

# **Alternative dispute resolution in the contracts of international package delivery<sup>1, 2</sup>**

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## **ABSTRACT**

As the rapid development of cross-border e-commerce, the industry of international package delivery is growing at a surprising speed. As contractual disputes within this industry are omnipresent and often lead to serious results, this paper is aimed at finding out the best resolution for these disputes. By the end of this paper, we will be able to know what the alternatives are for resolving disputes in the contract of international package delivery as well as which alternative is the most appropriate one to implement. In order to evaluate the six possible alternatives which are proposed, we give eleven different attributes that can assess the alternatives effectively. Throughout this paper, with the help of Disjunctive Reasoning Technique, Addictive Weight Technique, Pareto Analysis and other efficient techniques, we discover that prevention which focuses on the effective cooperation and information-sharing between the parties interested is the best alternative. However, if disputes have arisen, negotiation and standing neutral are the most appropriate dispute resolutions in the industry of international package delivery.

**Keywords:** Alternative Dispute Resolution/ADR, International package delivery, Cross-border e-commerce, Contract, Standing neutral, Arbitration, Negotiation, Prevention, Litigation.

## **INTRODUCTION**

In recent years, with the rise and the rapid development of cross-border e-commerce, the industry of international package delivery is developing in a high speed: “it is growing at a rate of 10 billion pieces per year in China”.<sup>3</sup> “In 2014, the trading volume of international package delivery accounted for 24.6% of global GDP. Actually, this industry is driven by China, Japan and

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<sup>1</sup> Editor’s note: Student papers are authored by graduate or undergraduate students based on coursework at accredited universities or training programs. This paper was prepared for the course “International Contract Management” facilitated by Dr Paul D. Giammalvo of PT Mitratata Citragraha, Jakarta, Indonesia as an Adjunct Professor under contract to SKEMA Business School for the program Master of Science in Project and Programme Management and Business Development. <http://www.skema.edu/programmes/masters-of-science>. For more information on this global program (Lille and Paris in France; Belo Horizonte in Brazil), contact Dr Paul Gardiner, Global Programme Director, at [paul.gardiner@skema.edu](mailto:paul.gardiner@skema.edu).

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<sup>3</sup> 2017 China Express Industry Development Overview. (n.d.). Retrieved from <http://www.chyxx.com/industry/201711/586648.html>

USA".<sup>4</sup> "According to AliResearch, in 2020, the trading volume of global e-commerce will reach 3,4 trillion US dollars and the number of cross-border e-commerce users will be estimated to reach 2,1 billion."<sup>5</sup> In addition, "the trading volume of global B2C e-commerce is expected to be 3,4 trillion US dollars and the logistics cost will reach 1,02 trillion US dollars".<sup>6</sup> Indeed, international package delivery is much more complex than we can imagine, it not only involves many people from customers to deliverers but also involves lots of processes like warehousing, transportation, distribution, taxation across national borders... In order to ensure the safe transportation of the cargo or define the related responsibilities, contracts are usually signed. Generally, a contract is the key to avoiding possible disputes in the coming future. However, the package delivery among countries is much more complex than that within a country, lots of possibilities will happen during the whole process. "As a result, lots of serious conflicts arising between the related parties (the consignor, the carrier, the consignee, the insurer...) and contract usually can't meet the demand to resolve this kind of complicated disputes among several related parties".<sup>7</sup> Since disputes are common, one of the main objectives in international package delivery industry is to clarify the root causes of different disputes.

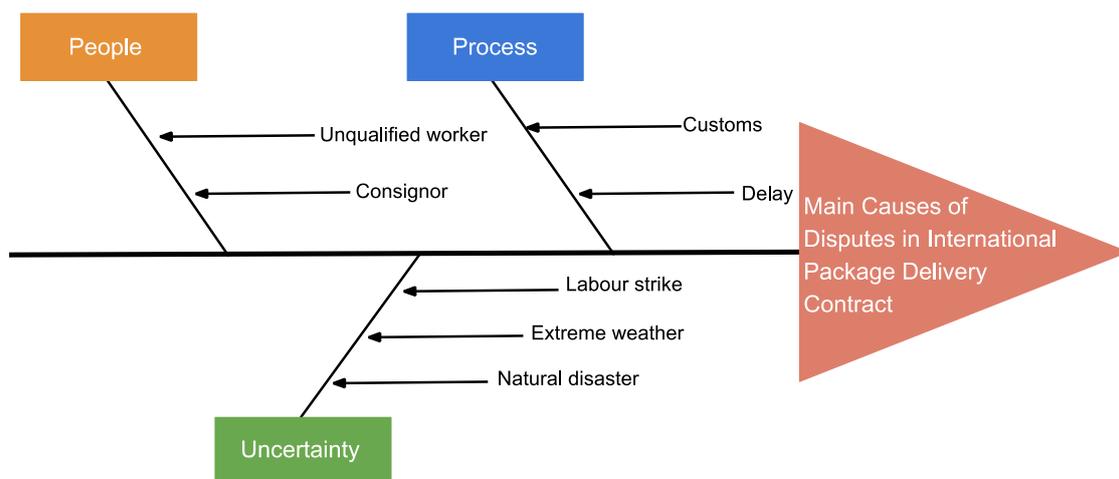


Figure 1: Root Cause Analysis<sup>8</sup>

<sup>4</sup> China Post Bureau: The growth rate of express delivery is 6 times faster than GDP. (n.d.). Retrieved from <http://politics.people.com.cn/n/2015/0327/c70731-26757161.html>

<sup>5</sup> [Global Cross-border Logistics Industry Report] "Three Giants" and "Postal Network". (n.d.). Retrieved from [https://www.sohu.com/a/156041400\\_354900](https://www.sohu.com/a/156041400_354900)

<sup>6</sup> [Global Cross-border Logistics Industry Report] "Three Giants" and "Postal Network". (n.d.). Retrieved from [https://www.sohu.com/a/156041400\\_354900](https://www.sohu.com/a/156041400_354900)

<sup>7</sup> How to deal with disputes in delivery industry. (n.d.). Retrieved from [http://www.66law.cn/fangan/anli\\_353/](http://www.66law.cn/fangan/anli_353/)

<sup>8</sup> By Author

There are all kinds of causes of disputes in international package delivery contracts and it's nearly impossible to avoid them. Unqualified workers who often make mistakes like damaging or losing the cargo, consignors who are careless or unethical, customs detained, unexpected tariff, delay, extreme weather... may lead to disputes between the parties involved because several parties' interests are involved so when accidents happen, it's not easy to answer the question like who is responsible, how many responsibilities should be taken and in most of the cases, the contracts signed can't clarify some specific matters. Then disputes arise again and again. This kind of disputes is inevitable, so the way how we deal with this kind of disputes really does matter. Considering the interest, the efficiency of resolving the disputes is very essential.

There are several resolutions to the disputes in the contracts of international package delivery and going to court is the most traditional one. However, this is not the only way to resolve disputes. There are also some alternative dispute resolutions for the disputes in the contract of international package delivery. Before, it's difficult to deal with this kind of disputes since it's not easy to find out which related part should take the responsibility and people usually went to court. But going to court sometimes is a costly choice which not only waste lots of money but also waste time. "Now with the development of Alternative Dispute Resolution/ADR allowing the involved parties to settle disputes with the assistance of a neutral party which is an impartial dispute resolution body, we can resolve the disputes in the contracts of international package delivery in a faster, easier and less expensive way rather than go to court".<sup>9</sup> Alternative dispute resolution generally includes early neutral evaluation, negotiation, mediation, arbitration..."The reason why people prefer ADR outside of the courtroom nowadays is not only that it's economical and fast but also that the resolutions are produced by the experts in the relate field so resolving disputes in this way is much more professional and efficient than going to court".<sup>10</sup>

A project is "an investment that requires a set of logically linked and coordinated activities performed over a finite period of time in order to accomplish a unique result in support of a desired outcome<sup>11</sup>". In an international package delivery company, each shipping order can be considered as a single project because each order is unique and temporary, for the package delivery company, the deliverable is the shipping service itself, and the company should apply the knowledge, skills, tools and techniques to meet the stakeholder's demand and expectation for the project. Between the seller (for example the cross-border online store like Mytheresa) and the international package delivery company (for example UPS), every day thousands of

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<sup>9</sup> Staff, L. (2007, August 06). Alternative Dispute Resolution. Retrieved November 17, 2017, from [https://www.law.cornell.edu/wex/alternative\\_dispute\\_resolution](https://www.law.cornell.edu/wex/alternative_dispute_resolution)

<sup>10</sup> Paul E. Knag. & Daniel J. Kagan (2016, December). Why arbitration is the preferred dispute resolution vehicle for most integrated delivery system disputes. Retrieved from <https://arbitrationlaw.com/library/why-arbitration-preferred-dispute-resolution-vehicle-most-integrated-delivery-system>

<sup>11</sup> Adapted from a Linked In discussion initiated by William R. Duncan 1/13/2018. Retrieved from: <https://www.linkedin.com/feed/update/urn:li:activity:6357416976318558208/>

people buy things on Mytheresa, so at the end of each day, Mytheresa sends the goods to UPS and makes shipping orders, each order concerns different goods bought by different customer of Mytheresa. In addition, in order to attract more customers, UPS often gives discounts for the customer who can make a couple of shipping orders at one time. In other words, the delivery price will be lower if you send several packages at one time than you only send one package. We have said that each order is unique and can be considered as a single project, so between UPS and Mytheresa, we can consider every day's shipping orders (projects) made by Mytheresa as a program. The general purpose of a multi-project program is to "achieve synergies from projects with common traits such as shared resources, similar clients or product technology and the reason for grouping projects is to obtain the benefits expected from synergy"<sup>12</sup>. "Program managers run groups of projects which can be funded either by the CAPEX or OPEX (Operating Expenditure Budgeting Process)<sup>13</sup>". The international package delivery company should manage their project portfolios appropriately by improving the efficiency of the process, the service quality, building good relationships with customers, constructing a good brand image, but the most important is by managing their assets in a proper way: their tangible assets refer to transportation tools like vehicle and cargo plane, package materials, containers, storehouse; their intangible assets refer to advanced technology, intelligent system, goodwill, brand image.

Between the end customer (the receiver of the package) and the international package delivery company, there is not any written contract, however, there is an implied contract which is "an agreement created by actions of the parties involved, but it is not written or spoken. An implied contract is a legal substitute for a contract that is assumed to have been drawn. In this case, there is no written record nor any actual verbal agreement."<sup>14</sup> Between the seller like Mytheresa and the international package delivery company, before the cooperation, they usually should sign a contract to establish their partnership as well as clarify their respective responsibilities and accountabilities.

By the end of this paper, we would be able to understand better different reasons for disputes in the contracts of international package delivery and the main ways for resolving this kind of disputes. And finally, we will be able to select the most appropriate options.

## **METHODOLOGY**

### **Step 1: Summarize**

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<sup>12</sup> GUILD OF PROJECT CONTROLS COMPENDIUM and REFERENCE (CaR) | Project Controls - planning, scheduling, cost management and forensic analysis (Planning Planet). (n.d.). Retrieved from <http://www.planningplanet.com/guild/gpccar/introduction-to-managing-project-controls>

<sup>13</sup> GUILD OF PROJECT CONTROLS COMPENDIUM and REFERENCE (CaR) | Project Controls - planning, scheduling, cost management and forensic analysis (Planning Planet). (n.d.). Retrieved from <http://www.planningplanet.com/guild/gpccar/introduction-to-managing-project-controls>

<sup>14</sup> What is an Implied Contract. (n.d.). Retrieved from: [https://www.investopedia.com/terms/i/implied\\_contract.asp](https://www.investopedia.com/terms/i/implied_contract.asp)

As introduced, this paper is aimed at suggesting the cross-border e-commerce some alternative dispute resolutions that may improve the quality of service and the reputation of the organization. This paper is focusing on answering the following questions:

- What are the alternatives for resolving disputes in the contracts of international package delivery?
- Which alternative is the most appropriate one for the disputes in the contract of international package delivery?

**Step 2: Identification of Feasible Alternative Solutions**

- We are going to address what are the different alternative to resolve disputes in the international package delivery contract. Below are the feasible alternative dispute resolutions that can be implemented:

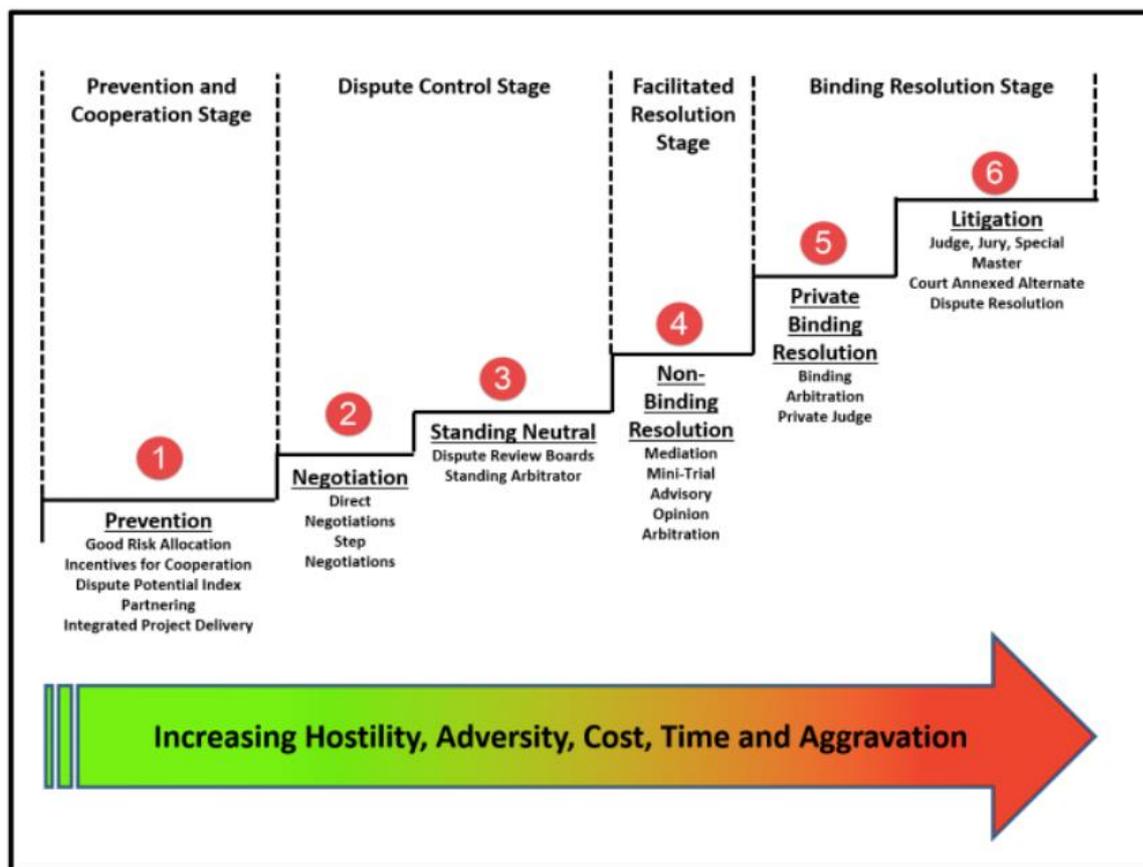


Figure 2: The Conduct Formalized Dispute Resolution Process Map<sup>15</sup>

<sup>15</sup> GUILD OF PROJECT CONTROLS COMPENDIUM and REFERENCE (CaR) | Project Controls - planning, scheduling, cost management and forensic analysis (Planning Planet). (n.d.). Retrieved from <http://www.planningplanet.com/guild/gpccar/formal-disputes-resolution>

## 1. Prevention

“In prevention and cooperation stage, lots of actions are taken in order to avoid problems.”<sup>16</sup> Disputes are prevented by good cooperation to achieve the objectives, integrated project delivery, good risk allocation...

## 2. Negotiation

“In negotiation, there is not any third neutral party to facilitate the resolution process and the participation is voluntary.”<sup>17</sup>

## 3. Standing Neutral

Standing neutral means the participant of a neutral party. “A dispute review board which is usually used in this step, similar to the project neutral process, typically uses a panel of one or more experts assisting in the management of conflicts and disputes in longer period and larger projects”.<sup>18</sup>

## 4. Non-Binding Resolution

“Non-binding resolution uses mediation, mini-trial, advisory or arbitration. In mediation, a mediator which is a neutral third party will appear to facilitate the resolution processes, however, the mediator doesn’t impose a resolution on the parties. Arbitration is less formal than court, and there is a third party called arbitrator who acts as a private judge and will impose a resolution on the dispute.”<sup>19</sup>

## 5. Private Binding Resolution

The tools used in this resolution are more formal. It could be binding arbitration or private judge. The private judge would conduct the process in a professional and formal manner resembling the litigation process while without the need to await an available judge or courtroom. “The private judge would render decisions that may be either advisory or determinative of the problem, depending on the terms of the agreement between the parties involved.”<sup>20</sup>

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<sup>16</sup> Joanne Staugas (January-2002) - Strategies for dispute prevention and management in commercial arrangements - Vol 4 no 9. Retrieved from: <https://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1169&context=adr>

<sup>17</sup> Joanne Staugas (January-2002) - Strategies for dispute prevention and management in commercial arrangements - Vol 4 no 9. Retrieved from: <https://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1169&context=adr>

<sup>18</sup> Does Your construction Contract Provide for a Project Neutral to Resolve Disputes? (n.d.). Retrieved from: <https://www.flabusinesslaw.com/real-estate/construction-design/does-your-construction-contract-provide-for-a-project-neutral-to-resolve-disputes/>

<sup>19</sup> Non-Binding Solution. (n.d.). Retrieved from : <https://www.revolv.com/page/Non%252Dbinding-resolution>

<sup>20</sup> John R. Allison (January-1990) - Five Ways to Keep Disputes Out of Court. (n.d.). Retrieved from <https://hbr.org/1990/01/five-ways-to-keep-disputes-out-of-court>

## 6. Litigation

Litigation refers to the resolution of disputes through the court system using judge, jury or special master.

- In order to evaluate each alternative mentioned above, this paper selects **eleven** different attributes to rank the resolutions from the best to the worst. These attributes are selected in accordance with the important elements when disputes arise in the international package delivery contracts.

### 1. Time

This attribute will indicate which alternative can resolve disputes the most quickly. “A difficult and complex dispute may last for several months or even years, and for this kind of disputes, if the method used is not appropriate, the time spent to resolve the disputes will be longer and there will be more negative influences on the efficiency.”<sup>21</sup> Since time is one of the six variables of a project, so it’s necessary for us to take this attribute into account.

### 2. Cost

This attribute will indicate which alternative is the most economical one. “In order to resolve a dispute in an efficient way, cost may be an important attribute that should not be ignored. Each party involved want to spend as little money as possible and a costly alternative may not be the advisable one.”<sup>22</sup>

### 3. Relationship maintenance

“This attribute will evaluate the impacts triggered by the alternative on the relationship between the parties involved.”<sup>23</sup> Since different method has different influences and if the resolution is not the appropriate one for a certain dispute, it may cause hostility or future conflict and badly influence the relationship so relationship maintenance should be taken into account as an attribute.

### 4. Confidentiality

This attribute will indicate the degree to which each alternative keep the disputes and the results confidential. As nowadays “most people prefer to keep a dispute and its resolution secret so

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<sup>21</sup> Paul J. Malcomb - Why Time is an important Project Profile Attribute. (n.d.). Retrieved from: <https://www.linkedin.com/pulse/why-time-important-project-profile-attribute-paul-malcomb-mba/>

<sup>22</sup> Deniz Ilter- The Use of Key Attributes in Alternative Dispute Resolution Process Design. (n.d.). Retrieved from: [http://www.arcom.ac.uk/-docs/proceedings/ar2008-455-464\\_Ilter\\_and\\_Dikbas.pdf](http://www.arcom.ac.uk/-docs/proceedings/ar2008-455-464_Ilter_and_Dikbas.pdf)

<sup>23</sup> Livengood, John (2014) “Construction Claims A to Z’ CDR 1484 AACE Symposium Bangkok, Thailand. Adaptation Planning planet. Retrieved from: <http://www.planningplanet.com/guild/gpccar/settlement-negotiations-phase>

confidential does play an essential role.”<sup>24</sup> They tend to keep the process of resolving the disputes away from the exposure in public, confidentiality is also an attribute that should not be ignored.

### **5. Fairness**

This attribute will indicate whether the alternative is fair enough or not as well as how fair is it. If the method used is not fair enough, it may influence the confidence of each party and the result may not be convincing enough.

### **6. Flexibility**

Flexibility is an integral attribute which indicates the degree to which we are free to fashion the process of resolving dispute to suit the needs and preferences, for example, “from a procedural standpoint, arbitration can be simpler and more flexible than court proceedings since arbitrations proceed without any particular set of applicable procedural rules”<sup>25</sup>.

### **7. Party autonomy**

This attribute means the decision-making capacity of the parties when they are choosing “the place of arbitration, the language of the arbitration, the procedure managing the arbitration, the number and identity of arbitrators, the type of evidence and so on.”<sup>26</sup> Since party involved are often reluctant to submit to the jurisdiction of the other party’s home courts so this attribute does matter.

### **8. Right to appeal**

Not all alternatives have the right to appeal so this attribute can also help us evaluate the alternatives. For example, “for arbitration, its awards are binding but there is normally a very limited right to appeal. However, litigation does not suffer from this restriction but appeals can only be made limited circumstances.”<sup>27</sup>

### **9. Rules of disclosure**

The rules of disclosure are different for each alternative. For example, “standard disclosure in litigation conducted in the courts of England and Wales requires a party to disclose all documents which are relevant to the case whether they are helpful or prejudicial or support another party’s case. This makes disclosure an onerous process and may force a party to show cards which it

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<sup>24</sup> Peter S., Ana V., Elizabeth F. – Perceived Advantages and Disadvantages of International Arbitration. CH. 19. Retrieved from <https://www.proskauerguide.com/arbitration/19>

<sup>25</sup> Peter S., Ana V., Elizabeth F. – Perceived Advantages and Disadvantages of International Arbitration. CH. 19. Retrieved from <https://www.proskauerguide.com/arbitration/19>

<sup>26</sup> Peter S., Ana V., Elizabeth F. – Perceived Advantages and Disadvantages of International Arbitration. CH. 19. Retrieved from <https://www.proskauerguide.com/arbitration/19>

<sup>27</sup> Deniz Ilter- The Use of Key Attributes in Alternative Dispute Resolution Process Design. (n.d.). Retrieved from: [http://www.arcom.ac.uk/-docs/proceedings/ar2008-455-464\\_Ilter\\_and\\_Dikbas.pdf](http://www.arcom.ac.uk/-docs/proceedings/ar2008-455-464_Ilter_and_Dikbas.pdf)

may not wish to play.”<sup>28</sup> But for arbitration, the party only need to disclose the helpful documents.

### **10. Enforceability**

“One of the essential advantages of arbitrating against litigating international disputes is the relative ease with which an international arbitral award rendered in one country can be enforced in another country.”<sup>29</sup> This attribute is important, because in an international dispute, the party who has won often has to enforce the judgment or award rendered in another country in which the unsuccessful party has assets.

### **11. Potential need for court intervention**

In certain cases, the intervention of courts becomes necessary. For example, “the arbitral tribunal hasn’t been constituted or where the coercive power of a court is needed to obtain or enforce an interim measure.”<sup>30</sup> The potential need for court intervention also means more time and more cost and more energy.

## **Step 3: Development of the Feasible Alternatives**

The eleven attributes chosen above are the important elements in the process of resolving disputes. However, these eleven attributes don’t have the same importance. We are going to use a **non-compensatory model** which is based on disjunctive reasoning to rank these eleven attributes from the most important to the less important. “By compare 2 different attributes, we give 1 point to the more important attribute and 0 point to the relatively less important one.”<sup>31</sup>

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<sup>28</sup> Lexis PSL, Mayer Brown International LLP – The pros and cons of Arbitration. (n.d.). Retrieved from: <https://m.mayerbrown.com>

<sup>29</sup> Lexis PSL, Mayer Brown International LLP – The pros and cons of Arbitration. (n.d.). Retrieved from: <https://m.mayerbrown.com>

<sup>30</sup> Peter S., Ana V., Elizabeth F. – Perceived Advantages and Disadvantages of International Arbitration. CH. 19. Retrieved from <https://www.proskauerguide.com/arbitration/19>

<sup>31</sup> Sullivan, Wickes & Kroelling (2014). [Engineering Economics](http://www.planningplanet.com/guild/qpcar/managing-change-the-owners-perspective) 15th Edition Using the approach. Retrieved from: <http://www.planningplanet.com/guild/qpcar/managing-change-the-owners-perspective>

	Time	Cost	Relationship Maintenance	Confidentiality	Fairness	Flexibility	Party Autonomy	Right to Appeal	Rules of Disclosure	Enforceability	Court Intervention	Score
Time	0	0	1	0	0	1	0	1	0	0	1	4
Cost	1	0	1	1	0	1	1	1	0	0	1	7
Relationship Maintenance	0	0	0	0	0	0	0	1	0	0	0	1
Confidentiality	1	0	1	0	0	1	0	1	0	0	1	5
Fairness	1	1	1	1	0	1	1	1	1	1	1	10
Flexibility	0	0	1	0	0	0	0	1	0	0	1	3
Party Autonomy	1	0	1	1	0	1	0	1	0	1	1	7
Right to Appeal	0	0	0	0	0	0	0	0	0	1	1	2
Rules of Disclosure	1	1	1	1	0	1	1	1	0	1	1	9
Enforceability	1	1	1	1	0	1	0	0	0	0	1	6
Court Intervention	0	0	1	0	0	0	0	0	0	0	0	1

Figure 3: Non-Compensatory Model – Disjunctive Reasoning Technique<sup>32</sup>

From the chart above, we can see clearly that **fairness** is the most important attribute compare with the other five attributes, and **relationship maintenance** and **court intervention** are relatively the less important attributes.

**Step 4: Selection of the Criteria**

In order to evaluate the feasible alternative solutions proposed in Step 2, now we are going to use a **multi-attribute decision-making model** which is based on a qualitative analysis<sup>33</sup> to assess the alternatives against the attributes. We will use three colors: red signifies bad, yellow signifies medium, green signifies good.

<sup>32</sup> By Author

<sup>33</sup> Sullivan, Wickes & Kroelling (2014) *Engineering Economics* 15th Edition Then the second step is to calculate the relative weighting of each attribute. Retrieved from: <http://www.planningplanet.com/guild/gpccar/managing-change-the-owners-perspective>

	Prevention	Negotiation	Standing Neutral	Non-Binding Resolution	Private Binding Resolution	Litigation
Time	short	medium	medium	medium	long	long
Cost	low	low	medium	medium	high	high
Relationship Maintenance	good	medium	good	bad	bad	bad
Confidentiality	good	good	medium	medium	medium	bad
Fairness	good	good	medium	good	good	good
Flexibility	good	good	good	medium	bad	bad
Party Autonomy	good	good	good	medium	bad	bad
Right to Appeal	medium	medium	bad	bad	bad	good
Rules of Disclosure	medium	medium	good	good	good	bad
Enforceability	medium	medium	good	good	good	bad
Court Intervention	medium	medium	bad	bad	bad	good

Figure 4: Multi-attribute Decision-making Model<sup>34</sup>

In accordance with the result from the chart above, we give 1 point to the green alternative, 0,5 to the yellow alternative while 0 to the red alternative.

level	good	medium	bad
score	1	0,5	0

<sup>34</sup> By Author

	Prevention	Negotiation	Standing Neutral	Non-Binding Resolution	Private Binding Resolution	Litigation
Time	1	0,5	0,5	0,5	0	0
Cost	1	1	0,5	0,5	0	0
Relationship Maintenance	1	0,5	1	0	0	0
Confidentiality	1	1	0,5	0,5	0,5	0
Fairness	1	1	0,5	1	1	1
Flexibility	1	1	1	0,5	0	0
Party Autonomy	1	1	1	0,5	0	0
Right to Appeal	0,5	0,5	0	0	0	1
Rules of Disclosure	0,5	0,5	1	1	1	0
Enforceability	0,5	0,5	1	1	1	0
Court Intervention	0,5	0,5	0	0	0	1
Score	9	8	7	5,5	3,5	3

Figure 5: Relative Weighting<sup>35</sup>

According to the chart above, we can eliminate those alternatives which obtain the scores <5,5. So we will eliminate **private binding resolution and litigation** to narrow down the choices. Litigation is the less appropriate one among the five alternatives since it’s a costly choice and it requires lots of time but can’t have neither good relationship maintenance nor privacy, however, it’s pretty fair. Finally, **prevention, negotiation, standing neutral and non-binding resolution** seem to be the best solutions and we will analyze them in findings.

## FINDINGS

### Step 5: Summarize

In order to summarize the decision-making process in step 3 and step 4, we are going to use an **additive weighting technique**<sup>36</sup> to rank the alternatives by comparing the weight of the alternatives and that of the attributes. According to the result of step 4, the alternatives that we are going to rank in step 5 are **prevention, negotiation, standing neutral and non-binding resolution**.

<sup>35</sup> By Author

<sup>36</sup> Sullivan, Wickes & Kroelling (2014) [Engineering Economics](http://www.planningplanet.com/guild/qpcar/managing-change-the-owners-perspective) 15<sup>th</sup>. Adaptation from planning planet. Retrieved from: <http://www.planningplanet.com/guild/qpcar/managing-change-the-owners-perspective>

Attribute	Step 1	Step 2			Prevention		Negotiation		Standing Neutral		Non-binding Resolution	
	Relative Rank	Normalized Weight (A)			(B)	(A) X (B)	(C)	(A) X (C)	(D)	(A) X (D)	(E)	(A) X (E)
Time	4	4/55	=	0,07	1	0,07	0,5	0,04	0,5	0,04	0,5	0,04
Cost	7	7/55	=	0,13	1	0,13	1	0,13	0,5	0,07	0,5	0,07
Relationship Maintenance	1	1/55	=	0,02	1	0,02	0,5	0,01	1	0,02	0	0
Confidentiality	5	5/55	=	0,09	1	0,09	1	0,09	0,5	0,05	0,5	0,05
Fairness	10	10/55	=	0,18	1	0,18	1	0,18	0,5	0,09	1	0,18
Flexibility	3	3/55	=	0,05	1	0,05	1	0,05	1	0,05	0,5	0,03
Party Autonomy	7	7/55	=	0,13	1	0,13	1	0,13	1	0,13	0,5	0,07
Right to Appeal	2	2/55	=	0,04	0,5	0,02	0,5	0,02	0	0	0	0
Rules of Disclosure	9	9/55	=	0,16	0,5	0,08	0,5	0,08	1	0,16	1	0,16
Enforceability	6	6/55	=	0,11	0,5	0,06	0,5	0,06	1	0,11	1	0,11
Court Intervention	1	1/55	=	0,02	0,5	0,01	0,5	0,01	0	0	0	0
<b>SUM</b>	<b>55</b>		<b>SUM</b>	<b>1</b>	<b>SUM</b>	<b>0.84</b>	<b>SUM</b>	<b>0,8</b>	<b>SUM</b>	<b>0,72</b>	<b>SUM</b>	<b>0,71</b>

Figure 6: Addictive Weight Technique<sup>37</sup>

According to the result of Figure 6 shown above, **prevention** seems to be the best alternative followed by **negotiation** and **standing neutral** whilst **non-binding resolution** gets the lowest score.

**Step 6: Selection of the preferred alternative**

According to the result of step 5, now we decide to remove the **non-binding resolution** from the list of our alternatives. Actually, “non-binding resolution lacks the advantage of yielding a decisive conclusion on a particular legal matter.”<sup>38</sup> However, in the international package delivery industry, legal matters are omnipresent, and “international shipping laws requirements vary from country to country.”<sup>39</sup> So non-binding resolution seems to be not so appropriate for the international package delivery industry.

<sup>37</sup> By Author

<sup>38</sup> Shane Coons - 2017 February 13 – Advantages and Disadvantages of Non-binding Resolution. (n.d.). Retrieved from: <http://shaneconslaw.com/advantages-and-disadvantages-of-non-binding-resolution-2/>

<sup>39</sup> ATS- International Shipping Laws and Requirements. (n.d.). Retrieved from: <https://www.atsinc.com/maritime/international-shipping-laws-and-requirements/>

Now we are going to rank the rest three alternatives from the best to the worst:

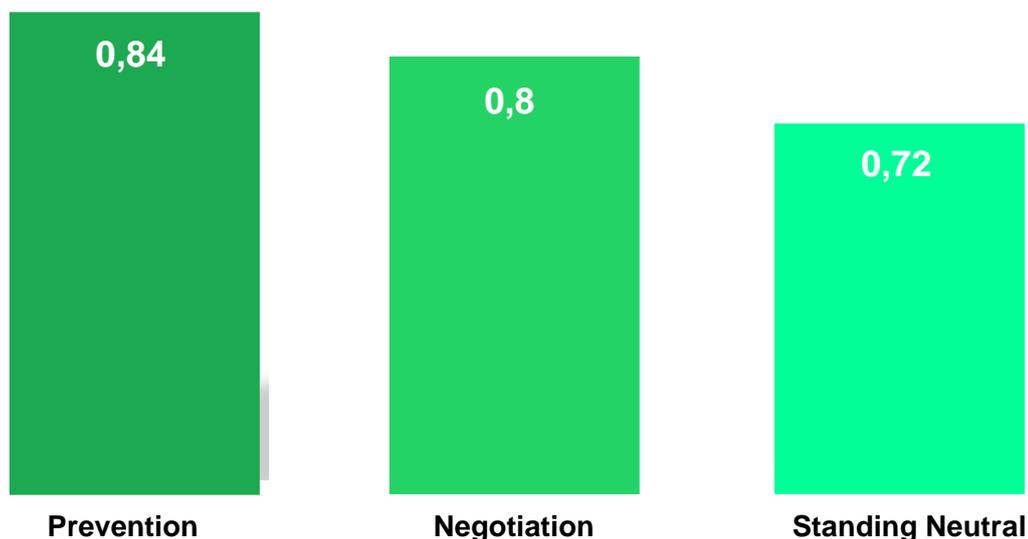


Figure 7: Bar Chart<sup>40</sup>

The bar chart above shows us the rank of the three alternatives, it's obviously that **prevention** is the best option followed by **negotiation** and **standing neutral**. The common advantages of these three alternatives are that the disputes can be resolved outside the courtroom and they can help save time and cost involved. According to the data in Figure 5, compared to litigation, **prevention** is a better choice by 300% ( $9/3 * 100\%$ ) and compared to non-binding resolution, prevention is a better choice by 164% ( $9/5,5 * 100\%$ ).

“By establishing effective cooperation and information-sharing mechanisms, the parties can make an agreement to prevent the disputes from arising.”<sup>41</sup> But disputes sometimes are inevitable and when they arise, the best alternatives may be **negotiation** and **standing neutral**. These two alternatives are efficient choice as they can help us save lots of time and cost. For negotiation, “there is not any third party so the whole process can proceed without the exposure in public.”<sup>42</sup> So the dispute resolution process can be kept confidential. In terms of standing

<sup>40</sup> By Author

<sup>41</sup> International Institute for Sustainable Development – A Sustainability Toolkit for Trade negotiators. (n.d.). Retrieved from : <https://www.iisd.org/toolkits/sustainability-toolkit-for-trade-negotiators/5-investment-provisions/5-5-preventing-and-resolving-investment-related-disputes/5-5-4-dispute-prevention-conciliation-and-mediation/>

<sup>42</sup> Joanne Staugas (January-2002) - Strategies for dispute prevention and management in commercial arrangements - Vol 4 no 9. Retrieved from: <https://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1169&context=adr>

neutral, “there is a participation of a third party like dispute review boards and standing arbitrator. They have professional knowledge in relative field so they can settle the disputes more professionally and efficiently.”<sup>43</sup>

**Step 7: Demonstration**

We have chosen **prevention** as the best alternative to resolve the disputes in international package delivery industry. In order to measure whether prevention can achieve the intended or desired results or not, we are going to use “**Before and After**” **Pareto Analysis** to see the effects of prevention on the results of disputes. “Pareto’s Law tells us that 80% of the problems come from 20% of the potential causes or explained more simply, a Pareto Analysis enables the project control practitioner to identify the “significant few” from the “insignificant many” and use that information to prioritize which problems should be addressed.”<sup>44</sup>

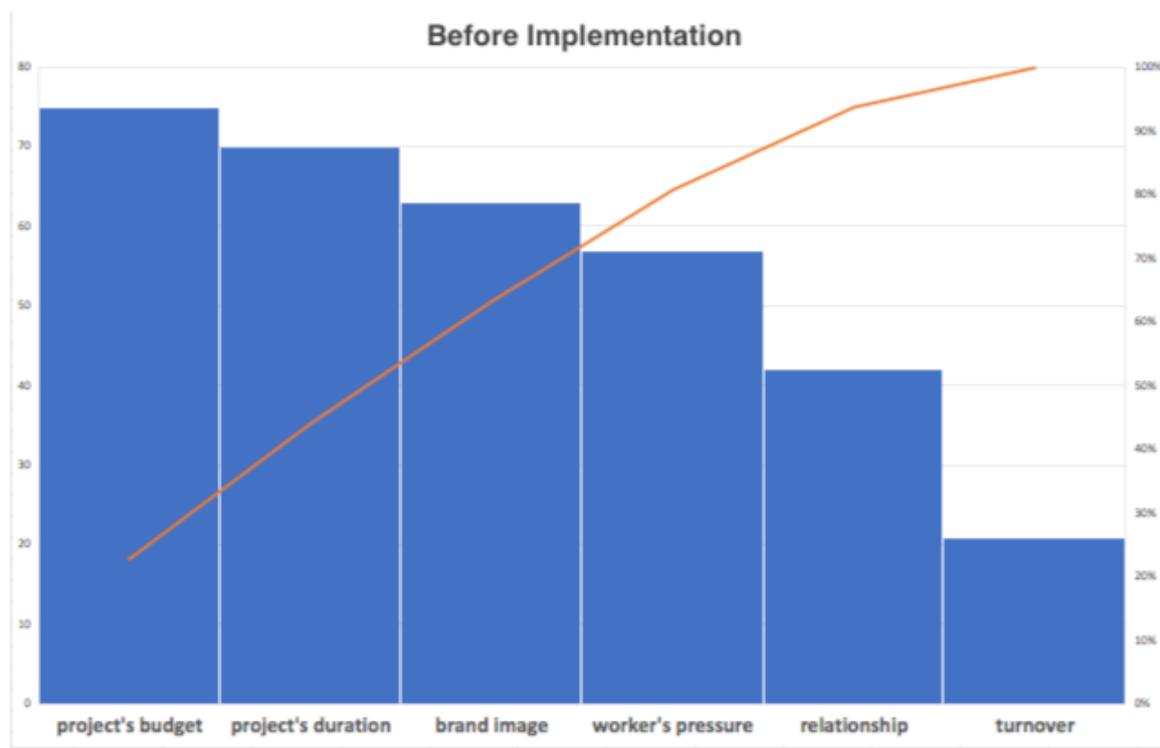


Figure 8: “Before” Pareto Analysis<sup>45</sup>

<sup>43</sup> Does Your construction Contract Provide for a Project Neutral to Resolve Disputes? (n.d.). Retrieved from: <https://www.flabusinesslaw.com/real-estate/construction-design/does-your-construction-contract-provide-for-a-project-neutral-to-resolve-disputes/>

<sup>44</sup> GUILD OF PROJECT CONTROLS COMPENDIUM and REFERENCE (CaR) | Managing Risk and Opportunity – Risk and Opportunity Monitoring and Control (Planning Planet). (n.d.). Retrieved from <http://www.planningplanet.com/guild/gpccar/risk-opportunity-monitoring-and-control>

<sup>45</sup> By Author

In “Before” Pareto Analysis, we can see clearly that without implementation of prevention, disputes have great impacts on the project’s budget and duration, brand image and the worker’s pressure. The relationship with customers and the turnover will be impacted to some extent. In order to see the effect of prevention, we are going to create the “After” Pareto Analysis.

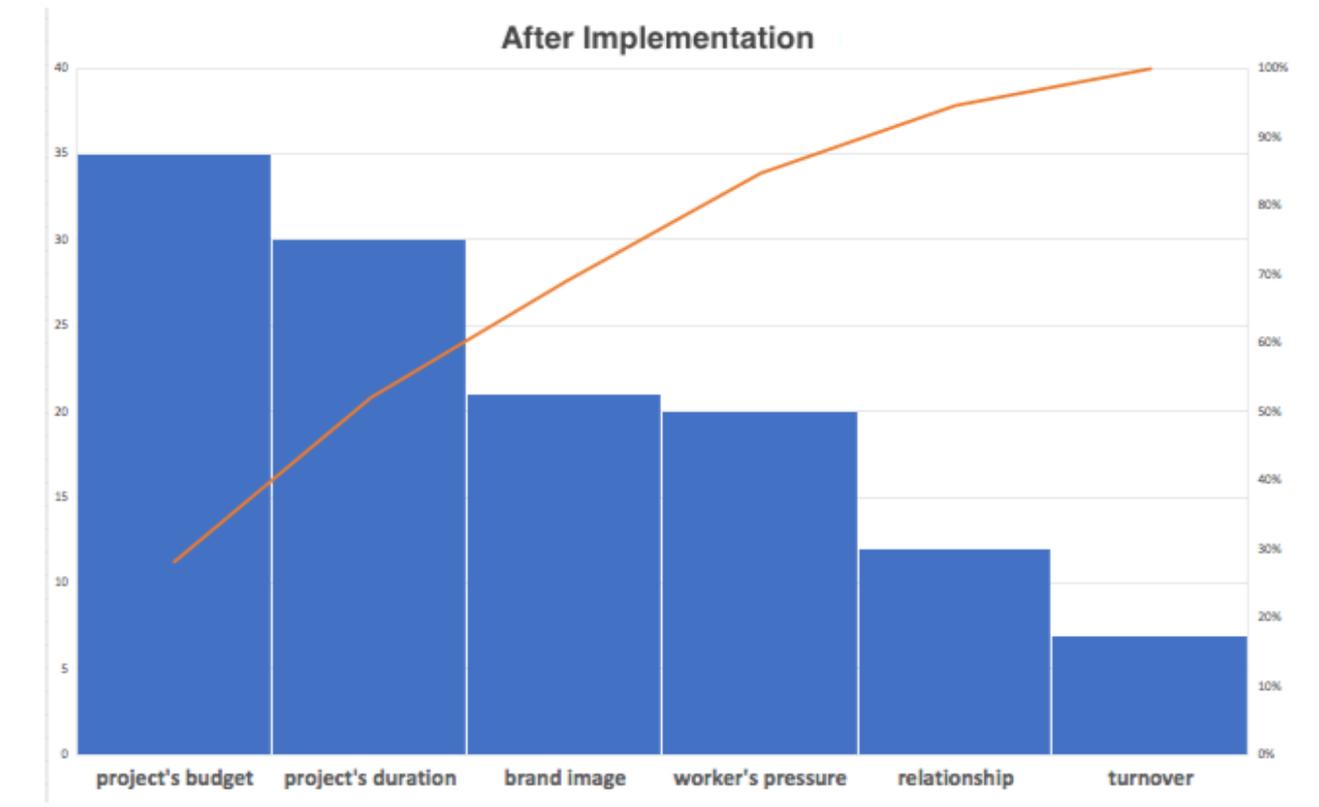


Figure 9: “After” Pareto Analysis<sup>46</sup>

By comparing the “Before and After” Pareto Analysis, it’s obvious that after implementing prevention, the impacts of disputes on the project’s budget and duration, brand image and worker’s pressure, relationship with customers and turnover will reduce. So the effects of prevention does have positive influences on the results of the disputes in the international package delivery industry. In other words, our best alternative, prevention does work and it’s really a good choice.

## CONCLUSION

This paper is aimed at answering the following questions:

1. What are the alternatives for resolving disputes in the contracts of international package delivery?

<sup>46</sup> By Author

## 2. Which alternative is the best one?

This paper is important since it provides some possible alternative dispute resolutions for the international package delivery industry where disputes are omnipresent. In this paper, we have mentioned six different alternatives to settle the disputes: prevention, negotiation, standing neutral, non-binding resolution, private binding resolution and litigation. We have explained each alternative and select eleven relative attributes to assess the six alternatives. Then we have produced three best alternatives: prevention, negotiation and standing neutral. Actually, in each case, things are pretty different and there are some specific requirements so what we should choose depends on the situation of the disputes. However, “compared with litigation, ADR is really a better choice in most of the cases since it is economical and efficient”<sup>47</sup>. And within the scales of ADR, according to our studies, prevention, negotiation and standing neutral may be better than non-binding resolution and private binding resolution. The best alternative proposed by this paper is prevention which focuses on the effective cooperation and information-sharing between the parties involved. As disputes sometimes are inevitable, if disputes have arisen, negotiation and standing neutral seem to be the most appropriate.

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<sup>47</sup> Advantages and Disadvantages of Alternative Dispute Resolution. (n.d.). Retrieved November 17, 2017, from <http://www.lorman.com/resources/advantages-and-disadvantages-of-alternative-dispute-resolution-16190>

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