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A Research on Legal Risk Prevention of Chinese enterprises' FDI in China-Japan-Korea FTA

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Abstract

Purpose – This research mainly studied with the promotion of "one belt and one road" initiative's strategy and the construction of China, Japan and South Korea Free Trade Zone, China exports urgently needed industrial products to Japan and South Korea, which will not only help digest excess industrial capacity, optimize China's industrial structure, but also promote the economic development of Japan and South Korea.

Research design, data, and Methodology – The study conducted a survey on 2018 year new revision of China-Korea Japan's data.

Results – This study shows that In this process, multinational enterprises, as pioneers of economic development, play an irreplaceable role. However, due to the differences between laws of different countries and their own corporate culture concepts, enterprises in different countries will inevitably encounter various conflicts in the process of development.

Conclusions – This requires our enterprises to have awareness of legal risk prevention in the process of development, and to study the corporate culture of relevant enterprises to truly achieve win-win cooperation.

Keywords: China; Korea; Japan; Legal System; FTA

1. Introduction

China, Japan and South Korea have all become one of the most important economies in Asia and even the world in recent years. The total GDP of the three countries already accounts for more than 20 % of the world's GDP and more than 90 % of East Asia's GDP, but the trade volume between the three countries accounts for only 20 % of the foreign trade of the three countries. In 2002, the leaders summit of China, Japan and South Korea put forward the great idea of building a China, Japan and South Korea free trade zone. Its purpose is to form a free trade area among the three countries, remove numerous and complicated trade restrictions, accelerate the flow of goods and capital, and enable enterprises in the region to reduce production costs so as to expand their advantages in the market. And to enable consumers to obtain products with lower prices so as to expand the commodity demand in East Asia, thus promoting the prosperity and development of the three economies. On the morning of September 7, 2013, Chinese President Xi Jinping proposed to jointly build the "Silk Road Economic Belt" in a speech at Kazakhstan's Nazarbayev University. Japan and South Korea, as an important part of China's silk road construction strategy, are bound to play an irreplaceable role, and "one belt and one road" initiative's strategy will also greatly boost the construction of the China - Japan - Korea Free Trade Zone. At present, the economies of China, Japan and South Korea are facing a major test: internationally, since US President Trump came to power, trade wars have been fought around the world in order to maintain its US priority policy and increase the instability of the global economy;

All three countries are facing urgent problems such as industrial upgrading and serious industrial pollution. The construction of China, Japan and South Korea Free Trade Zone will greatly make up for the lack of industrial structure in the three countries and promote the common development of the three countries.

2. Current Situation of Legal Risks Enterprises in International Market

2.1. Exchange rate risk

Foreign exchange control means that a country's government exercises strict control over the inflow and outflow of foreign exchange in order to ensure the balance of payments and maintain the stability of its currency value in order to safeguard its economic interests. A country with strict foreign exchange control will increase the risk of foreign exchange flow under certain circumstances. The difficulty in entering foreign exchange makes it difficult for enterprises to make large-scale investments and maximize their interests. Foreign exchange is difficult to export from the host country, which will inevitably affect the enterprise's resource allocation and integration in the global field. China, Japan and South Korea have their own laws on foreign exchange control, with varying degrees of control over foreign exchange, and there is no unified currency for transactions. In actual payments, most of them use internationally accepted US dollars. Therefore, how to realize the free exchange and circulation between RMB, Japanese yen and Korean won will be an important proposition during the construction of China - Japan - Korea FTA. In addition, the change of international exchange rate is also one of the important factors affecting corporate profits, which I believe has an important connection with the international political situation. For example, in recent years, Mr. Li Ka - shing has sold Chinese properties and invested heavily in infrastructure industries in Europe and the United States through his flagship companies in Hong Kong and companies such as industry, Yangtze River Industry and Yangtze River Infrastructure. However, the UK's departure from Europe has led to a sharp drop in the exchange rate of sterling and a large fluctuation in the exchange rate of the euro, which has had a certain impact on the profits of the entire group.

2.2. Legal risks in intellectual property rights

Today's world is a new world, in the final analysis, a world of knowledge. Therefore, all countries have put the protection of intellectual property rights in the prominent position of economic development, and set up and improve the law on intellectual property protection as an important link in the construction of the rule of law. The legal protection of intellectual property rights in China started late and is not perfect at present, and there is still a certain gap compared with developed countries. China, Japan and South Korea have low legal compatibility in the protection of intellectual property rights, so enterprises may face greater intellectual property risks in the process of development. This is not only a problem for China, Japan and South Korea, but also an important problem China must face in the process of economic construction in the "one belt and one road" initiative. For example, in the case of German Mercedes - Benz Group v. Sany Heavy Industry Group of China, according to the information I consulted, the Mercedes - Benz logo came from Daimler's letter to his wife, and Daimler believed that the trigeminal star logo symbolized the development of Mercedes - Benz in three directions: air, sea and land. As the trinity symbol of the Chinese national heavy industry brand, it represents its corporate culture of "creating first-class enterprises, bringing up first-class talents and making first-class contributions". The signs of the two groups are shown in the following figure. The author believes that there are great differences in the design concepts of the two signs. From the perspective of ordinary people, the two have similarities, but careful observation is not difficult to find the difference. Mercedes - Benz Group and Sany Group have experienced five court hearings in China and foreign countries, all of which ended with losing Mercedes - Benz Group. This reflects that the legal risks of enterprises in intellectual property are huge and unpredictable.

2.3. Legal Risks in Infrastructure Construction

The core of China's "one belt and one road" initiative's strategic development is infrastructure construction, but infrastructure construction involves greater legal risks. The risk not only comes from its huge investment and long payback period. What is more important is that infrastructure is related to a country's national security, so most countries in the world have strict legal provisions for foreign capital to invest in their own infrastructure. Even some countries have laws stipulating that foreign investment in their own infrastructure must be combined with their own enterprises, and their capital must not be less than a certain proportion of the total investment. This makes our

country face greater risks in foreign infrastructure construction. In recent years, it is not uncommon for China to refuse to invest in its infrastructure on the grounds of threatening its national security. For example, on September 28, 2012, U.S. President Barack Obama signed an executive order prohibiting Chinese capital-controlled wind infrastructure companies from building four wind power plants at Oregon's military base, citing threats to national security. Similarly, in July 2016, Australia rejected the acquisition of shares in Australia's power grid by China's State Grid Corporation on the grounds of national security.

3. Comparison of legal risk prevention

In terms of economy, the state should vigorously promote the development of domestic economy, give policy support to multinational enterprises with strength and legal development concept, and correctly guide domestic enterprises to invest abroad. At the political level, the government should strengthen exchanges and communication with the governments of the invested countries and establish a coordination and dialogue mechanism. Our government can set up a special external coordination mechanism for "one belt and one road" initiative's strategy and the construction of China, Japan and South Korea Free Trade Zone, and sign bilateral or bilateral reciprocal investment agreements with trading countries. In terms of culture, China should establish a cultural exchange mechanism with the invested country, strengthen cultural identity, and make the thinking and behavior of both sides mutually recognized, so as to achieve mutual benefit and win - win. In terms of legal exchange, the state should strengthen legal exchange with trading countries, clarify the differences between laws, and conduct corresponding legal training and guidance for foreign investment enterprises, establish a legal exchange mechanism between countries, and guard against possible legal risks in advance so as to avoid the problem from widening.

First, in view of the foreign exchange control and exchange rate issues, we should conduct in-depth investigation and study of the foreign exchange policies and systems of the investing country in advance and strictly abide by the foreign exchange system of the host country.

Second, in view of the legal risk of intellectual property rights, Chinese enterprises should enhance their awareness of protecting their own intellectual property rights and conduct relevant investigations and studies in advance when entering the relevant markets. And deeply study the laws of intellectual property protection in foreign countries, and actively safeguard their legitimate rights.

Third, in view of the legal risks in infrastructure construction, enterprises should conduct in-depth investigation and study on the specific national conditions and relevant national policies of the invested countries in advance. To reach an agreement with the local government as far as possible before investment to reduce the risk of contract performance;

Fourth, with regard to environmental issues, Chinese enterprises should attach importance to environmental protection in the process of foreign investment, do their utmost to reduce the damage to the host country's ecological environment caused by enterprise investment and development, and strive to take part in the host country's ecological environment protection with part of their profits.

Fifth, in view of the problem of asset safety and asset safety exit of foreign investment enterprises in China. China's enterprises should make relevant political risk prediction, and formulate safety plans for investment withdrawal and asset protection in advance according to international forms and the basic national conditions of the investing country.

Sixth, after studying the foreign investment cases of many multinational companies in the world, the author found that if an enterprise wants to survive and develop outside, it must follow a rule that the enterprise should not only exercise its legitimate rights reasonably and legally, but also actively assume social responsibilities and fulfill its obligations.

4. Results and Conclusion

In the process of the national the belt and road initiative strategy and the deepening of the construction of China - Japan - Korea Free Trade Zone, Chinese enterprises may face various legal risks in their foreign investment. How to correctly avoid legal risks and make Chinese enterprises invincible in foreign competition is a major proposition that needs repeated research and practice. China's enterprises should strengthen their ability to deal with legal risks outside the country, not only to safeguard the rights and interests of the host country, but also to safeguard their own legitimate interests.

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