

Legal Background of the Chinese E-commerce Law and Key Interpretations

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352
million
parcels

210
countries /
regions

Review of the legislation of E-commerce Law

National e-commerce trading volume, in trillion yuan



Number of people doing online shopping, in 100 million



Legislation process of E-commerce Law



- ◆ E-commerce businesses' registration issues
- ◆ Tax issues
- ◆ Sales of inferior quality, counterfeit or smuggled products and IPR violations
- ◆ Fabricated transactions
- ◆ "Having to choose of the two" malicious competition
- ◆ Ineffective supervision and joint cross-border coordination

Review of the legislation of E-commerce Law

- Between 2013 and 2016, the tenth National People's Congress reviewed 25 cases and put forward recommendations for 133 cases
- In December 2013, the National People's Congress Financial and Economic Committee led the process of e-commerce legislation and established an e-commerce law drafting group composed of 12 departments of the State Council.
- Established 16 key topics related to the draft and completed more than 30 thematic research reports



The existing foundation in China

The Electronic Signature Law, Decision on Strengthening Network Information Protection, the State Council's Several Opinions on Accelerating E-Commerce Development, the Eleventh Five-Year Plan for E-Commerce Development, the E-Commerce Twelfth Five-Year Development Plan, the Ministry of Commerce's Guiding Opinions on Online Trading, Guiding Opinions on the Development of E-Commerce in the Twelfth Five-Year Plan Period, and the Interim Measures for the Administration of Online Commodity Trading and Related Service Behaviors of the State Administration for Industry and Commerce, etc.

Foreign benchmark :

UNCITRAL Model Law on Electronic Commerce, Model Law on Electronic Signatures, Convention on Electronic Contracts

More than 30 countries and regions have developed comprehensive e-commerce laws, such as the US Uniform Electronic Transactions Act and the Electronic Signature Act.

Opinions of the State Council on Vigorously Developing E-Commerce and Accelerating the Cultivation of New Economic Momentum

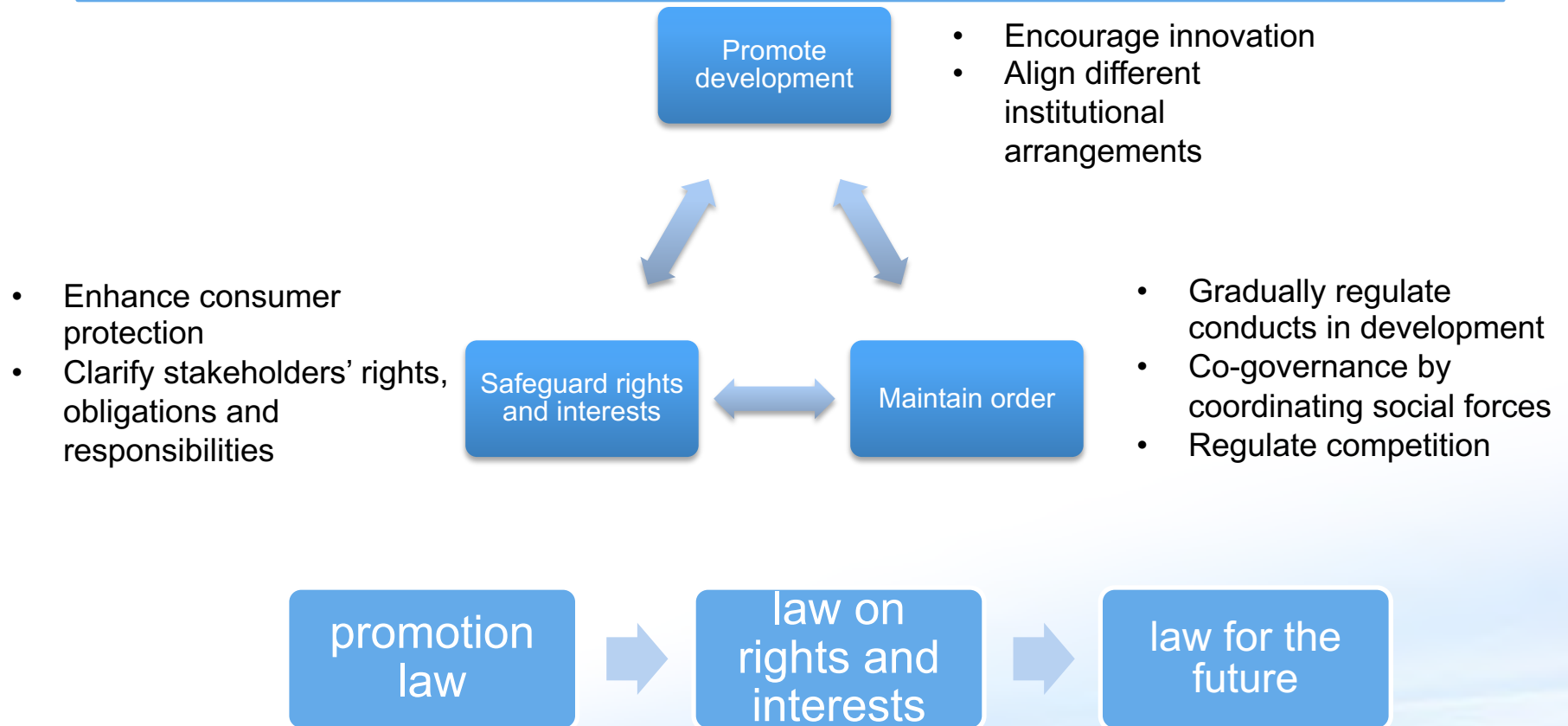
- ❖ **(1) Guiding thoughts.** Efforts will be made to resolve the deep-seated obstacles and major problems in the development of e-commerce, vigorously promote policy innovation, management innovation and service innovation, and further foster the driving forces of e-commerce innovation, creative potential, and entrepreneurial vitality.
- ❖ **(2) Basic principles.** First, promote actively; second, regulate in a phased-in manner; third, strengthen guidance.
- ❖ **(3) Main objectives.** By 2020, we will have built an integrated, open, secure and reliable e-commerce market featuring orderly competition, integrity and law-abiding practices. The deep integration of e-commerce and other industries has become an important platform for promoting entrepreneurship, stabilizing employment, and improving people's livelihood. It plays a key role in bolstering the simultaneous development of industrialization, informatization, urbanization, and agricultural modernization.

The Chinese e-commerce promotion system is set up

- ❖ 53 national e-commerce demonstration cities
- ❖ 10 cross-border e-commerce integrated pilot cities
- ❖ 35 cross-border e-commerce comprehensive experimental areas
- ❖ 100 national e-commerce demonstration bases
- ❖ 1016 demonstration counties for the introduction of e-commerce into the rural areas
- ❖ 238 e-commerce demonstration companies (annual)

Objectives and purpose for the legislation of the E-commerce Law

Article 1 This Law is enacted for the purposes of safeguarding the legitimate rights and interests of all parties to e-commerce, regulating e-commerce conducts, maintaining the market order, and promoting the sustainable and sound development of e-commerce.



Overall framework of the Chinese E-commerce Law

Chapter I General Provisions

Chapter II E-commerce Businesses

Section 1 General Rules

Section 2 E-Commerce Platform Businesses

Chapter III Formation and Performance of E-Commerce Contracts

Chapter IV Settlement of E-Commerce Disputes

Chapter V Promotion of E-Commerce

Chapter VI Legal Liability

Chapter VII Supplemental Provision

(89 articles)

Foreign e-commerce laws

Uniform Electronic Transactions Act of the United States (21

articles, 1999): definitions, scope, application, electronic records, electronic signatures, written information, notarization and recognition, automated transactions, time and place of transmission and reception, transferable records, etc.

Australian Electronic Transactions Act (16 articles, 1999): definitions, validity of electronic transactions, written form, signature, presentation and retention of documents, attribution of electronic communications

The United Nations Model Law on Electronic Commerce (17 articles, 1996):

Part I General Principles of Electronic Commerce Chapter I General Provisions Chapter II Legal Requirements for Data Messages Chapter III Transmission of Data Messages Part II Specific Areas of E-Commerce

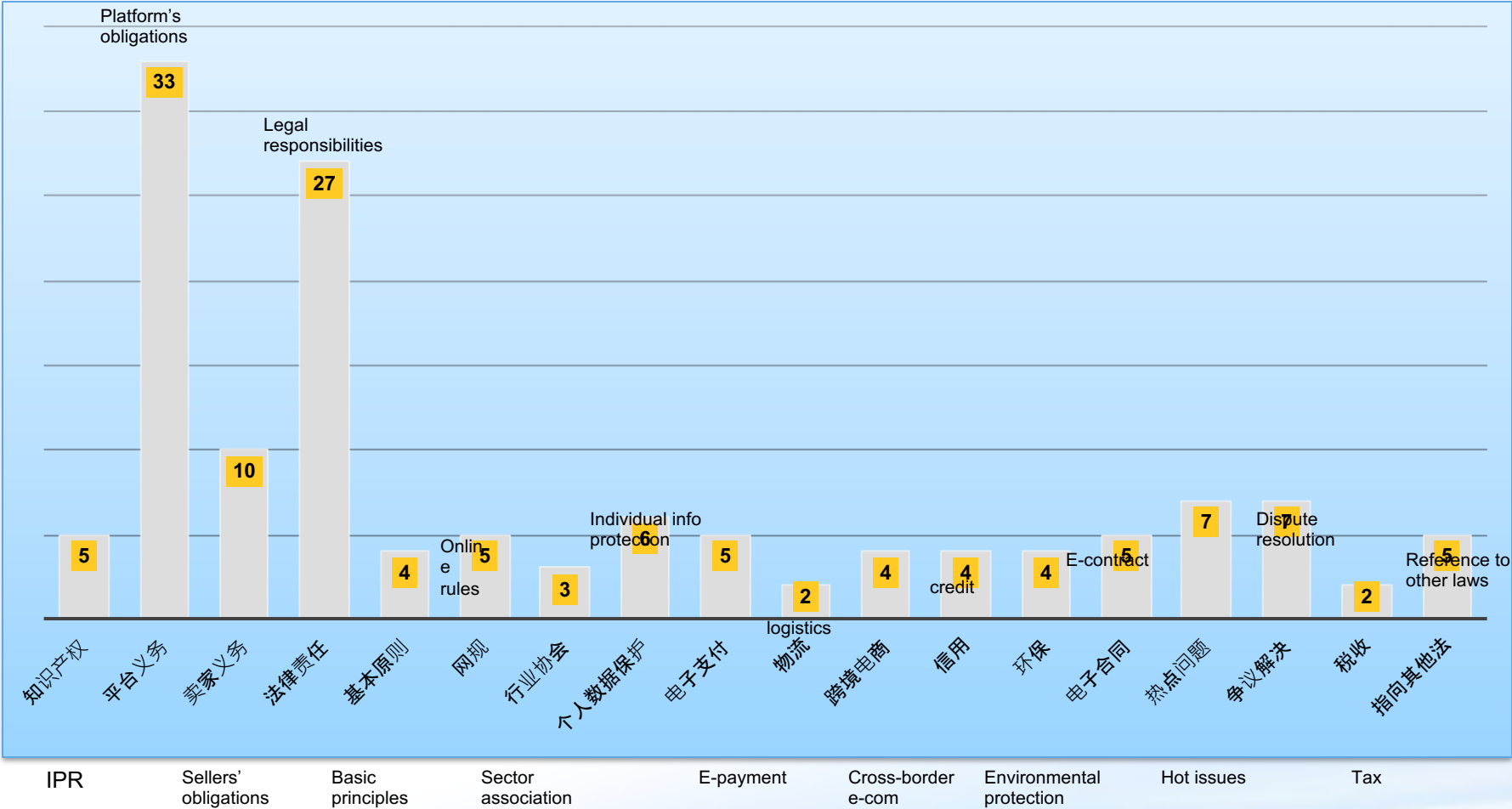
The EU Directive on Certain Legal Aspects of Electronic Commerce in the Internal Market (27 articles, 2000): Chapter I General Provisions Chapter II

Section 1 Establishment and Information, Section 2, Business and Information Dissemination, Section III Electronic Contracts Section IV Responsibilities of Service Intermediaries Chapter III Implementation Chapter IV Exclusions Chapter 5 Advisory Committee and Final Terms

The Korean Basic Law on Electronic Commerce (34 articles, 1999): Chapter I General Provisions Chapter 2 Electronic Information Chapter III Security of

Electronic Commerce Chapter 4 Promoting the Development of Electronic Commerce Chapter 5 Consumer Protection Chapter 6 Others

Distribution of articles in the Chinese E-commerce Law



Interpretation of key parts in the E-commerce Law

Scope of application

Article 2

This Law shall apply to e-commerce activities in the territory of the People's Republic of China.

For the purpose of this Law, "e-commerce" means business activities of selling commodities or providing services through the Internet or any other information network.

If any other law or administrative regulation provides for the sale of commodities or provision of services, such other law or administrative regulation shall apply. This Law shall not apply to financial products and services and news information, audio and video programs, publication, cultural products, and other content services provided via information networks.

Interpretation:

- Where the Chinese domestic e-commerce businesses procure goods and services from overseas for the consumers, such e-commerce activities are within the scope of application of the Law.
- The e-commerce activities of Chinese consumers purchasing goods and services from abroad are subject to the relevant provisions of the E-commerce Law on consumer protection of e-commerce contracts in accordance with the provisions of the Law on the Application of Laws for Foreign-related Civil Relations in China.
- Engagement in cross-border e-commerce activities should also abide by the legal and administrative regulations supervising import and export. (Article 26)

Interpretation of key parts in the E-commerce Law

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Interpretation:

- This Law applies to wechat business, online celebrities' live broadcast, social e-commerce, social communities e-commerce, overseas procurement service, sharing economy and other innovative models of e-commerce.
- The applicable regulations for medicines, foods and other products that are under special sales regulations; the Law applies to on-spot electronic trading of commodities; the Law does not apply to internet finance, cyber games, online news or publication, live streaming and other cultural products or services.

Interpretation of key parts in the E-commerce Law

Basic principles (Article 3-5)

Article 3 The state shall encourage the development of new business types in e-commerce and the innovation in business models, promote the research, development, promotion and application of e-commerce technologies, advance the development of the e-commerce honesty system, create a market environment favorable to innovative development of e-commerce, and maximize the role of e-commerce in promoting quality development, satisfying the people's ever-growing needs for a better life, and building an open economy.

Article 4 The state shall equally treat online and offline business activities and promote integrated development online and offline, and the people's governments and relevant authorities at all levels may neither take discriminatory policies and measures nor abuse administrative power to exclude or restrict market competition.

Article 5 An e-commerce business shall, in business operation, abide by the principles of voluntariness, equality, equity and good faith, observe the law and business ethics, fairly participate in market competition, perform obligations in aspects including protection of consumer rights and interests, environment, intellectual property rights, cyber security and individual information, assume responsibility for quality of products or services, and accept the supervision by the government and the public.

Interpretation:

E-commerce is
encouraged

Online/offline
consistency

No
territorial
restrictions

Interpretation of key parts in the E-commerce Law

Market participants registration and tax payment

Article 10 An e-commerce business shall make market participant registration according to the law, unless it, as an individual, sells agricultural or sideline products produced by it, or products of a cottage industry, or uses its own skills to engage in public convenience services, or occasional and low-value transactions, for which no permit is required by law, or unless no registration is required by laws or administrative regulations.

Article 11 An e-commerce business shall, according to the law, perform the obligation of tax payment and enjoy tax incentives

Interpretation:

- On the e-commerce platforms today, there are many natural person's online shops opened up by natural persons or businesses, wechat business, online celebrities' e-commerce, and personal procurement services. They shall register and make tax payment according to the law.
- Considering the need for flexible employment, to encourage mass entrepreneurialship and innovation and the need to alleviate poverty via e-commerce, exceptional treatment is given for those that sell the self-produced agricultural or sideline products, products of a cottage industry, or those who use their own skills to engage in public convenience services, or occasional and low-value transactions.
- For all the people that engage in the e-commerce, regardless of their business sizes, they shall be subject to the undifferentiated tax payment obligations.

Interpretation of key parts in the E-commerce Law

Liabilities of the platforms: joint and several liability , supplementary liability, corresponding liability

Article 38 Where the e-commerce platform business knows or should know that the goods or services provided by the on-platform businesses do not meet the requirements for protecting the personal and property safety, or that there are other violations of the legitimate rights and interests of consumers, and no necessary measures are taken, the platform business shall **bear the joint and several liability** with the on-platform businesses. In the fields of commodities or services related to life and health of consumers, where the platform business fails to perform its obligation to verify qualifications of on-platform businesses, or fails to meet its obligation to guarantee safety and security for consumers, the platform business shall **bear its corresponding liability according to the Law**.

Interpretation

- Clarified the scope of application for the platforms' liabilities when it comes to sales of products and services related to life and health.(in fact the scope of application is expanded and filled the void caused by former restrictive provisions that the authorities can only use the *Food Safety Law* to hold the outlaws liable in the food area and use the *Law on the Protection of Consumer Rights and Interests* to hold the outlaws liable in the advertising area)
- Clarified that the liability is corresponding liability. Corresponding liability means the victims shall file claims on the grounds of infringement, default or others. Compared to the joint and several liability , the corresponding liability may increase the difficulty of the consumers to maintain and protect their own rights. This may need to resort to judicial practices to fine-tune the leniency of the liabilities.
- Corresponding liability gives space for the on-platform businesses to make reference to the *Food Safety Law* and the *Law on the Protection of Consumer Rights and Interests*

Interpretation of key parts in the E-commerce Law

Forced “to choose one of the two (platforms)”

Article 22 Where an e-commerce business has a dominant market position on account of its technological advantage, number of users, control of the relevant industry, other businesses' reliance on it in trading, or any other factor, the e-commerce business may not abuse the dominant market position to exclude or restrict competition.

Article 35 The e-commerce platform business may not use its service agreements, trading rules or other technical approaches to impose unreasonable restrictions or unreasonable conditions on the e-commerce businesses' trading, trading prices and trade with other businesses in its platform.

Interpretation:

- It is explicitly prohibited to violate the rights of the e-commerce businesses and force them to choose one of the two(platforms); the normal market competition order shall be maintained to guarantee vitality of the e-commerce market and sustain its continuous innovation momentum.
- An explicit rule of penalty (article 85) further eliminates the possibility of the e-commerce businesses being forced to choose of the two.

Interpretation of key parts in the E-commerce Law

The problem of willfully revising platform rules

Article 33 E-commerce platform businesses shall continuously display their platform service agreements, trading rules, or links to such information in a conspicuous position on their homepages, and ensure that on-platform businesses and consumers can conveniently read and download the information intact.

Article 34 In the event of revising platform service agreements and trading rules, e-commerce platform businesses shall solicit public comments in a conspicuous position on their homepages, and take reasonable measures to ensure that relevant parties can promptly and adequately express their opinions. The revised content shall be publicized at least seven days before it is implemented.

Where on-platform businesses do not accept the revised content and request to withdraw from the platform, e-commerce platform businesses must not obstruct them and shall take on relevant responsibilities in accordance with the previous service agreements and trading rules.

Interpretation:

- The platform rules shall conform with the relevant laws and regulations in the country and help maintain the normal e-commerce market order.
- The Provisions on the Procedures for Developing the Third-Party Online Retail Platform Transaction Rules (for Trial Implementation)

Interpretation of key parts in the E-commerce Law

Counterfeit and infringement products

Article 41 E-commerce platform businesses shall establish rules for intellectual property rights protection and enhance cooperation with intellectual property rights holders to protect intellectual property rights in accordance with the law.

Article 42 Where intellectual property rights holders perceive infringement of their intellectual property rights, they have right to notify the e-commerce platform business to take necessary measures such as deleting, blocking or disconnecting links and terminating transactions or services. The notices shall include preliminary evidence that the infringement is constituted.

Upon receiving such notices, the e-commerce platform business shall promptly take necessary measures and forward the notices to the on-platform business; and where necessary measures are not taken promptly, the e-commerce platform business shall be jointly liable together with such businesses for any increase in damages.

Where any error in a notice causes harm to on-platform businesses, the e-commerce platform business shall assume civil liability in accordance with the law. Where any erroneous notice is issued maliciously and causes harm to on-platform businesses afterwards, the e-commerce platform business shall assume liabilities that are doubly incumbent on them.

Article 43 Upon receiving the forwarded notices, on-platform business can submit declarations of non-infringement of any intellectual property right to the e-commerce platform business. The declarations shall include preliminary evidence of non-infringement.

Upon receiving the declarations, the e-commerce platform business shall forward them to intellectual property rights holders who have issued the notices and notify them that they may complain to the competent authorities concerned or institute legal proceedings in the People's Courts.

Where the e-commerce platform business has not received notices that intellectual property rights holders have made complaints or instituted legal proceedings, within 15 days of receipt of the declarations by such rights holders, the platform business shall promptly terminate all measures they have taken.

Article 44 The e-commerce platform business shall promptly publicize receipt of the notices and declarations provided for in Articles 42 and 43 of this Law, as well as their outcomes.

Article 45 Where the e-commerce platform business knows or should know that on-platform businesses infringe any intellectual property right, the platform business shall take necessary measures such as deleting, blocking or disconnecting links and terminating transactions or services; and where necessary measures are not taken, the e-commerce platform business shall be jointly liable together with infringers in such cases.

Interpretation:

- Integrate guidance and provisions to address issues of counterfeit and infringement products; the general provisions that clarify the infringing behaviors by the e-commerce businesses.
- get aligned with Tort Liability Law, The Regulation on the Protection of the Right to Communicate Works to the Public over Information Networks, and the Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Cases Involving Civil Disputes over Infringements upon Personal Rights and Interests through Information Networks
- There are still challenges regarding the platforms' verification channels, data openness, and confirmation of domestic and international rights(trademark, patents).

Interpretation of key parts in the E-commerce Law

Fabricated transactions

Article 17 An e-commerce business shall fully, authentically, accurately, and timely disclose the information on commodities or services to safeguard consumers' right to know and right of choice. An e-commerce business may not conduct false or misleading commercial promotion by fabricating transactions, making up user comments or any other means, to defraud or mislead consumers.

Interpretation:

- A greater legal deterrent for the platforms and urge them to take technical and other approaches to improve the trading rules and build a complete and well-functioning customer review system.
- Provides the legal reference for the fabricated transactions to be deemed as illegal business operation.

Interpretation of key parts in the E-commerce Law

Personal information protection

Article 23 An e-commerce business shall, when collecting or using the individual information of its users, observe the provisions on protection of individual information in the relevant laws and administrative regulations.

Article 24 An e-commerce business shall expressly state the means of and procedures for search, correction or deletion of user information and user deregistration and shall not establish unreasonable conditions for search, correction or deletion of user information and user deregistration.

When receiving an application for search, correction or deletion of user information in a timely manner, an e-commerce business shall, upon verification of identity, permit search, correction or deletion of user information in a timely manner. In the case of user deregistration, an e-commerce business shall immediately delete the information of the user; if any law or administrative regulation provides for, or the parties stipulate, the retention, the law, administrative regulation, or stipulation shall prevail.

Article 18 When providing the results of search for commodities or services for a consumer based on the hobby, consumption habit, or any other traits thereof, the e-commerce business shall provide the consumer with options not targeting his/her identifiable traits and respect and equally protect the lawful rights and interests of consumers

Interpretation:

- “Protection of user information” is elevated to the legal arena and it is conducive to protecting the individual information of consumers.
- It confirms, to some extent, the right to be forgotten and that reflects the international legislation trend.
- It safeguards information equity and hands the right of selection back to the consumers.

Interpretation of key parts in the E-commerce Law

Cross-border e-commerce

Article 71 The State shall promote the development of cross-border e-commerce, establish and improve the management system of customs, taxation, entry-exit inspection and quarantine, payment and settlement in line with the characteristics of cross-border e-commerce, to improve the facilitation in all links of cross-border e-commerce, and support operators of cross-border e-commerce platforms in providing warehousing, logistics, customs declarations and inspection services for cross-border e-commerce.

The State shall support small and micro enterprises in engaging in cross-border e-commerce.

Article 72 The State import and export administration departments shall promote the construction of the comprehensive service and supervision system in cross-border e-commerce customs declaration, tax payment, inspection and quarantine, and other links, optimize the supervision process and promote information sharing, mutual recognition of supervision, and mutual assistance in law enforcement, to improve cross-border e-commerce services and supervision efficiency. Cross-border e-commerce operators may take the electronic documents to the State import and export administration departments to fulfill the relevant formalities.

Article 73 The State shall promote cross-border e-commerce exchanges and cooperation with different countries and regions, participate in the formulation of international e-commerce rules, and promote international mutual recognition of e-signatures and e-identities.

The State shall promote the establishment of cross-border e-commerce dispute resolution mechanisms between itself and other countries and regions.

Interpretation:

- From the legal perspective, it confirms the nature of cross-border e-commerce being a significant component of the Chinese e-commerce and is designed to accelerate the development of the international e-commerce market by mobilizing resources from home and abroad.

Interpretation of key parts in the E-commerce Law

Green e-commerce

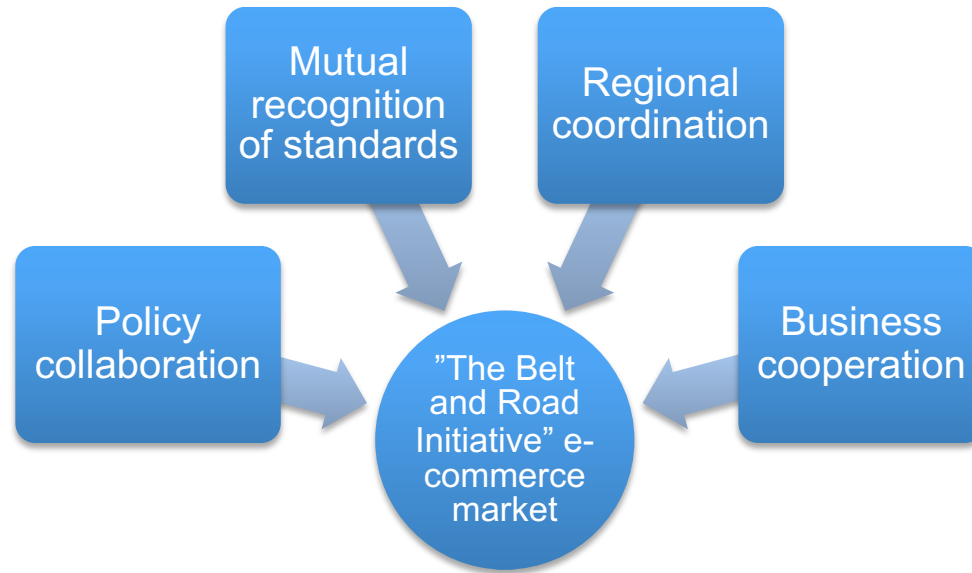
Article 52 Courier service providers shall use environmentally friendly packing materials in accordance with relevant regulations, and facilitate the reduction and reuse of packing materials.

Article 65 The State Council, people's governments at or above the county level and their relevant departments shall take measures to support and promote green packaging, storage and transportation, to promote the green development of e-commerce.

Interpretation:

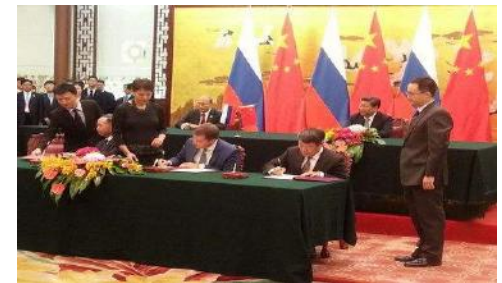
- These two are about guiding the future orientation of e-commerce.

Collaboration with foreign organizations in the legal and regulatory frameworks to foster “silk-road e-commerce” and thus promote the development of international e-commerce market



Up to now, China has signed MoUs on bilateral e-commerce collaboration with 15 countries including France, Chile, Brazil, Vietnam, Cambodia, United Arab Emirates, Kazakhstan, Kuwait, Russia, Estonia, Hungary, Austria, New Zealand, and Australia to enhance policy communication and coordination.

- Conduct personnel training and joint research;
- Promote locality-locality cooperation and public-private dialogue, and support enterprises in both countries to carry out e-commerce cooperation;
- Continuously improve the level of trade facilitation and cooperation.



Collaboration with foreign organizations in the legal and regulatory frameworks to foster “silk-road e-commerce” and thus promote the development of international e-commerce market

- ❖ **China and relevant countries signed the Initiative between China and Central and Eastern European Countries to Develop E-commerce**
- ❖ 1. Actively support the joint statement on e-commerce published at the 11th WTO Ministerial Conference with a view to finding a global policy response in this key area.
- ❖ 2. The implementation of this initiative should not affect the EU's authority, and respect the EU member states / candidate countries' obligations to the EU.
- ❖ 3. Encourage e-commerce cooperation among cities between China and Central and Eastern Europe including: sharing policy planning information, sharing management experience, strengthening capacity building, promoting best practices, and further promoting the free, secure and fair trade of featured products and services in a level playing field.
- ❖ 4. Support that e-commerce enterprise undertake cooperation and exchange of ideas based on the domestic laws, regulations, and policies, while complying with international rules and guidelines, and meet the common targets of achieving open, safe, free, fair and transparent trade; encourage companies to participate in exhibitions and project matching activities.
- ❖ 5. Strengthen public-private dialogue, and share information on e-commerce laws and regulations of various countries, understand the development of each other's e-commerce markets for accurate positioning, tap potential opportunities, and promote the set-up of an open, secure, transparent, non-discriminatory and predictable regulatory environment in China and Central and Eastern European countries.

Collaboration with foreign organizations in the legal and regulatory frameworks to foster “silk-road e-commerce” and thus promote the development of international e-commerce market

❖ China and relevant countries signed the Initiative of BRICS on e-commerce

Collaboration:

- First, strengthen the BRICS e-commerce cooperation mechanism, promote the establishment of an e-commerce working group, to facilitate comprehensive and pragmatic cooperation;
- Second, strengthen interaction among e-commerce industries of the BRICS and actively engage in exchanges and dialogue;
- Third, carry out joint research on e-commerce, take stock of the present e-commerce situations in the BRICS countries, and put forward recommendations for deeper cooperation.

Thank you for your attention!
Discussions are welcome!

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