

Cross-border E-commerce Dispute Settlement Mechanism: Review, Reflection and Construction

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Abstract. Global cross-border e-commerce is booming, and the development of the corresponding dispute settlement system is also attracting attention, especially the large-scale application of ODR (Online Dispute Resolution). However, the existing dispute settlement mechanism still cannot fully meet the needs of various cross-border e-commerce disputes, and many problems need to be resolved urgently. Through in-depth analysis of the evolution of the cross-border e-commerce dispute settlement mechanism path, it is found that the evolution of different types of dispute settlement paths presents different degrees of endogenous mechanisms and the integration of exogenous mechanisms with the overall social system. Path evolution provides a useful reference for future institutional construction. From the perspective of global governance, China's construction of the cross-border e-commerce dispute settlement mechanism is crucial. Based on the review and reflection on the development of e-commerce dispute settlement, it provides suggestions for the construction of cross-border e-commerce dispute settlement mechanism.

Keywords: Cross-border e-commerce; Dispute settlement; China path.

1. Introduction

As of the first half of 2019, there were 639 million users who made purchases through the Internet in China, compared with 2018, an increase of 28.71 million. 74.8% of netizens use online shopping [1]. In addition to the continuous increase in the number of e-commerce users and platform profits, China's online shopping market shows a trend of consumption upgrade. The Alibaba Group's quarterly results for the end of June 2019 showed that quarterly revenue from cross-border and global retail commerce increased by 29% year-on-year to 5.567 billion Yuan [2]. Domestic e-commerce companies are maturing and some companies have participated in global competition. As of December 2018, the number of Internet companies listed in China and abroad reached 120 [1]. China's e-commerce companies have shown a trend of overseas expansion. Domestic e-commerce companies such as Alibaba, JD.com, and Jumeiyoupin have successively listed overseas. Alibaba has used Alipay to set up overseas shopping markets and has achieved results [3].

There are also potential risks behind the huge market potential of cross-border e-commerce. The application of consumer protection rules, accountability mechanisms, and the choice of jurisdiction clauses in cross-border consumer activities are prominent issues at this stage. European and American countries have tried and made some progress in the cross-border e-commerce dispute settlement mechanism, but their adjustment scope is still limited to a few countries in a certain region. From the perspective of global governance, a mature cross-border e-commerce dispute settlement mechanism has not yet been established. Ensuring the good development of cross-border e-commerce has become a problem that e-commerce companies and countries must face. Needless to say, a matching cross-border e-commerce dispute settlement mechanism needs to be established.

Various forms of problem solving platforms have been developed worldwide. More typical are: online negotiation and mediation platforms, such as Square Trade (third-party quality assurance platform); automated mediation procedures, such as Cyber settle; online arbitration, such as online arbitration established by the China International Trade Arbitration Commission; unified regional dispute settlement mechanism. Well-known domestic e-commerce platforms such as Taobao website already have autonomous dispute resolution systems and rules, including third-party payment platforms, third-party online dispute resolution platforms, and online complaints platforms. An online information exchange and dialogue platform is gradually being established with the

world, and industry standards and directives of a demonstrative nature are also continuously being optimized [4]. Among them, the large-scale, small-value, and cross-border online dispute resolution mechanism caused by e-commerce is the most noticeable, namely, the B2C form of e-commerce.

The article intends to answer the following questions by exploring the development path of the existing cross-border e-commerce dispute settlement mechanism: 1. The endogenous and exogenous mechanisms of the cross-border e-commerce dispute settlement and the social environment embedded. 2. Can the current dispute settlement mechanism meet the needs of cross-border e-commerce consumer activities? What needs to be resolved? 3. How China will choose the development path of cross-border e-commerce dispute settlement mechanism in the future.

2. Path Selection of Cross-border E-commerce Dispute Settlement Mechanism

Countries' attempts to settle cross-border e-commerce disputes are mainly achieved through two paths: one is an attempt led by participants in online civil and commercial activities, that is, an "endogenous mechanism"; and one is outside the field of online civil and commercial activities. , The design and adjustment of the dispute resolution mechanism for cross-border e-commerce activities, that is, the "exogenous mechanism".

There are differences between the two in several dimensions: 1. Different leaders. The "endogenous mechanism" is dominated by the operators of online e-commerce (including e-commerce platforms) and consumers. They are both participants in the event and play the role of settler of the dispute settlement mechanism. The "exogenous mechanism" is usually independent of participants in e-commerce activities, such as the founders of arbitration institutions, and is neutral in the dispute settlement process. 2. The purpose of dispute settlement is different. For the "endogenous mechanism", the purpose of the dispute settlement of participants in cross-border e-commerce activities is to continuously and orderly conduct e-commerce activities and obtain profits. The leaders of the "exogenous mechanism" only consider whether the mechanism can meet the needs of dispute settlement or whether it can replace the original settlement mechanism. Therefore, in this dimension, the leader of the endogenous mechanism has a stronger demand for dispute resolution. 3. The "endogenous mechanism" is designed for dispute settlement based on a large amount of transactional experience it has mastered, and this information is difficult for third parties outside the transaction to know. The "exogenous mechanism" is often designed by legal experts based on their professional knowledge, such as traditional dispute settlement methods and legal knowledge, and cannot use internal information in e-commerce transactions. The design of the two systems is based on different information content.

In the development of the cross-border e-commerce dispute settlement mechanism, "endogenous mechanism" and "exogenous mechanism" work together. Both of them and the social environment have different degrees of embeddedness.

3. Evolution of ODR

The definition of ODR has not yet been unified. Some scholars believe that it is a network form of alternative dispute resolution (ADR). The development of ADR in the past decades has proved its success as a form of dispute resolution. Several online dispute settlements have been successful. For example, the Internet Corporation for Assigned and Numbers (ICANN) provides an online form of dispute resolution (Uniform Domain Name Dispute Resolution Policy, UDRP) when a domain name is assigned. In the field of e-commerce, as of 2010, the eBay / Paypal procedure has successfully resolved tens of millions of disputes between consumers and sellers, and most of them have not passed human intervention. However, ODR still faces legal obstacles, and some scholars have even questioned the practicality of ODR for dispute resolution [5]. Although technical and legal obstacles exist in the realization of ODR, it provides a low-cost, convenient, efficient,

transparent and fair solution for cross-border e-commerce disputes caused by consumer contracts [6].

Some scholars predict that ODR will handle certain types of disputes in the future, and openly operate and accept supervision. It is mandatory, highly automated, and capable of providing many functions of neutral people. The realization of these functions depends on the support of artificial intelligence. Although ODR that integrates artificial intelligence content already exists, such as smart settle, the issue of "consumer friendly" has not yet been resolved. It is believed that with the corresponding development of technology and law, it is only a matter of time before ODR matures and becomes the mainstream of online B2C dispute settlement [7].

4. China's Path Choice for Cross-border E-commerce Dispute Resolution Mechanism

Since 2017, China has firmly established itself as the largest and most dynamic e-commerce market in the world. E-commerce ranks first in the world in terms of B2C sales and online shopping [8]. From the perspective of global governance, China's path selection is crucial to the construction of a future cross-border e-commerce dispute settlement mechanism.

China's cross-border e-commerce related legislation started later than European and American countries, showing a strong market-driven, unofficial path dominated development characteristics. Several major e-commerce giants such as Ali and other stakeholders have jointly negotiated the establishment of a participation mechanism. In terms of endogenous mechanisms, major e-commerce platforms have their own network dispute resolution mechanisms. In terms of exogenous mechanisms, online arbitration dispute resolution mechanisms and other institutions providing online dispute resolution have emerged, such as the China International Economic and Trade Arbitration Commission. It can provide online arbitration, and the China Consumers Association Complaint and Settlement Platform can accept complaints from the complaint and settlement contact unit of the China Consumers Association.

The existing online dispute settlement mechanism has obvious limitations. As far as the internal mechanism is concerned, taking Taobao as an example, the platform provides the "Taobao Platform Dispute Handling Rules" [9], but this rule is formulated by the e-commerce platform, which lacks neutrality and consumption. Consumers are often in a disadvantaged position and their rights are easily infringed. At the same time, since most B2C disputes are small, the cost of seeking other legal channels exceeds the transaction costs, and consumers are likely to choose to deal with them negatively.

In the exogenous mechanism, the China International Economic and Trade Arbitration Commission promulgated the "Online Arbitration Rules". Both parties to the dispute can conduct online court hearings and online mediation. At the same time, in addition to the ordinary procedures, certain simplified conditions have been creatively provided for simplified procedures And expedited procedures have greatly improved the convenience of dispute settlement. However, the disadvantage of this mechanism is that its arbitration costs are too high. For foreign-related cases, an additional filing fee of 10,000 Yuan will be charged. For a large number of small-scale cross-border e-commerce disputes, the relief cost is too high.

In September 2016, Jack Ma first proposed the e-WTP (Electronic World Trade Platform) initiative and was recorded in the G20 Gazette. It shows the strong market-driven characteristics of China's e-commerce legislation. In the same year, China submitted to the WTO a negotiation plan aimed at promoting e-commerce issues at the 11th Ministerial Conference, which became a major attempt to participate in the formulation of international economic and trade rules in the multilateral field. In the world map of cross-border e-commerce dispute settlement, the United States initiated an online system for regional dispute resolution of cross-border transactions in the Americas. The online platform built by the European Union is a consumer dispute among operators, consumers and disputes. A communication bridge has been established between the settlement agencies. China

urgently needs to become the maker of new rules in the cross-border e-commerce dispute settlement mechanism and reflect the demands of developing countries.

5. Conclusion

E-commerce is an important topic in economic and trade negotiations, and dispute settlement plays an indispensable role in the establishment of its rule system. Countries are also trying to develop rules, and some of these solutions have been successful.

For our country, the domestic rule system construction of e-commerce disputes has achieved certain results, but cross-border e-commerce urgently needs the supply of international rules. Therefore, China must actively promote the establishment and improvement of the international rule system, and promote the interaction between the rule of law of international e-commerce and domestic legislation, and have a greater say in the construction of cross-border e-commerce dispute settlement mechanisms, so as to enable international and domestic rules. Combined to regulate the healthy development of cross-border e-commerce.

Considering that the establishment of a global cross-border e-commerce dispute settlement mechanism cannot be achieved in the short term, unified rules can be implemented through regional cooperation and then implemented globally. In the current "Belt and Road" context, China should make full use of strategic dividends to develop e-commerce dispute settlement mechanisms. The ODR can be promoted in the countries along the "Belt and Road" and accumulated successful experience before providing dispute settlement rules for the international community.

Based on the two-way interaction between the international rule of law and the domestic rule of law, it is necessary for China to promote the construction of the ODR mechanism by cross-border e-commerce platform enterprises in the United Nations and transfer domestic e-commerce dispute settlement experience to the international rule of law. The construction of the platform should make full use of the existing dispute settlement methods, integrate online negotiation, mediation, arbitration and other methods to provide instant dispute resolution services for both parties to the dispute.

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