

LEGAL MATTERS OF THE MODERN SILK ROAD BETWEEN THE PEOPLE'S REPUBLIC OF CHINA AND THE REPUBLIC OF KAZAKHSTAN¹

Abstract

The Silk Road was one of the biggest trade routes between East and West, but due to some historical reasons, particularly reorientation of trade and political relationships with the other seaside countries that had large demand of goods, the Silk Road became unprofitable. However, in 2013 the President of the People's Republic of China Mr. Xi Jinping introduced the new strategy, which will integrate the world economy from East to West. The study identifies possible legal issues and barriers of the "One Belt, One Road" strategy as well as the ways of its promotion by analyzing past and current relationships between the People's Republic of China and the Republic of Kazakhstan. The first part of this article tries to identify the customary rules of the ancient Silk Road, especially the regulatory framework of trading relationships existing between China and Kazakhstan. The second part introduces the modern Silk Road program, which concept tries to restore the most prosperous trading activity. Finally, the third part discusses the future perspective of the concept by answering questions on how to develop and modernize this strategy in order to get mutual benefits to both parties. The paper concludes with the need for the promotion and prosperity of this concept, particularly in the legal regulation of current relationships with due regard to features of the legislation of both countries in order to avoid legal collisions.

Key words: "One Belt, One Road", investment regulation, promotion of investments in Kazakhstan, Chinese investment.

1. Introduction

The Silk Road was one of the biggest trade routes between East and West, but due to some historical reasons, particularly reorientation of trade and political relationships with the other seaside countries that had large demand of goods, the Silk Road became unprofitable. However, in 2013 the President of the People's Republic of China Mr. Xi Jinping introduced the new strategy called "The Silk Road Economic Belt" and "21st century Maritime Silk Road", which will integrate the world economy from East to West. The importance of this topic is that by analyzing past and current relationships between the People's Republic of China (hereinafter China) and the Republic of Kazakhstan (hereinafter Kazakhstan) to remove defects in relationships and create new mutually beneficial interstate economic relationship. This paper discusses development of economic integration between China and Kazakhstan in the past, current and future period of time. Particularly, the first part of paper tries to identify the customary rules of the ancient Silk Road, especially the regulatory framework of trading relationships existed between China and Kazakhstan. The second part of paper introduces the modern Silk Road program, which is called "The Silk Road Economic Belt" and "21st century Maritime Silk Road". It analyses current situation and development, which have been done to implement provisions of new strategy. Finally, the third part discusses the future perspective of this concept by answering questions how to develop and modernize it in order to get mutual benefits to both parties.

2. The regulatory framework of the ancient Silk Road between China and Kazakhstan

The Silk Road was the most flourishing trade networks approximately existing during the period of time between 114 B.C. and 1450 A.D.² It started from China and went through Central Asia, Middle East, India until the Europe. To be specific, one of the paths of the ancient Silk Road started from Chang'an

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² "Silk Road", The Free Encyclopedia of Wikipedia, available at <www.wikipedia.org> accessed on 27/02/2016.

(now Xian, China) and passed through the territory of the Central Asia to the West.³ In the territory of the Central Asia the Silk Road was divided into some other routes, so making the sub-branches of the main route. One of the main starting points in the Central Asia was the city of Kashgar, from where merchants exchanged goods and took them to different cities located nearby.⁴ In the territory of the ancient Kazakhstan, people used to live as nomads, and a lot of various tribes inhabited in this area. It seems that one of these tribes, who lived in the ancient territory of the Central Asia, was very good at trading, whereas the others, who also inhabited the Central Asia area, were strong in military activities.⁵ According to Boulnois, one of the routes of these tribes went through the Aral Sea, the Caspian Sea and the Ili, Talas, Chu rivers.⁶

There was a wide range of trading goods between China and tribes inhabited in the ancient Kazakhstan such as craft, food, clothe, paintings and many others. It showed us that mutual trading activity was very helpful to both sides. They traded between themselves, exchanged their goods and learnt from each other the methods and techniques in various spheres.⁷ So it was very prosperous and prominent kind of interrelation between these nations.

Nevertheless, some limitations such as taxation restricted development of trade.⁸ In fact, in China, silk was used as a currency and was a kind of tax which government collected from the people.⁹ This showed how significant the role of silk in trading activity among people was. Beside tax regulation, security was an important factor for traders since the road from China to the Central Asia was not short and easy. Under the power of the Seljuk Empire or as in other sources mentioned as Saljuq Turks, traders had a secure investment environment in the Central Asia. Anyone, who was robbed in the territory, which was under the control of Saljuq Turks, could get compensation for his lost.¹⁰ That was a kind of high level of guarantee from the state insuring stable and protected environment. Otherwise, traders would not take risks to do business in unsafe place.

So, to sum up, three main points can be identified. The first was that the people of the ancient China and Kazakhstan had mutual interests in trading activity, which made the Silk Road the most prosperous and productive trade network. Secondly, tax regulation considerably affected the development of bilateral commercial relationship. It was one of the reasons for which merchants were reluctant to trade outside their country. Finally, stable and secure environment was no less important than taxation system. Maybe this even was the most significant matter for traders, as they wanted reliable place to trade and some kind of guarantee for their business. These three main characteristics will be discussed further in the second part of paper.

3. “One Belt, One Road” (Modern Silk Road)

The new strategic program introduced by the President of the People’s Republic of China Mr. Xi Jinping in 2013 is called “The Silk Road Economic Belt” and “21st century Maritime Silk Road”, which is abbreviated as “One Belt, One Road”. This is a new model of the ancient Silk Road. It is divided into two categories: the land-based and maritime-based way. Kazakhstan is a part of this new strategy. Since Kazakhstan is located in the Central Asia, it has strategic location connecting the East with the West.

³ “The History of Silk Road by Oliver Wilde”, 1992 available at <<http://www.ess.uci.edu/~oliver/silk.html>> accessed on 27/02/2016.

⁴ “The History of Silk Road by Oliver Wilde”, 1992 available at <<http://www.ess.uci.edu/~oliver/silk.html>> accessed on 27/02/2016.

⁵ L. Boulnois “The Silk Road”, translated by D.Chamberlain, NY E.P. Dutton & Co., INC. 1966, p. 150-151.

⁶ *ibid*, p. 152-153. Kazakhstan shares the northeast part of the Caspian Sea with four countries, whereas the north part of the Aral Sea with Uzbekistan. Regarding three rivers, the southeast part of the Ili river lies in Kazakhstan, the Talas and the Chu river are located in the south part of Kazakhstan.

⁷ *ibid*, p. 152-153.

⁸ *ibid*, p. 150.

⁹ X. Liu “The Silk Road: Overland Trade and Cultural Interactions in Eurasia”, American Historical Association Washington D.C., 1998, p.25.

¹⁰ *ibid*, p.28.

According to the framework of the strategy, it is “win-win” cooperation, where development of several economic corridors to expand relationships between parties is expected.¹¹ Particularly, it shall improve infrastructure, trade, investment and transportation.¹² This aspiring and challenging strategy places great expectations on development and reinforcement of interrelationships in various spheres. Moreover, 40 billion US dollars have been allocated to the Silk Road fund, where 1.65 billion US dollars have already been invested to the project in Pakistan.¹³ Since this project can serve as an example for other Silk Road countries, it is a good beginning for Kazakhstan and China to avoid any gaps and possible barriers based on the experience of this project.

Meanwhile, Kazakhstan has also introduced his own economic program called “The Path to the Future” (Nurly Zhol). It was compared with the “One Belt, One Road” strategy as this program is also intended to develop transportation, infrastructure, energy, small and medium business, particularly international routes from Western China to Western Europe.¹⁴ Moreover, in 2015, both presidents visited each other’s country and noted that the “Nurly Zhol” program has the same objectives as the “One Belt, One Road” strategy.¹⁵

In order to achieve intended aims, some steps have already been made towards improvement of transportation and infrastructure. For example, construction of several roads will be carried out in Kazakhstan under the fund of the Chinese investment.¹⁶ Moreover, in accordance with the agreement between the government of the People’s Republic of China and the Republic of Kazakhstan, the new special economic zone “Korgos – Eastern Gate” will be created to expand trade, economic and cultural exchanges between two countries.¹⁷ So for Kazakhstan, a number of investments are expected to enhance its infrastructure, logistics and economy. Several agreements have been made to implement new projects and some of them have already been started. This is a good beginning of realization of the “One Belt, One Road” strategy, which should bring benefits to both sides. However, it is better to understand whether the current situation will match the three main characteristics, which have been identified in the first part of paper.

The first was the mutual interest in trading activity. According to the latest data, Kazakhstan’s main export goods are oil, gas, ferrous metals, coal, chemicals and agricultural products, whereas the major import products are machinery, equipment and foodstuff.¹⁸ The main export and import partners for Kazakhstan are China, Russia, and EU. Whereas in China, the main export goods are electromechanical and labor-intensive products and the main import goods are electromechanical products, oil and mineral fuels.¹⁹ The major export and import partners for China are EU, Japan, South Korea and USA. The details are depicted in the following table as of December, 2015:²⁰

¹¹ “Vision and Actions on Jointly Building Belt and Road”, issued by the NDRC, MOFA and MOC of the PRC with SC authorization, 2015-03-29, Xinhua, III part: Framework, available at <http://english.cri.cn/12394/2015/03/29/2941s872030_1.htm> accessed on 27/02/2016.

¹² *ibid.*

¹³ “Silk Road Fund’s 1st investment makes China’s words into practice”, 2015-04-21, Xinhua, available at <http://english.gov.cn/news/top_news/2015/04/21/content_281475093213830.htm> accessed on 27/02/2016.

¹⁴ “Nurly Zhol – The Path to the Future” Kazakhstan’s state program, 2014-11-11, available at <<http://www.kazakhembus.com/content/nurly-zhol-path-future>> accessed on 27/02/2016.

¹⁵ S. Kushkumbayev “Kazakhstan’s Nurly Zhol and China’s Economic Belt of the Silk Road: Confluence of Goals”, 2015-09-22, The Astana Times, available at <<http://astanatimes.com/2015/09/kazakhstan-nurly-zhol-and-chinas-economic-belt-of-the-silk-road-confluence-of-goals/>> accessed on 27/02/2016.

¹⁶ *ibid.*

¹⁷ The official website of the Korgos international Centre of Boundary Cooperation, available at <http://mcps-korgos.kz/en/sez_ptez> accessed on 27/02/2016.

¹⁸ Kazakhstan’s imports and exports 1998-2015 data chart, available at <<http://www.tradingeconomics.com/kazakhstan>> accessed on 5/12/2015.

¹⁹ China’s imports and exports 1983-2015 data chart, available at <<http://www.tradingeconomics.com/china>> accessed on 5/12/2015.

²⁰ China’s and Kazakhstan’s export and import data chart, available at <www.tradingeconomics.com> accessed on 5/12/2015.

	The People's Republic of China	The Republic of Kazakhstan
The main export goods	Electromechanical products (57%) Labor-intensive products: clothing, textiles, footwear, furniture, plastic products, bags, toys (20%)	Oil and related products (73%) Ferrous metals Copper Aluminum Zinc Uranium
The main export partners	USA (17%) EU (16%) ASEAN (10%) Japan (7%) South Korea	China (19%) Italy (17%) Russia (8,4%) Netherlands (8%) France Switzerland Ukraine Canada
The main import goods	Electromechanical products (43%) Crude oil (12%) Iron ore (5%) Copper Aluminum Soybeans	Electronics Machinery and mechanical appliances (25%) Mineral products (15%) Transport equipment (12%) Base metals and related products (10%) Chemicals and related products (8%) Foodstuff and beverages (6%)
The main import partners	EU ASEAN Japan South Korea Taiwan	Russia (41%) China (14%) Germany Ukraine USA Italy

As this table shows, electronics are the major export goods for China, whereas for Kazakhstan they are the main import goods. The main export goods of Kazakhstan such as oil, gas and minerals are one of the main import goods in China. So, it is clear that both parties have interests in this trading activity and it should benefit in the future.

The second point, which took major concern of traders during the period of the ancient Silk Road, was taxation system. Since under the strategy “One Belt, One Road” China is going to make an investment in other countries, there is no need to discuss the Chinese taxation system. In this regard China will be a home state and Kazakhstan will be a host state country, which will be a recipient of foreign investments. Accordingly only the Kazakhstan’s tax regulations will be taken into consideration in this paper. There are three types of tax preferences available for foreign investors under the law of Kazakhstan: 1. exemption from corporate income tax for up to 10 years; 2. exemption from land tax for up to 10 years; and 3. exemption from property tax for up to 8 years.²¹ Beside these, it offers various state supports and subsidies such as an exemption from customs duties and state in-kind grants for priority investment projects approved by the state to attract investors.²² Hence, the taxation system of Kazakhstan should not be a barrier for Chinese investors to make investment in Kazakhstan.

²¹ Tax Code of the Republic of Kazakhstan dated 10 December, 2008, article 152-2. Note: exemption from property tax for up to 8 years will come into force on 01.01.2016.

²² The Law on Investment of the Republic of Kazakhstan dated 8 January 2003, Chapter 3: State Support for Investment.

Finally, the third point was importance of security. Investors prefer invest their money in countries with political and social stability. In this regard, on the domestic regulation level Kazakhstan has the Law on Investments adopted on 8 January 2003. It provides foreign investors with the same full protection of rights as accorded to national investors. Furthermore, it guarantees stability of agreements, free use of income, transparency of state authorities and compensation of damages in case of nationalization and requisition.²³

On the ground of international regulation level, there are different bilateral and multilateral agreements between China and Kazakhstan. For instance, in 1992 China and Kazakhstan have signed the Bilateral Investment Treaty, which became effective on 18 August 1994. This treaty provides a number of guarantees for foreign investors such as fair and equitable treatment, protection against nationalization and expropriation, settlement of disputes in international arbitration.

Taking into consideration all these aspects, mutual interest, investment environment and security in host state, it is likely that both parties China and Kazakhstan should benefit from the new strategy as well as it should deepen relationship between two countries.

4. The future perspective of the strategy “One Belt, One Road”

The “One Belt, One Road” is very comprehensive strategy. Therefore, it is likely that countries can face certain challenges in implementing it. This part of paper intends to discuss what we need for the promotion and prosperity of this concept, particularly in the legal regulation of current relationships with due regard to features of legislation of both countries in order to avoid legal collisions. Although many advantages have been identified previously, there are some potential risks, which countries can face in the implementation of the strategy. According to the research made by the United Nations Conference on Trade and Development, such risks can arise due to consequences of outdated technology, absence of direct road connections, visa issues and different domestic regulations.²⁴ However, these issues can find their resolution in international agreements by negotiation of parties. There are two options to develop international agreements between two countries: either improve the existing treaty or adopt a new one, which will satisfy the standards of both parties.

As was mentioned earlier, we already have the Bilateral Investment Treaty 1992 (BIT) between China and Kazakhstan. However, since that time more than twenty years have been passed, so it certainly needs to be renewed in accordance with requirements of global economy. Moreover, it has some omissions and broad interpreted provisions. For instance, the treaty does not have the national treatment provision, whereas it has the most-favored-national treatment. National treatment provision is considered to be an essential part of investment treaties, where foreign investors should be treated in host country no less favorable than their own nationals. However, the China-Kazakhstan BIT 1992 did not include it. Furthermore, article 3 of this BIT provides fair and equitable treatment for investment of investors of another party, but the basic meaning of fair and equitable treatment is very extensive.²⁵ It was not limited to specific regulations, so it can be interpreted very broadly. Therefore, some countries restricted its application to the minimum standard of treatment under customary international law or only to obligation not to deny of justice with a due process.²⁶ Consequently, some provisions of the BIT 1992 do not conform to the newly developed regulations and must be updated.

In the regard to adoption of new agreement, the official explanation issued by the government of China specifies the objectives of the strategy “One Belt, One Road”, which one of them is establishment of

²³ *ibid*, Chapter 1: General provisions.

²⁴ UNCTAD: Investment Guide to the Silk Road, NY and Geneva 2014, Chapter II: The Silk Road Business Operating Environment, pp.9-26.

²⁵ “Fair and Equitable Treatment”, UNCTAD Series on Issues in International Investment Agreements II, NY and Geneva 2012, Chapter I: Explanation of the issue, pp.5-17.

²⁶ US Model Bilateral Investment Treaty 2012, article 5; Canada Model Bilateral Investment Treaty 2004, article 5.

free trade areas that will comply with high standards.²⁷ The conclusion of the Free Trade Agreement is the second phase of economic integration and is believed to be one of the best ways of cooperation.²⁸ However, for now there is no Free Trade Agreement between China and Kazakhstan. Currently China has 13 Free Trade Agreements with countries such as Australia, New Zealand, Switzerland, South Korea, Iceland, Costa Rica, Pakistan, Chile, Peru and ASEAN countries. Besides these agreements China has 8 FTAs under negotiation and 4 FTAs under consideration.²⁹ Meanwhile Kazakhstan has the FTAs with only the CIS member countries such as Russia, Belarus, Georgia, Armenia, Azerbaijan, Ukraine, Kyrgyz Republic, Uzbekistan, Moldova and Tajikistan. In comparison with China, Kazakhstan does not have such experience in making FTAs. Since Kazakhstan became independent country, it only had close trading tie with the former USSR countries. Therefore, Free Trade Agreement with China would take Kazakhstan to the new level of economic cooperation with the other countries as well as to integration with a global market. The conclusion of Free Trade Agreement would be a good starting point for trade relationships between two countries. It would increase the number of investment flow so bringing profits for both parties.

5. Conclusion

The regulatory framework of the ancient Silk Road was quite interesting taking into account similarities with the new strategy “One Belt, One Road”. Like Silk Road, “One Belt, One Road” is a concept which involves different countries in order to cooperate in various sectors such as trade, infrastructure, investment and transportation. The ancient Silk Road was the most prosperous and beneficial trade network. So similar to this, the new strategy shall promote mutual interests and deepen multilateral interrelationships between different countries. Under this strategy, China and Kazakhstan can strengthen their economy and benefit from its implementation. Both China and Kazakhstan have mutual interest in different spheres. China has experience, technology and sufficient fund to invest, while Kazakhstan has stable investment environment and different subsidies and supports for foreign investors and large resource potential. Moreover, China has an economic interest in Kazakhstan as for disposal of goods, whereas Kazakhstan has an interest and demand for Chinese goods. This strategy has considerable prospects in future. In order to make it prosperous as the Silk Road used to be, the governments of two countries should work closely and permanently by excluding any obstacles in legislation and international treaties and show more initiatives in a successful implementation.

²⁷ “Vision and Actions on Jointly Building Belt and Road”, issued by the NDRC, MOFA and MOC of the PRC with SC authorization, 2015-03-29, Xinhua, III part: Framework, available at <http://english.cri.cn/12394/2015/03/29/2941s872030_1.htm> accessed on 27/02/2016.

²⁸ “Free Trade Area”, The Free Encyclopedia of Wikipedia, available at <www.wikipedia.org> accessed on 27/02/2016.

²⁹ China FTA Network, data available at <<http://fta.mofcom.gov.cn/english/index.shtml>> accessed on 27/02/2016.