

Research on the legal guarantee of cross-border e-commerce under the “Belt and Road” strategy

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Abstract: The high-quality development of cross-border e-commerce under the “Belt and Road” strategy cannot be separated from the legal guarantee. China improves the policies and regulations of the “Belt and Road”, strengthens strict law enforcement, deepens the reform of the judicial system, strengthens the legal guarantee of the co-construction mechanism, gives full play to the role of the legal guarantee, and has achieved obvious results, but the legal guarantee still faces some difficulties, proposes to improve the cooperation mechanism, strengthens the regulatory mechanism of cross-border e-commerce, Building cross-border e-commerce live streaming cooperation, multiple dispute resolution mechanisms and improving the countermeasures of the element guarantee system.

Key words: The Belt and Road; Cross-border e-commerce; Legal guarantee

As a new form and model of foreign trade, cross-border e-commerce integrates the digital economy with the real economy and is an effective force for the high-quality development of China’s foreign trade. The guarantee of the rule of law will help ensure that the Belt and Road Initiative can achieve institutional reform, resource integration and other institutional innovations on the basis of breaking through the existing institutional mechanisms. It will help improve the business environment. It is conducive to accelerating regional economic development, breaking down interest barriers between regions, forming coordinated regional development featuring strong overall planning, orderly competition, and win-win cooperation, continuously attracting extensive investment, rationally distributing industries, and promoting coordinated regional development.

1. The status quo and effectiveness of legal protection of cross-border e-commerce under the “Belt and Road” strategy

1. Legal protection status of cross-border e-commerce under the “Belt and Road” strategy

(1) Improve policies and regulations to promote institutional guarantee

① Improve the policy framework

China has issued a number of policies and implementation plans, including the Notice on Improving the Tax Policy on Cross-border E-commerce Retail Imports, the Notice on the Tax Policy on Retail Export Goods in the Comprehensive Pilot Zone of Cross-border E-commerce, and Several Measures to Further promote the healthy development of cross-border e-commerce, to comprehensively promote the development of cross-border e-commerce industry.

② Improving the legal system

China has successively promulgated the Code of Conduct for Live Streaming Marketing, Code of Conduct for Live Streaming E-commerce Platform Management and Service, Code of Conduct for Network Anchors and other laws and regulations on live streaming e-commerce to promote the healthy and orderly development of live streaming marketing. In terms of case trial, the Provisions of the Supreme People’s Court on Several Issues relating to the Application of Law in the trial of online consumption Dispute Cases (I) clearly stipulates that the format terms of online consumption, no reason to return goods within seven days, the legal consequences of e-commerce platform self-management misleading, and online live broadcast with goods.

(2) Strengthen strict law enforcement and carry out special actions

First, we will carry out special actions to crack down on infringement, strengthen online transaction information monitoring and product quality spot checks, and intensify efforts to regulate the import and export of cross-border e-commerce. In 2022, customs across the country took 64,600 IPR protection measures and detained 60,900 batches of goods suspected of import and export infringement, or 77,938,500 pieces, still ranking first in the number of goods infringing trademark rights. Second, in 2023, the General Administration of Customs and other six ministries and commissions mobilized 17 key port cities including Beijing to carry out special actions to facilitate cross-border trade, optimize and improve the LCL operation mode of cross-border e-commerce and other export goods, and improve the communication mechanism between government departments and the business community.

(3) Deepen the reform of the judicial system and explore judicial protection mechanisms

First, deepen the reform of the judicial system and mechanism. China has set up Internet courts in various places to centrally administer Internet-related cases such as online shopping contract disputes in Hangzhou, and realize “online trial of Internet-related disputes”. On July 15, 2020, the Cross-border Trade Court of the Hangzhou Internet Court was officially established, which will focus on hearing cross-border trade cases. Second, the cities where the 165 comprehensive pilot zones are located actively explore the judicial protection mechanism for cross-border e-commerce, establish a diversified resolution mechanism for cross-border e-commerce disputes, and comprehensively improve the judicial protection capacity of cross-border e-commerce.

(4) Strengthen the co-construction mechanism to achieve mutual benefit and win-win results

First, China has signed more than 200 documents on joint construction and cooperation with 151 countries and 32 international

organizations. Among them, China signed the Belt and Road cooperation Plan with the African Union, Morocco and Cuba, confirmed the extension of the Outline of the Plan for Building China-Mongolia-Russia Economic Corridor with Russia and Mongolia, and signed the Belt and Road implementation plan with Kiribati. Second, a cross-border RMB payment system has been established. China has established bilateral currency swap arrangements with more than 20 co-co-authors and RMB clearing arrangements in more than 10 co-authors. The cross-border RMB payment system (CIPS) has steadily increased its business volume and influence. Third, China has participated in the formulation of rules for the development of cross-border e-commerce, participated in the negotiations on the establishment of an international rules system for cross-border e-commerce, and effectively improved the external environment for cross-border e-commerce.

2. The effectiveness of legal protection of cross-border e-commerce under the “Belt and Road” strategy

First, further optimize the business environment. Since China set up the first comprehensive pilot zone for cross-border e-commerce in Hangzhou in 2015, 165 comprehensive pilot zones have been set up in seven batches by the end of 2022, covering provinces (autonomous regions) and municipalities along the Belt and Road. The market size (growth rate) of cross-border e-commerce in 2018-2022 is 9 trillion yuan (11.66 percent), 10.5 trillion yuan (16.66 percent), 12.5 trillion yuan (19.04 percent), 14.2 trillion yuan (13.6 percent) and 15.7 trillion yuan (10.56 percent) respectively. Second, the law enforcement of intellectual property rights has achieved remarkable results. Cross-border e-commerce channels detained 21,000 batches and 4.023 million suspected infringing goods, with the proportion of detained batches and quantity in non-freight channels increasing from 23.53% and 22.70% in 2021 to 35.73% and 50.39%, respectively. Third, China continues to deepen cooperation in trade security and customs clearance facilitation, signs the certified operator (AEI) mutual recognition agreement with 32 co-building countries and regions, and establishes a cross-border e-commerce statistical system.

2. The legal guarantee of cross-border e-commerce under the “One Belt, One Road” strategy is facing difficulties

1. The cooperation mechanism needs to be strengthened

(1) National cooperation mechanisms need to be strengthened

First, the laws and regulations of live streaming in the “Belt and Road” countries are inconsistent, the cross-border e-commerce logistics efficiency is low, the cost of payment and settlement is high, and the return and exchange difficulties are related to the intellectual property protection and product quality of live streaming of e-commerce, which cannot be solved. Second, there are trade barriers in cross-border e-commerce between the countries and regions of the “Belt and Road”. Third, the connection between the “Belt and Road” policy and the RCEP rules on cross-border e-commerce needs to be strengthened. For example, the goods trade of countries along the “Belt and Road” has failed to achieve zero tariffs.

(2) Domestic and regional cooperation mechanisms need to be strengthened

The development of cross-border e-commerce in the east and west of China is unbalanced and insufficient, and the cooperation mechanism needs to be strengthened. A large number of cross-border e-commerce enterprises have gathered in Shenzhen, Shanghai, Beijing, Guangzhou and Hangzhou, and more comprehensive pilot zones have been developed along the eastern provinces and cities, of which Guangdong, Shandong, Jiangsu and Zhejiang provinces have approved 62 comprehensive pilot zones, accounting for 37.58 percent of the comprehensive pilot zones. However, there are fewer comprehensive pilot zones in the west of China.

2. Industry supervision needs to be improved

In 2022, illegal live streaming apps involved illegal collection of personal information, illegal use of personal information, forcing users to use targeted push functions, and excessive requests for permissions. This shows that the supervision of the cross-border e-commerce industry needs to be further improved, especially the regional rules in the fields of electronic authentication and signature, online consumer protection, online personal information protection, network security, and intellectual property protection need to be strengthened.

3. Diversified dispute resolution mechanisms need to be strengthened

In 2022, live e-commerce complaints have major problems such as delivery problems, refund problems, product quality, goods are not on the board, difficult to return or exchange goods, and overlord clauses. Although China has set up three Internet courts, there is still a certain gap between Internet courts and the needs of digital economy and digital trade innovation, and data circulation standards have not been established, failing to provide effective compliance guidelines for e-commerce, cross-border payment, cross-border logistics and other application scenarios.

4. Factor guarantees need to be strengthened

First, there is insufficient support for the real economy, including the shortcomings of local Internet celebrity products, enterprises, talent and platforms. The lack of talent support is mainly due to the lack of efforts to train the head online celebrity talent, and the lack of support for the training of new e-commerce talents by colleges and training institutions. Second, there will still be local protectionism in provinces and cities along the “Belt and Road”, and different levels of trade protection barriers such as the approval process will hinder the virtuous cycle of all links of cross-border e-commerce. Third, the infrastructure and supporting facilities of some industrial parks are weak, the implementation of pro-enterprise policies is not in place, and there is a phenomenon of heavy investment and light “support business”.

3. Improve the countermeasures for legal protection of cross-border e-commerce under the “Belt and Road” strategy

1. Improving cooperation mechanisms

(1) Improving state cooperation mechanisms

First, improve trade negotiations and consultations among Belt and Road countries, and establish a cooperation mechanism among cross-border e-commerce countries. The joint construction and the coordinated development of RCEP member states, and the timely connection of cooperation documents and cross-border e-commerce rules. Second, take China's standard industrial chain as the leading role, and fully implement e-commerce rules. We should strengthen cooperation mechanisms with RCEP member countries to promote economic integration and achieve win-win cooperation. Third, accelerate the internationalization of the RMB. On the basis of the RMB cross-border payment system, we should strengthen multilateral cooperation with RCEP member countries, encourage and guide the development of new e-commerce industries, and accelerate the internationalization of the RMB.

(2) Improve domestic and regional cooperation mechanisms

The eastern region along the Belt and Road should develop in tandem with the new land-sea corridor in the west along provinces, autonomous regions and municipalities. The eastern and central regions will jointly build regional economy, accelerate the construction of industrial parks and capital financing, and promote the development of cross-border e-commerce in the central and western regions.

(3) Strengthen non-governmental cooperation and exchanges

Actively guide the participation of business associations and overseas Chinese delegation organizations, give full play to the role of provincial and municipal business associations and overseas Chinese delegation organizations in government decision-making, guide business associations to actively participate in the construction of cross-border e-commerce, carry out flexible and diversified investment and financing capital, and help member enterprises invest at home and abroad.

2. Strengthen the supervision mechanism of cross-border e-commerce

First, establish an operational monitoring and statistical system, carry out direct data reporting and analysis, and improve monitoring and supervision. Second, encourage and support the establishment of cross-border e-commerce statistical monitoring points, and give preferential treatment and support. Third, establish an identification mechanism and improve the customs clearance supervision model. The fourth is to provide buyers with screening services for product procurement to promote product exports.

3. Establish a cross-border e-commerce live streaming cooperation mechanism

By December 2022, there will be 18,700 enterprise-scale live streaming users in China. In order to actively build a cross-border e-commerce live streaming cooperation mechanism, first, improve the supporting facilities for live streaming and build live streaming parks. The second is to build a cross-border e-commerce service base to attract cross-border talents and industrial resources. The third is to build trans-electricity talent highland and promote the alliance between industry and education.

4. Building a diversified dispute resolution mechanism

First, we should give full play to the judicial function and build a diversified dispute resolution mechanism. We will provide online consultation to cross-border e-commerce enterprises and individuals, and focus on resolving the frequent occurrence of international trade disputes. China has set up cross-border trade tribunals to provide judicial protection for cross-border trade. Second, explore and improve digital judicial governance to resolve cross-border e-commerce disputes in the cloud. Third, promote international commercial arbitration in free trade zones and establish a regional Internet arbitration center to provide high-quality and efficient legal services for commercial entities.

5. Improving the system of ensuring factors of production

(1) Establish and improve the training system for e-commerce talents

First of all, China encourages and supports the development of cross-border e-commerce, and promotes the identification of professional skill levels of Internet marketers. Secondly, we will increase the research on the core theories of big data and the basic knowledge of live broadcasting to cultivate talents in related fields. Third, regular cross-border e-commerce competitions should be held to support cooperation between e-commerce training institutions and livestreaming platforms.

(2) Improve the cross-border e-commerce logistics system

First, explore the cross-border e-commerce logistics model of "cross-border e-commerce + international combined transport", promote cross-border e-commerce logistics and transportation, and stabilize cross-border e-commerce air and road transport channels. Second, actively support the construction of overseas warehouses, optimize the process of cross-border goods, and ensure that all aspects of circulation, settlement and cooperation are carried out efficiently and orderly.

(3) Strengthen the government service system

First, the government will accelerate the development of digital e-commerce and promote the construction of the "Digital Belt and Road". Second, build a bridge to serve cross-border e-commerce enterprises, and provide policy consultation and beneficial services for cross-border e-commerce enterprises. Third, make use of modern new information technology to explore new modes of organizing exhibitions and promote the innovation of exhibition modes. Fourth, to carry out services for overseas buyers, provide procurement services for overseas buyers, reduce procurement risks and costs, and promote domestic product exports.

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