

Cyber Driver

China gets cracking on first e-commerce law
By Yin Pumin

China has become the largest e-commerce market in the world. According to market research firm iResearch Consulting, China's e-commerce trade volume eclipsed 20 trillion yuan (\$2.88 trillion) in 2015, with online retail sales totaling 3.88 trillion yuan (\$558.27 billion). The average annual growth rate of e-commerce was more than 30 percent during the 12th Five-Year Plan (2011-15) period.

The fast growth has also created new challenges and opportunities that were not foreseen by the existing laws. So to fill the gap, the National People's Congress (NPC), the national legislature, turned its attention to drafting an e-commerce law in 2013. After three years of preparation, the NPC's Financial and Economic Affairs Committee came up with a draft of China's first e-commerce law in 2016.

At the 25th session of the 12th NPC Standing Committee, held on December 19-25, 2016, the draft was submitted for its first reading and two days later, was put on the NPC website to solicit public opinion.

According to Lu Zushan, Vice Chairman of the Financial and Economic Affairs Committee, the main purpose of the law is to develop e-commerce, regulate the market and protect the legitimate rights and interests of major parties involved in e-commerce.

The draft details the duties and obligations of third-party platforms, stipulates the utilization and protection of e-commerce data and information, and regulates electronic contracts, payments and logistical services.

Both online and offline commercial activities would be put on an equal footing. All e-commerce operators will have to pay their taxes and acquire business certificates.

"The e-commerce law is going to play an important role in protecting consumers as well as creating a healthy and fair market environment," Lu told lawmakers.

The draft has been welcomed by many experts. Xue Jun, Vice Dean of Peking University's Law School, said e-commerce enterprises have to obey the law and regulations and shoulder their responsibilities.

However, with e-commerce still evolving

rapidly and new trends continuing to emerge, like online-to-offline (O2O) business, social networking and Internet finance, it is difficult to draft a comprehensive law covering all possible aspects.

"The complex situation makes it more difficult to define e-commerce activities," said Alamusi, Deputy Director of the Committee on Political and Legal Affairs at the China Electronic Commerce Association.

The draft defines e-commerce as the transaction of commodities or services through the Internet. However, commodity or service transactions covered by special laws or administrative regulations will not come under its purview.

According to Shi Yuzhi, Deputy Director of the Investigation Office of the NPC Financial and Economic Affairs Committee, the law will also not cover some online business behavior, such as the sale of second-hand items and agricultural products. Financial transactions such as online insurance and securities trading, and service activities such as car-hailing services, will also not be included.

Lu admitted it was hard to keep all aspects of online business in mind when formulating the law: "The rapid changes in e-commerce like the development of the consumer-to-business model and O2O boom in rural areas have made it impossible for the law to cover all online business activities."

However, there is a principle that the law will follow: it must promote employment and the development of e-commerce. According to the NPC Financial and Economic Affairs Committee, the e-commerce sector provided employment to 26.9 million people in China in 2015.

Liu Xiaochun, Executive Director of the Research Center for Internet Legislation with Beijing-based China Youth University of Political Studies, said a credit and rating system can help address the problem of exclusion. "Internet service providers have the technology and ability to restrain the behavior of online operators who do not come under the law," Liu said.

Xue with Peking University believes the



e-commerce law will progressively cover the changing segments of online businesses.

Protecting consumers' rights

Yin Zhongqing, another Vice Chairman of the NPC Financial and Economic Affairs Committee, said the purpose of the law is to promote e-commerce and protect consumers' rights.

Protection of personal information is a highlight of the draft. It says e-commerce



Customs officers check imported goods at the inauguration ceremony of the Qingdao West Coast International Shipping Express Center in the Qingdao Cross-border E-commerce Industrial Park in Qingdao, Shandong Province, on September 26, 2016

compensate consumers if they do not check the authenticity of the information provided by their operators.

Yin said third-party platforms play a pivotal role in e-commerce. So the stipulations about the responsibilities of third-party platforms will guarantee protection of consumers' rights.

However, Han Xiaowu, an NPC deputy, suggests making more detailed regulations for consumers to safeguard their legal rights, file a law suit and claim compensation once their information security is infringed upon. "The e-commerce law alone cannot provide all necessary ways to protect consumers' rights," Han said.

Liu Zhengkui, another NPC deputy, suggests third-party platforms establish related organizations to deal with complaints from consumers and help them to safeguard their rights.

"This can not only crack down on fake and shoddy goods, but also strengthen the responsibility of third-party platforms and enhance their reputation," Liu said.

The draft also states that business operators have no right to delete negative reviews, force consumers to write good reviews, or to arrange fake reviews. Since online shopping caught on, posting fake online reviews has become a common trend among many operators.

In October 2016, eight Internet companies in China, such as Alibaba, Tencent, JD.com, 58.com, Didi and Baidu, signed an agreement with the National Development and Reform Commission (NDRC), the country's top economic planner, to improve consumer trust in online transactions by stopping fake reviews and sales.

The practice, known in Chinese as "brushing," is used by some merchants to achieve higher sales.

"This brushing industry is becoming bigger and bigger, undermining the healthy development of e-commerce," said Zhao Chenxin, an NDRC spokesperson.

According to the NDRC, the agreement would be part of a larger project to create a national "social credit system" aimed at promoting online trustworthiness.

Baidu, China's largest search engine, and Alibaba, the country's biggest e-commerce company, said the system will protect consumers against fraud. "The stipulation about fake reviews in the draft will provide a legal

base to stop the bad practice and protect consumers' rights," Alamusi said.

Zhao Zhanling, a legal adviser with the Credit Evaluation Center of the Internet Society of China, suggested adding detailed stipulations to regulate brushing practices by all the parties involved, from business operators to delivery companies and third-party platforms. "The draft law leaves a big gap concerning this aspect. It regulates the responsibility of business operators only," Zhao said.

Cross-border e-commerce

The draft law talks of promoting cross-border e-commerce and establishing a supervision and management system. According to the Ministry of Commerce, cross-border e-commerce in 2016 reached 6.5 trillion yuan (\$935.25 billion), accounting for 20 percent of China's foreign trade.

Chen Jin, Director of the China Services Industry Research Center at the Beijing-based University of International Business and Economics, said cross-border e-commerce has become an important way to develop foreign trade. He estimated cross-border e-commerce will grow annually at over 30 percent in the next few years, becoming a new growth point for the e-commerce industry.

In October 2016, a national quality-monitoring center for cross-border e-commerce was launched in Hangzhou in east China's Zhejiang Province. Its functions include risk monitoring, evaluation and treatment, quality source tracing, and credit rating.

Lu, with the NPC's Financial and Economic Affairs Committee, pointed out that promoting cross-border e-commerce conforms to China's opening-up policy. "It will also be helpful to promote the Belt and Road initiative," Lu said.

The draft law says besides digitalizing cross-border e-commerce activities, like tax payments and quarantine procedures, China will also promote cooperation in cross-border e-commerce among countries. Besides, China will take part in formulating international rules on cross-border e-commerce and work to set up dispute settlement mechanisms with the countries and regions involved. ■



An e-commerce retailer (left) in Nongan County, Jilin Province, introduces her goods to a customer at a local e-commerce exhibition on June 23, 2016

business operators must ensure the security of consumers' personal information. Those failing to do so will face fines of up to 500,000 yuan (\$71,942) and could have their business certificates revoked.

The draft also stipulates that e-commerce operators must improve technology to guarantee security of their customers' information. In addition, e-commerce operators should provide information on their goods or services comprehensively, truthfully and accurately. Third-party platforms have to