and proper manner.

## II. Characteristics of disputes in logistics activities and difficulties in litigation

Disputes in logistics activities include both civil and commercial disputes and administrative disputes, but they appear more frequently in the form of the former. These disputes discussed in this paper are limited to civil and commercial disputes and generally belong to disputes arising from property rights and interests. Compared with common civil and commercial disputes, disputes in logistics activities have their own characteristics, which will lead to many difficulties in litigation in the following aspects:

### A. The widespread and specialty of disputes in logistics activities lead to the low efficiency and high cost of litigation.

Logistics activities cover the whole process in which raw materials are processed into semi-finished products through

production and finally delivered to consumers through circulation. In addition, these activities also include the recycling and disposal of wastes, involving transport, storage, loading and unloading, packaging, processing, distribution, information handling, and so on. [2] Therefore, on the one hand, disputes in logistics activities involve processing, packaging, transportation, warehousing, distribution, information handling, and other links, and disputes of rights and interests may occur in any link. On the other hand, these disputes involve many participants, including carriers using different modes of transportation (road, rail, air, and sea), as well as warehousing operators, packaging providers, loading and unloading operators, and information service providers. Due to the widespread disputes and the rapid increase in caseload, under the limited judicial resources, the backlog and delay of cases will be inevitable. In addition, there are complex legal relationships among logistics activities, and the new generation of information technology revolution has promoted the emergence of new logistics technologies and business model, and the disputes of new complex logistics activities are increasing day by day. The dispute settlement is professional and complex, and the litigation procedure is correspondingly longer. This leads to low efficiency in the litigation of logistics disputes, the failure to settle disputes timely, and the high cost of dispute settlement, which imposes a heavy burden on the parties involved in logistics dispute resolution.

#### **B. The diversity of institutions and procedures for settling disputes arising from logistics activities results in uncertainty of their jurisdiction and procedures for litigation**

Logistics activities involve many industries, sectors, and links. However, the resulting disputes, according to their different nature and contents, will need different settlement institutions and procedures. With regard to the litigation and settlement of logistics disputes in China, there may be the following situations: a) Logistics disputes involving railway transport are generally under the jurisdiction of railway courts, and the Civil Procedure Law shall apply to the litigation procedure, such as disputes concerning railway freight transportation contracts; b) Maritime disputes involving maritime transport contracts and maritime torts are in principle under the jurisdiction of the maritime courts, and the Civil Procedure Law and the Special Maritime Procedure Law shall apply, such as disputes concerning maritime transportation contracts and ship collisions; c) Disputes over logistics activities other than sea and rail transportation shall be under the jurisdiction of the ordinary people's court, and the Civil Procedure Law shall apply. In addition, according to the jurisdiction agreement of the parties, disputes over international logistics activities may also be under the jurisdiction of foreign courts. Judging from this, different types of logistics disputes shall be resolved through different institutions and procedures.

Modern logistics activities are characterized by specialization and integration, and logistics service contracts cannot be simply equated with transportation contracts. For example, third-party logistics means that logistics operators provide multi-functional and integrated logistics services and manage all logistics activities and processes provided by them according to the contract. [3] This integrated logistics activity may not only involve different modes of transportation such as rail, sea, road, and air, but also

involve warehousing, loading and unloading, information processing, and other activities. In the process of this multi-functional and integrated logistics activity, in some cases, it is impossible to accurately judge the logistics links that result in the dispute (such as the link where the goods are damaged), which will lead to the inability to determine its litigation jurisdiction and handling procedures, thus leading to jurisdiction disputes between the parties to the dispute or between the courts. Therefore, in the process of handling disputes in logistics activities, it is objectively necessary to have a professional organization and a unified handling procedure that can deal with disputes arising from all links of logistics activities. However, the uncertainty of the jurisdiction and handling procedures of logistics disputes is not conducive to the proper settlement of logistics disputes.

#### **C. The particularity and complexity of applicable laws of logistics disputes lead to the uncertainty of the dispute handling results**

As logistics activities involve many links, laws and regulations with different contents and at different levels apply to each link such as transportation, warehousing, packaging, and distribution processing. For example, as far as the transportation link is concerned, transportation laws and regulations include different levels of laws, administrative regulations, ministerial rules, and technical standards; there are different legal norms on road, rail, waterway, sea, and air transportation. In addition, in the process of international freight transportation, it is also necessary to abide by relevant international conventions and practices. Moreover, from the perspective of the legal norms related to logistics activities, neither domestic legislation nor international conventions have formed uniform legal rules. For example, in terms of the carrier's liability for damages when goods are damaged or lost, under different modes of transportation, there are great differences in the legal provisions on the imputation principle, compensation limit, liability period, exemption causes, limitation of action, determination of the scope of damage compensation, etc. In addition, the parties involved in modern logistics activities may concurrently act as cargo carriers, warehouse owners, processing contractors, and freight forwarders, and are usually in dual or multiple legal relationships. In case of disputes, their legal status and legal liabilities are not easy to identify and judge, and the applicable laws are different, so the results may be quite different. This leads to the particularity and complexity of the application of laws in the settlement of logistics disputes. Therefore, there are always many puzzles and difficulties in the application of laws in the process of litigation, whether it is a judge or parties to the dispute. The litigation of logistics disputes is rather difficult, and the results of dispute settlement are uncertain. Furthermore, foreign law may apply to the dispute resolution of international logistics activities, which makes it more complicated for the court and the parties to resolve disputes.

#### **III. Advantages of ADR in dispute resolution of logistics activities**

The existence and development of ADR provide the parties involved in logistics disputes with a non-litigation mechanism for settling disputes. The characteristics of disputes in logistics activities and the difficulties faced in litigation demonstrate the advantages of ADR in tackling these disputes from the following aspects:

#### **A. Facilitate the parties to disputes in logistics activities to resolve disputes voluntarily and flexibly**

Following the principle of autonomy of will, the ADR procedure is characterized in that the parties have the right to freely choose the substantive laws and procedural laws of dispute resolution through a voluntary agreement. However, litigation is strictly restricted by rules of judicial proceeding, and the application of relevant laws complies with mandatory provisions clearly and strictly. Once the parties start the litigation procedure, their free choice is very limited. Therefore, under the premise of not violating the mandatory provisions of the laws, almost all matters related to dispute resolution can be decided by both parties through the ADR procedure, which can effectively avoid the uncertainty of their litigation jurisdiction and handling procedures, and enable both parties to solve disputes flexibly and voluntarily.

#### **B. Facilitate the parties to disputes in logistics activities to resolve disputes efficiently and at a low cost.**

The ADR procedure is very simple, flexible, and convenient. The parties can choose the proper dispute resolution procedure according to the nature, content, and specific circumstances of the dispute, without the need to abide by strict procedural rules. In recent years, despite the continuous reforms of the litigation procedure to improve the efficiency of the trial, it is absolutely impossible to simplify the litigation procedure to the level of ADR due to the inherent characteristics of the litigation procedure. Compared with the complicated and expensive litigation procedure, ADR procedures can help the parties to resolve disputes with less time, manpower, and costs. Therefore, in the face of ever-growing and increasingly complicated logistics dispute cases, on the one hand, the wide application of ADR can realize the effective diversion of cases, thus rationally allocating judicial resources, alleviating the pressure of courts, and avoiding the backlog and delay of cases. On the other hand, from the perspective of dispute resolution, in principle, judges, lawyers, and other legal professionals shall take part in litigation procedure. The ADR procedure can be conducted by non-legal professionals or legal professionals such as lawyers. Trade experts, logistics experts, and technical experts can also participate in some professional logistics dispute resolution procedures, and helping to solve logistics disputes more professionally and efficiently.

#### **C. Facilitate the parties to disputes in logistics activities to resolve disputes smoothly and friendly**

In most cases, ADR embraces the principle of compromise rather than confrontation to resolve disputes and means a non-confrontational dispute resolution process, which is conducive to maintaining the long-standing relationship between business partners. In the increasingly specialized and integrated modern logistics activities, the parties usually maintain long-term business relationships, even strategic partnerships. Once the parties start the litigation procedure, fierce confrontation may lead to the breakdown of cooperative relationships and interruption of business relationships, which will easily cause greater losses. Unlike the fierce confrontation in litigation, ADR encourages the parties to reach a dispute resolution agreement through friendly negotiation or to submit the dispute to a trusted third party for mediation or arbitration. The final dispute resolution is usually the result of mutual understanding and

compromise between both parties, which is characterized by peace and mutual benefit, easy for both parties to follow, and conducive to maintaining the existing business relationship between both parties.

#### **D. Promote the timely and proper settlement of disputes over new logistics activities**

ADR is an open and dynamic system. With the changes in society and economy and the technological development, the types and contents of disputes are changing quickly, and the types and methods of ADR are also continuously improved and innovated. Especially for some new disputes with the development of technology and new economy, ADR can quickly provide one or several settlement mechanisms, which has strong adaptability to the settlement of new disputes. With the in-depth development of economic globalization and the wide application of advanced information technologies such as the Internet, cloud computing, and big data in the logistics field, China's logistics industry is in the process of transformation, upgrading, and rapid development, and logistics activities are becoming increasingly specialized and complicated, and disputes over new logistics activities inevitably arise in large numbers. However, the legal system of logistics is not perfect, and there are still some legislative vacancies and lags, especially the lack of legal response and effective solution to the disputes over new logistics activities, which makes it impossible for the disputes over new logistics activities to be properly and timely resolved through litigation procedure. Therefore, making full use of the openness and flexibility of the ADR system can solve the disputes over new logistics activities independently and properly, and guarantee the transformation, upgrading and healthy development of the logistics industry.

In addition, ADR procedures are usually conducted privately, so that these disputes involving trade secrets can be resolved in a relatively private environment. Even if trade secrets are not involved, the parties to a logistics dispute are often unwilling to make the disputes public for the sake of maintaining the corporate image and cooperation. The litigation procedure is based on the principle of openness, while the ADR procedures are not disclosed to the public, which also provides a convenient dispute resolution environment for all parties to the logistics dispute. On the dispute settlement of international logistics activities, since the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) basically covers important countries in international trade, there are also a large number of regional commercial arbitration treaties and bilateral agreements including arbitration cooperation. Therefore, the arbitral awards are easier to be recognized and enforced by foreign courts than judicial decisions, which also provides greater convenience for the parties to disputes over international logistics activities.

#### **IV. Conclusion**

The development of the modern logistics industry and the diversity of interests, values, and actual needs of all parties involved in logistics activities objectively require diversified dispute resolution mechanisms. As Pro. Takeshi Kojima (Japan) pointed out: "Judicial proceeding is a very extravagant way to resolve disputes, so it is unrealistic for all civil disputes to be resolved through the judicial proceeding." [4]Therefore, ADR has its legitimacy and rationality in solving logistics disputes, which can effectively avoid the uncertainty of jurisdiction and unnecessary

procedural delay, and facilitate the parties to solve logistics disputes quickly, flexibly, and at low cost. It should be the priority choice of the parties to logistics disputes.

Specifically, for disputes with a simple case and long-term commercial cooperation between both parties, priority can be given to mutual consultation and settlement, and disputes can be quickly resolved on the basis of mutual understanding and accommodation. For disputes with fewer business contacts in the past, the parties can choose a third party to mediate. In particular, intermediary service agencies (such as law firms) and social organizations (such as logistics association) should give full play to the mediation role in solving daily logistics disputes. If disputes involve significant interests, complicated cases, and strong professionalism, and the parties are unwilling to settle through litigation procedure, professional logistics dispute arbitration institutions (such as the Logistics Dispute Resolution Center of China Maritime Arbitration Commission) shall be the best choice.

Of course, emphasizing importance to the role of ADR in logistics dispute resolution is in no way merely an exclusion

or substitution of litigation procedures. Based on the inherent characteristics of ADR procedures, most ADR agreements are not enforceable and have no legal effect of excluding jurisdiction. If the parties refuse to perform or repent after reaching an agreement, litigation is still the ultimate means of dispute resolution.

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