



The Freight Forwarding Services in E-Commerce in Viet Nam from Legal Perspective

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Abstract

The development of digital-technology has created the premise for digitization of the operating of e-commerce. In addition, e-commerce is currently not only fast, ubiquitous but it also brings in a wide range of customers, which includes businesses (B2B-Business to Business model) and consumers (B2C-Business to Consumers model) and they bring great economic value for the businesses in terms of production and business activities. In order to achieve economic value and ensure the smooth circulation of goods, the freight forwarding services are supposed to meet customers' demand, which tends to play a crucial role in transportation from manufacturers to the final customers, consumers in e-commerce in particular and the supply chain in general. This report focuses on analyzing the freight forwarding services and the correlation of logistics and e-commerce. Consequently, there is a correct assessment of the nature and legal responsibility of the freight forwarding services in e-commerce and some legal recommendations are given out for this service in the current digital economy.

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Keywords: The freight forwarding, e-commerce, logistics, the supply chain, the forwarder, the shipper

1. Introduction

The freight forwarding is an activity that has been established for a long time, and plays an important role in completing last-mile delivery, meaning the goods reach the final customer, contributing to success in a number of fields such as: logistics, commodity trade and the supply chain. The emergence of the sharing economy and the development of e-commerce have changed business strategies, restructured investment portfolios, upgraded technology infrastructure and methods of supplying goods and services of manufacturing and trading enterprises, including logistics service traders and freight forwarding service companies.

According to the report of Vietnam E-Commerce Association (VECOM), the estimated growth rate of the e-commerce sector increased by over 25% compared to 2022 and reached 25 billion USD. While the scale of online retail sales of goods reached 17.3 billion USD, the ratio of online retail sales of goods compared to total retail sales of goods was about 8.8%, higher than the corresponding rate of 7.2% in 2022 and e-commerce accounted for about 10% of total retail sales of goods and consumer service revenue, higher than the rate of 8.5% in 2022 ^[i]. Furthermore, it is impossible not to mention the freight forwarding activities that also contribute significantly to this growth when the rate of businesses transporting itself stands at 67%, businesses using third-party services makes up 60% according to the report of the Vietnam E-Commerce and Digital Economy Agency (IEDA) ^[ii]; at the same time, the freight forwarding activities associated with the development in both scale and quality of fulfillment services, last mile delivery and cross-border e-commerce.

However, freight forwarding services are currently only understood and explained by business management theories and are mainly interpreted by shipping lines and logistics companies.

From a legal perspective, the freight forwarding activities are considered as supporting activities in the trading and a stage in logistics services in Vietnamese commercial law ^[iii]; along with that they have the economic sector code 5529 ^[iv] and are considered substitutional service activities related to transportation in the promulgating Vietnam standard industrial classification. This shows that there has not yet been a precise definition or explanation of freight forwarding, especially in e-commerce today. It is until today that freight forwarding activities have been simply understood as the act of visually delivering goods to customers, which means we have not kept ourselves updated with the development of e-commerce, it is completely different from the previous traditional model.

Moreover, the understanding of freight forwarding has not been linked to the characteristics of current e-commerce. This leads delivery companies to unwillingness to invest in infrastructure, build a network of delivery personnel, and operate an effective delivery management road-map. This also contributes to the perception and implementation of the legal rights and obligations of the subjects participating in the freight forwarding, which are unclear and unspecific in the process of concluding and performing contracts. Some unfortunate incidents have occurred such as: goods cannot be returned or changed when defective, goods lost during transportation, goods inspection policies are not really transparent and so on. As a result, there would be bad influence on consumer psychology, the reputation of the delivery unit and the seller's brand, especially in the B2C with the last-mile reaching the consumer.

Regarding the above situation, some issues regarding freight forwarding services need to be clarified: (i) how should freight forwarding services be understood in e-commerce today? (ii) What are the specific legal responsibilities of freight forwarding services in e-commerce? The author wishes to clarify the above issues, this report will analyze and propose some recommendations related to the current freight forwarding service in e-commerce (called "Freight Forwarding Service") from a legal perspective.

2. Freight forwarding is a part of logistics activities and is the process of transporting goods in E-commerce.

2.1 Definition of freight forwarding services in E-commerce.

When it comes to freight forwarding and freight transport, we immediately think of logistics activities. First, we need to understand the concept of logistics from many different perspectives, especially:

The Council of Logistics Management (CLM) defines that "Logistics is the process of planning, implementing, and controlling the efficient, effective flow and storage of goods, services, and related information from point of origin to point of consumption for the purpose of conforming to customer requirements."; or The United Nations (UN) defines that "the process of planning, implementing, managing and controlling the flow and storage of goods, services and related information from the point of origin to the point of consumption". Based on these definitions, logistics is defined in a broad sense and considered as managing, strategic planning of production for businesses and goods delivery activities starting from transporting raw materials for production to finished products and then reaching consumers. The World Maritime University has defined "Logistics as a calculated, organized process aiming to minimize costs in

determining transportation and storage locations for supplies, from the point of origin, through various activities, to the point of final consumption."; The Council of Supply Chain Management Professionals (CSCMP) defines "Logistics Management as a part of supply chain management including the planning, implementing, and controlling of the efficient transportation and storage of goods, services, and related information, from the point of origin to the point of consumption to meet customer requirements."; Pursuant to Article 233 of Commercial Law 36/2005/QH11 dated June 14, 2005, "Logistics service means a commercial activity whereby a trader organizes the performance of one or more tasks, including receipt of goods, transportation, warehousing, storage, completion of customs procedures and other documentation procedures, providing advice to customers, packaging goods and labeling them with appropriate codes, delivery of goods or other services relating to goods under an agreement with a customer against remuneration.". Thus, from this perspective, the logistics is literally understood in a narrow sense just as the delivery of goods from the manufacturers to the consumers.

The essay's freight forwarding services are discussed in e-commerce and the European Commission defines "E-commerce can be defined generally as the sale or purchase of goods or services, whether between businesses, households, individuals or private organizations, through electronic transactions conducted via the internet or other computer-mediated (online communication) networks.". Pursuant to Clause 1, Article 4 of Decree on E-Commerce 52/2013/ND-CP dated May 16, 2013 defines: "E-commerce activity means conducting part or the whole of the process of commercial activity by electronic means connected to the Internet, mobile telecommunications network or other open networks.". In general, the success of the purchase and sale of goods in e-commerce, the freight forwarding services need to be performed partly or entirely in an electronic environment to follow the current digital transformation trend.

In summary, the freight forwarding services in e-commerce (called "Freight Forwarding Services") can be understood as: "The freight forwarding services in e-commerce is a part of logistics activities in e-commerce, whereby logistics service traders organize and carry out the delivery of goods from the seller to the consumer through operations according to the process from receiving goods, storing, packaging, distributing, transporting, delivering or other related services according to the agreement to receive remuneration". Because, (i) The freight forwarding is performed after the buyer ordered successfully through the seller's website or e-commerce exchange; (ii) most of the operations are similar to logistics services under Vietnamese commercial law.

2.2 Characteristics of freight forwarding services in E-commerce.

Based on the definition above, we can recognize that there is literally, in the characteristics of freight forwarding services, the intersection between logistics and e-commerce activities as follows:

Firstly, the freight forwarding services is a commercial service activity, in which the object is the transportation of tangible goods and receiving remuneration. For intangible goods (e-books, software...), the role of freight forwarding services in e-commerce will not be seen clearly. Because this type of goods is default to transport in electronic environment. For example: to optimize shopping, the buyers

choose to shop and delivery on e-commerce exchange (Shopee, Lazada...) with the characteristics of being fast, anytime, anywhere.

Secondly, this is a core and regular activity. The buyers choose to buy goods in e-commerce because they do not care too much about the seller. They only focus on factors such as: genuine products, diverse product categories, meeting needs, fast delivery, low freight and price. These are the factors that determine the success and development of e-commerce today.

Third, this activity meets the needs of participating entities including: The Sellers and The e-commerce exchange owner sell goods and achieve revenue and profit targets; The Buyers own the desired goods; The freight forwarder receives remuneration after completing the transaction. For example: A buyer orders a number of clothes on a fashion company's website or on the Amazon e-commerce exchange. If the order is successful, the seller or Amazon receives the payment, then they will hand over the clothes to the forwarder (DHL, TNT, J&T Express) to transport to the buyer and pay the delivery fee.

2.3 The essence of freight forwarding services in E-commerce.

The freight forwarding services in e-commerce are logistics activities in the narrow sense according to Vietnamese law. This is proved by the activities listed in the definition of logistics that are similar to the delivery process, specifically: The forwarder receives goods from the seller, the goods are gathered at the forwarder's warehouse, then they are packaged base on the standards or characteristics of the goods (liquids, fragile goods) ^[v], customs clearance procedures for import and export goods (in case of cross-border delivery of goods), they are delivered to each region (urban, rural residential areas), customer type (individuals, businesses), product characteristics (compact, large, oversized...)

The freight forwarding services in e-commerce are a supporting activity, promoting the circulation of goods in the supply chain in particular and the trade of goods in general. In terms of delivery methods, the forwarder plays an important role in choosing the delivery method (sea transport, air transport, rail transport, river transport, road transport) according to the requirements and characteristics of the goods (for example: air transport ensures fast delivery, sea transport is low cost...) ^[vi]. In terms of territorial scope, the cross-border delivery activities (import-export delivery) are quite important as the forwarder, apart from the traditional forwarding activities, also takes on the role of customs clearance (import-export procedures), loading and unloading goods, bonded warehouse storage, container packing... If all of these operations have not carefully prepared and accurately calculated, they will lead to delays in delivery progress, warehouse and container storage costs, damage to goods... ^[vii]

The freight forwarding services in e-commerce are the connection of economic entities. The proposed hypothesis is that the activities of buying and selling goods, circulating goods in the global supply chain and e-commerce without the freight forwarding services. This hypothesis will lead to the following consequences: (i) customers and buyers are required to come to the seller's warehouse to receive goods; (ii) the seller must establish a delivery department, leading to increased fixed costs (employee salaries), high transaction costs, and loss of competitiveness; (iii) the supply chain of

goods is interrupted and congested at rush hour; (iv) the fast and ubiquitous nature of e-commerce will be broken. Thus, based on the above consequences, the hypothesis completely fails to develop the economy, especially for the sharing economy when economic value is distributed to participating entities. Typically, in the sharing economy, its economic value is redistributed to the seller (revenue), the e-commerce exchange (sales revenue rate), the forwarder (freight charges), the shipper (fee for each transport order) and the buyer (value of goods owned); At the same time, this economic value will connect nearby entities through freight forwarding services.

In summary, all the analysis mentioned above has shown an overview of freight forwarding services in e-commerce through the definition, characteristics and essence of freight forwarding services. This result has brought the concept of freight forwarding activities out of the previous simple traditional thinking; Simultaneously, they contribute practical applications such as: From an economic perspective, they create the premise for organizations and businesses to build, establish and operate commercial production and business activities suitable for the context of the developing digital economy in general and e-commerce in particular. From a legal perspective, they help identify typical legal issues (legal status, legal responsibilities) of freight forwarders in e-commerce.

3. Specialized legal issues of the freight forwarding services in E-commerce.

In the scope of this article, we only focus on researching the internal issues of the freight forwarding service in e-commerce, specifically: business conditions (building information systems, technical infrastructure, human resources), the entities participating in the freight forwarding service and responsibilities when delivering goods from a legal perspective.

3.1 Legal responsibilities of the entities performing freight forwarding activities.

We need to distinguish between entities participating in freight forwarding activities in e-commerce and those performing these activities. In general, the freight forwarding service only needs a forwarder to perform. However, e-commerce requires the participation of the Forwarder and the Shipper to complete the delivery of goods in reality. The two entities have the following differences:

Firstly, the freight forwarder is usually an organization while the shipper is an individual. For example, although the freight forwarding company is in charge of performing procedures, the goods are delivered directly to the last mile consumer by the shipper, who can be an employee of the company or a third party.

Secondly, the freight forwarder is a comprehensive service provider whereas the shipper transports goods from point A to point B. A clearer example is the best Cross-border where most freight forwarding companies have to make a plan for the following steps: The forwarder will receive the goods at the port of loading to perform customs clearance of export goods; when the goods arrive at the port of discharge, they perform customs clearance of import goods; then the goods move to the yard, to classify and disposal to the shipper to deliver to the end of consumer. China's logistics can be related to this when they can deliver goods quickly and cheaply. ^[viii]

Third, in the sharing economy, in some cases, the shipper is a third-party employee who will cooperate and share transportation capacity with the freight forwarder. At this time, the shipper is completely independent and only performs the simple delivery of goods ^[ix]. For example: The freight forwarding company will plan to deliver goods from China to Vietnam, the delivery to consumers will be performed by the shipper who delivers the goods directly to the consumer, because it is just the shipper has the insight of the local traffic.

Thus, the differences have shown us that there is the existence of the freight forwarder and the shipper when performing the freight forwarding. These two entities may only depend on each other within the business, but sometimes they will be independent when it comes to last-mile delivery. However, there are no legal regulations on the conditions for the shipper in e-commerce whereas, in reality, the buyer only knows this last-mile delivery shipper and the shipper can be independent of both the seller or the e-commerce exchange. Additionally, the legal responsibility of the shipper is important enough for shippers to make last-mile deliveries in e-commerce.

3.2 Legal issues when delivering the last mile to the consumer.

The last-mile delivery is an important stage to mark the completion of a transaction and creates trust, directly affecting consumers' next purchasing decisions ^[x]. So, some issues BELOW need to be taken into consideration when the shipper delivers to consumers:

Firstly, there are no legal regulations and policies about Co-inspection of goods currently when the buyer receives the goods, depending on the e-commerce exchange, they can arbitrarily regulate this issue in the general regulations section on their website. This can lead to the shipper making it difficult or refusing to check the goods when the buyer receives them. Even, sometimes, the seller must recommend the buyer proactively to record video when receiving the goods from the shipper.

Secondly, the law is yet to provide with a mechanism for returning goods when the goods are defective or the delivered goods do not match the agreement in the order. Most e-commerce exchanges have return and refund policies, but they are only informal and in reality are not really effective, because: (1) This policy depends on the will of the seller or e-commerce exchange and not on specific legal regulations; (2) This last-mile transaction is performed by the shipper, in some cases, they are a third party who can refuse to return the goods on the grounds that they are only responsible for delivery. More importantly, to return the goods, the buyer must contact the seller again, in case the buyer purchases on an e-commerce exchange, the buyer must wait for the response of the e-commerce exchange owner after working with the seller. (3) The Co-inspection of goods policy only allows buyers to perform inspections on goods nominated by e-commerce exchanges, or the inspection is only performed on the outside of the product, which means only the packaging of the shipper is allowed to be removed ^[xi]. In case the goods already received are inspected and found to be defective or of incorrect quantity and quality, the return process is very difficult and complicated.

In order to complete the transaction, checking and receiving the goods plays a key role. However, these operations are just for legality and are manifested in the form of a sample agreement according to the subjectivity of the seller or the e-

commerce exchange. Besides, difficult and complicated procedures for exchanging and returning goods will affect consumers' psychology and purchasing decisions later.

3.3 Regulations on business conditions for freight forwarding services in e-commerce.

As analyzed above, freight forwarding services in e-commerce are one of the logistics operations. However, logistics law has not recognized this operation under the development of e-commerce. In terms of form, freight forwarding is an activity regulated in the legal regime on logistics in the Commercial Law 2005 and Decree on logistics services business 163/2017/ND-CP dated December 30, 2017. In terms of content, the longstanding definition of the Commercial Law 2005 only considers the forwarding is a pure and traditional activity, including: delivery and receipt, which is not appropriate in the current context of digital transformation and sharing economy; At the same time, Decree No. 163/2017/ND-CP only focuses mainly on transport business conditions and responsibilities of traders providing logistics services, which ignore the role of the freight forwarder and the shipper when performing forwarding in e-commerce.

4. Some recommendations and solutions.

Along with the legal analysis of freight forwarding services in e-commerce and with the hope that freight forwarding services are viewed accurately in the development of e-commerce and logistics today. Although economic value is still the core issue, protection of consumers and businesses' rights also needs to be taken into account. For that reason, I have some recommendations as follows:

Firstly, it is necessary to recognize the concept of "freight forwarding services" in logistics and e-commerce law. This recognition is a premise to determine the legal status of the entity doing business in freight forwarding services, and at the same time specify the role of the freight forwarder and the shipper participating in logistics activities in e-commerce.

Secondly, it is necessary to develop a model regulation on Co-inspection of goods - exchange and return of goods. A model regulation on Co-inspection of goods will be the basis for establishing evidence to perform the exchange and return of goods, and to determine the responsibilities of the parties in each logistics stage, in order to avoid cases where goods are stolen but the fault of the party has not been determined ^[xii]. At the same time, the model regulations are also used for sellers and e-commerce platforms to refer to and build business policies.

Third, the requirements for human resources and technical infrastructure for freight forwarding services on e-commerce are decisive factors for success. The careful personnel requirements, especially for the shipper will help to recruit professional shippers to comply with the business's delivery regulations and behave well with customers. These will support human resource management and minimize disputes between the shipper and the buyer when receiving the goods, avoiding unfortunate incidents ^[xiii]. For example: requirements on ethics, qualifications, training sessions... for employees. The technical infrastructure requirements are mandatory and especially in e-commerce. In addition, the basic requirements for Telecommunications networks (Internet, LTE, 5G...), Information systems (Server, domain, hosting...), setting up online ordering functions in the electronic contract signing process, Order management

system (OMS), Warehouse management system (WMS), Transportation management system (TMS), Enterprise resource planning (ERP), Customer complaint management system (CCMS) will help the freight forwarder to be proactive in controlling the delivery of goods, customer care and timely handling with exchanging or returning goods; For the buyers, they can proactively track orders and prepare to receive goods; It is a place to store information and sources of electronic evidence.

5. Conclusion

In the context of digital transformation, the formation of a sharing economy and the development of e-commerce, the freight forwarding service in e-commerce has transformed to adapt to the modern digital trend. From the economic perspective, the freight forwarding service brings economic value through completing delivery from the first point to the last mile of the trade process and goods supply chain. From the legal perspective, recognizing the legal status of traders providing freight forwarding services is inevitable, in addition to clarifying the definition of logistics in e-

commerce, it is also a legal basis for determining responsibilities when it comes to resolving disputes, ensuring the rights and interests of the parties involved in the transaction.

The freight forwarding activities in e-commerce need to be accurately assessed and defined in accordance with current economic and legal issues. This is also the premise for amending and supplementing the commercial law, logistics law, and e-commerce law that have existed for a long time. In particular, the legal responsibilities of the freight forwarder and the shipper are determined when performing freight forwarding activities; Establishing regulations and procedures for Co-inspection of goods and performing the exchange and return of goods to ensure consumer rights; Business conditions, specifically: human resource requirements, information system requirements, technical infrastructure requirements also need to be balanced and adjusted to suit and adapt to the global digitization process, ensuring sustainable economic and e-commerce development.

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ⁱⁱ Vietnam E-Commerce and Digital Economy Agency (2024), *Sách trắng Thương mại điện tử năm 2023*.

ⁱⁱⁱ Article 233 of Commercial Law 36/2005/QH11 dated June 14, 2005

^{iv} Vietnamese Prime Minister (2018), *Decision no. 27/2018/QĐ-TTg Promulgating Vietnam standard industrial classification*.

^v EIMSkip Vietnam (2024), *Hướng dẫn đóng gói hàng Shopee chuẩn chỉnh 2024 theo từng ngành hàng*. Source: <https://eimskip.vn/dong-goi-hang-shopee>

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^{xii} The Anh (2024), *Cộng đồng thất vọng về cách Apple xử lý vụ mua iPhone 16 nhận hộp rỗng*, dtinews (dantri international). Source: <https://dantri.com.vn/cong-nghe/cong-dong-that-vong-ve-cach-apple-xu-ly-vu-mua-iphone-16-nhan-hop-rong-20241022105238813.htm>

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