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China towards the regulation of e-commerce

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前言

2013 年底全国人民代表大会财政经济委员会正式开始了有关电子商务的立法工作。自那时起，在政府的大力推动下，所有与电子商务有关的各方，包括地方政府、电商企业和院校的专家们，密切地合作以加快电子商务法的出台。

这篇论文的目的是了解为何在中国制定电子商务法如此十分急迫。电子商务究竟对国家经济带来了什么好处，引发了中国政府对该行业的关注？为了回答上述问题笔者进行了对于中国电子商务行业的广泛而深入研究。

第一章用了较大的篇幅来介绍为何电子商务行业在中国十分重要的一个原因。我收集了大量的数据来说明电子商务已经成为一个在中国乃至全球范围内蓬勃发展的行业。数据涉及到中国电子商务对全球网络零售行业所作出的贡献，电子商务在国内网络零售的情况以及电子商务的未来发展趋势。另外，这个部分还讨论了最近几年跨境电子商务的蓬勃发展趋势。由于电子商务的增长引发了许多相关服务的发展，围绕电子商务行业产生了一个生态系统，涉及从事电子商务活动的所有参与方，比如消费者、网络商家、电子商务平台、电子支付服务提供者以及快递物流服务提供者。为了进一步鼓励电子商务的增长，电子商务的立法迫在眉睫。

在介绍了中国电子商务行业的规模和运作模式后，笔者分析了对中国政府来说电子商务具有什么经济价值而吸引其关注。这个部分主要介绍了电子商务在中国经济结构的调整过程中发挥的重要作用。具体而言，从七十年代末期的改革开放政策开始中国经济一直依靠出口和来自国外的投资，而目前在“新常态”的大背景下，中国经济正转向至服务行业和国内的消费市场。因此，这一部分介绍了电子商务如何成功地适应和支持了国家经济的需要。最终，这个部分讨论了电子商务对社会整体做出的巨大贡献：包容性增长。考虑到电子商务对国家经济所有带来的好处，为了继续支持电子商务的发展，电子商务的立法刻不容缓。

尽管电子商务在国内外取得了巨大的成绩，但是在其发展过程中的许多矛盾和问题已经逐渐凸显出来了。首先，扭曲网络市场秩序的违法行为不断升级，特别是假冒伪劣，炒信和售假等诈骗手法。其次，保护消费者和商家的个人和商务信息安全也成为一个关键问题。再次，线上线下的零售商竞争激烈而不公平。然后，跨境电子商务的交易规则也有待完善。最后，在法律方面也有诸多问题亟待解决。比如，现有的法律体系和商业

规则有待完善，使得法律缺乏了应有的权威性；交易环境也需要进行规范；管理体制有待理顺，原有管理方式不适应现在电子商务的需要；交易安全保障还需加强。考虑到上述诸多的主要矛盾和关键问题有待解决，通过电子商务立法来规范市场秩序成为当务之急。

此后，为了了解中国现有法规在什么方面需要改善，便于纵览中国关于电子商务的现有法规框架，第二章首先介绍了中国关于电子商务的基本法律，包括《中华人民共和国合同法》，《中华人民共和国电子签名法》，《中华人民共和国消费者权益保护法》以及《中华人民共和国网络安全法》。除了这些基本法律之外，为了补充措辞模糊或者遗漏的规定，国家各方有关部门和机构不断加快工作进程，催生了一系列补充性的国家级法律、法规、政策、意见的出台，体现了中国电子商务立法的紧迫性。由于规章的数量巨大，并且规章还在不断被修改和增加中，这一部分的内容可能无法详尽而完整地记述。因此，在搜集并研究现存法律及其修订补充条款后，我在此只介绍那些在电子商务中最重要、最具影响力的规章，比如涉及电子支付、税务和跨境电子商务的有关规章。此外，由于 2014 年国家工商行政管理总局发布的《网络交易管理办法》提供了中国电子市场的主要监管指导，这篇论文也对这个规章的条款进行了解释。

考虑到中国电子商务行业的所有优势和缺点，最后一章介绍了从立法工作开始起中国政府正循着什么方向来规范电子商务市场，并且通过对相关细节的阐述来表明电子商务法的立法过程的特殊性。首先，2013 年全国人大财政经济委员会开展电子商务立法工作的时候，成立了电子商务法起草组，凝聚了方方面面的智慧。与电子商务有关的中央各部门和委会，中国电子商务企业和协会，学术机构以及地方财经委都共同参与了起草工作。起草组成立后，为了制定一个综合、客观和符合国情的法律，在 2014 年起草组对 16 项电子商务立法专题进行了全面而系统的深度研究，以便充分听取各方的意见。此外，“四合一”的立法过程也是一种创新，即从四个版本到两个草案建议稿，最终在 2015 年合成唯一送审版，这在以往一个法律的制定过程中很少出现。还有，电商立法遵循了完善监管体制、诚实信用、线上线下一致性、对数据开发、利用、保护均衡，以及行业自律和社会共治这五项原则。遵循着这个方向，中国政府希望既能鼓励这个新兴行业的发展，也能对市场秩序进行规范，从而保障各方权益。

据《中华人民共和国立法法》，列入常务委员会会议议程的草案，一般应当经三次常务委员会会议审议后再交付表决。2016 年 12 月 19 日，《中华人民共和国电子商务法

（草案）》提请了全国人大常委会初次审议，并向全社会征求意见。草案主要目的是促进电子商务发展以及保障电子商务各方主体权益。具体内容包括许多迫切需要立法的方面，比如加强对电子商务消费者的保护力度，明确第三方平台的责任义务，保护各方的私隐信息，完善信用评价体系，形成符合电子商务发展特点的规范方式。同时，也要通过立法来保障电子商务经营者的权益，按照政府最小干预原则，推动实现政府监管、行业自律、社会共治有机结合，为电子商务的良性发展奠定制度基础。

2017 年 10 月 31 日十二届全国人大常委会对电子商务法草案进行了再次审议。最后这个部分介绍了草案的修改思路。草案二次审议稿十分重视促进电子商务的发展，聚焦于对电子商务的所有经营者进行规范，特别是电子商务平台。草案着重对加强消费者权益保护，进一步进行了修改和完善，对虚假宣传、虚构交易、编造用户评价等侵害消费者的合法权益的行为进行了约束。

古代中国的老子有一句话：“千里之行，始于足下”。中国电子商务行业在国内外取得了很大的成绩。然而，在发展过程中也在不同方面上发生了许多问题和矛盾。此外，由于现有的法规框架特别分散，缺乏权威性，就赶不上电子商务行业的迅速发展。2013 年中国政府正式启动了电子商务法立法工作，这一举措为鼓励电子商务行业的发展、解决出现的急迫问题以及改善现有的法规框架铺平了道路，此后催生了一系列法律和规章。截至目前，虽然草案有待经最后审议而成为法律，但是这在该领域已经取得了长足的进步，标记着中国政府在努力提高立法质量，争取尽快出台权威且高效的电子商务法。

Introduction

"A journey of a thousand miles begins with a single step" is a quote from the Chinese philosopher Laozi, which may perfectly represent the lengthy legislative process started by the Chinese government with a view to formulate a comprehensive e-commerce law. The reasons that have led the Chinese government to start this journey are many and different and will be the subject of the present work, in order to understand the background of China's e-commerce law legislative process.

The present work is organized in three main chapters, which focus on, firstly, China's e-commerce situation; secondly, China's current e-commerce regulatory framework; lastly, the progresses made by the e-commerce law legislative process.

The first chapter discusses four main aspects of China's e-commerce: market size, the industry ecosystem, the macroeconomic importance of e-commerce for the government and the problems hindering the further development of this sector.

First of all, in order to make the reader understand the important role of e-commerce within the retail industry, from both a domestic and an international perspective, the author has carried out extensive research concerning the e-commerce market. The data collected are mainly intended to show the explosive development of this sector in recent years, as well as trends of future growth, with a special focus also on cross-border e-commerce.

Given that e-commerce has spurred growth also in many other related industries, and considering that the government is working on the formulation of a comprehensive law, the second part of this chapter aims at providing the reader with a brief introduction of the many and different parties that constitute the e-commerce market and that have fallen under the scope of the e-commerce law. In particular, the parties engaged in e-commerce activities include, first and foremost, consumers, sellers and marketplaces, but also e-commerce-related services, such as electronic payments, express logistics and delivery.

The third section, has focused on the economic background in which e-commerce has emerged, in order to understand the role of e-commerce in supporting the government's macroeconomic goals under the "New Normal" theory and the "Internet Plus" action plan, which provide guidelines for the country's economic restructuring and industrial upgrading. Once the government's major goals have been clarified, the subsequent part presents the actual benefits brought on by e-commerce to the society and to the overall economy at large. The purpose of

this section is to make the reader understand the other reasons, besides the outstanding sales figures, that have led the Chinese government to start working on formulating an e-commerce law which aims at promoting the further development of this sector. A report released by AliResearch has been significant in explaining in which way e-commerce has enhanced inclusive growth in China.

The last part of this chapter focuses on the major problems that affect China's e-commerce, including market order issues, such as counterfeits, brushing and fake orders, as well as cybersecurity and data breaches, different fiscal treatment of traditional and online retailers, difficult application of taxation and customs procedures with regard to goods imported through cross-border and, finally, the flaws in the overall e-commerce legislative framework. In order to have a general idea of the main problems related to e-commerce in China, the author has carried out in-depth research into many industry-specific issues and collected insights coming from different reports of professional services firms, such as KPMG, a report from the OECD, as well as other contributions of expert lawyers and scholars included in newspapers and academic journals.

Afterwards, the second chapter aims at giving an overview of the current regulatory framework, distinguishing between basic laws and departmental regulations, so as to highlight the lack of high-rank legislations covering e-commerce-related activities, as opposed to the large amount of low-rank administrative regulations issued by many and different department and State agencies. As this fragmented regulatory framework cannot keep the pace with the booming development of e-commerce and related industries, China's e-commerce needs to be improved. As for the basic laws, this section discusses e-commerce related provisions of the Contract Law, E-Signature Law, Consumer Protection Law and the recently approved Cybersecurity Law; departmental regulations cover areas such as e-payments, cross-border e-commerce and taxation. In addition, a more detailed explanation of the Administrative Measures for Online Trading issued by the SAIC is also provided, as until now, in absence of an e-commerce law, they represent the main regulatory reference for e-commerce in China. It should be noted that the laws and regulations included in this chapter are not exhaustive, due to the enormous fragmentation of the regulatory framework and the continuous publication of amendments and supplementary regulations.

Finally, the last chapter goes through the different steps that are characterizing the formulation of the e-commerce law, mainly discussing the peculiarities of this process. Starting from the official launch of legislative work in 2013, the author presents the background anticipating the First Draft E-commerce law, including the extensive researches and studies conducted by the different drafting groups, as well as the “four-in-one” process, which has made four initial different drafts converge into one single final version: the First Draft.

The second part of this chapter provides the reader with a detailed presentation concerning the topics included in the First Draft, along with a few comments related to improvements adopted or to be adopted with regard to the challenges and problems discussed in the previous chapters.

Finally, the last part focuses on the content of the Second Draft and its differences compared to the First Draft.

Considered that the e-commerce draft is still waiting to be reviewed by the NPC Standing Committee, it has not been possible to produce a complete work on the e-commerce law legislative process. In addition, the very both little and industry-specific literature on this topic has not allowed a comprehensive approach during the preparation of the present work, which, consequently may appear fragmented and deficient in some parts. Nevertheless, the present work may be still taken into consideration when looking for a general overview of the current regulatory framework concerning e-commerce, as well as for future studies on this topic.

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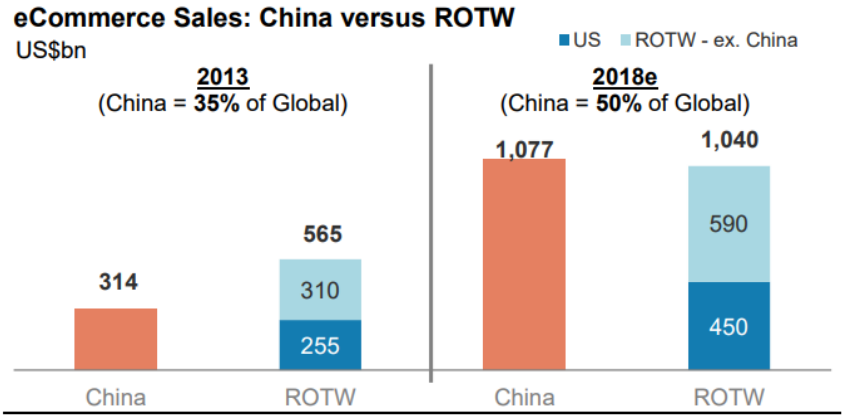
Chapter 1 CHINA'S E-COMMERCE MARKET OVERVIEW

1.1 China's e-commerce: a booming industry

In 2013, China with its $314 billion in online sales became the largest e-commerce market in the world, surpassing for the first time, and every year since then, the United States, which "only" totaled $255 billion[1]. Not to mention that such a remarkable result accounted for 35 percent of global online sales, a rate expected to grow by up to 50 percent in 2018, according to Morgan Stanley's forecast in 2014, as shown in the chart below[2].



Source: Morgan Stanley Research, ComScore, Euromonitor, iResearch, Forrester, CEIC, NAB, Quantium, US Census Bureau, National Statistics Bureau of China.
e = Morgan Stanley Research estimates

Indeed, Morgan Stanley's forecast seems quite accurate today, as China's e-commerce hit a total transaction value of RMB 5.16 trillion (USD 750 billion) in 2016, ahead of its major competitors, namely the United States (USD 450.81 billion), the United Kingdom (USD 110.07 billion) and Japan (USD 95.33 billion)[3], and even exceeding the combination of the total volume of their online sales, thus representing the largest contributor to worldwide e-commerce turnover.

However, China's e-commerce not only is important for its contribution to global online sales, but, also from a domestic point of view, it is emerging as a new driving force in the overall national retail sector. In fact, the RMB 5.16 trillion (USD 750 billion) of total online sales hit in

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[1] Morgan Stanley Blue Paper, "eCommerce: China's Consumption Growth Engine", November 6, 2014. http://linkback.morganstanley.com/web/sendlink/webapp/f/ummisopu-3p35-g00i-9823-d8d3855ab000?store=0&d=UwBSZXNlYXJjaF9NUwBlNGFkNWVjNi02NTg0LTExZTQtOTY2Ni0yOGE3MDg0MWMyYzY%3D&user=35khv33xe2lci-18&__gda__=1541450659_b31acb9ce6d3d9d4431c68e6803b221d

[2] ROTW here is an acronym used for "Rest Of The World". Ibidem.

[3] LONG, Danielle, *China's ecommerce market to pass $1.1tn in 2017*, in "The Drum", July 5, 2017, http://www.thedrum.com/news/2017/07/05/china-s-ecommerce-market-pass-11tn-2017

China in 2016, represented 15.5 percent of the country's total retail sales, according to a report by China's National Bureau of Statistics[4]. In addition, the report also shows that e-commerce is growing faster than the overall retail sector, registering in 2016 a growth rate around 26.2 percent year-over-year, by far exceeding the 10.4 percent growth rate in total retail sales.

Although there have been concerns of a slow-down in the online business, the market research firm eMarketer, has predicted that e-commerce is meant to expand even further over the next few years, with online sales accounting for 40.8 percent of all retail sales in China by 2021[5].

There is plenty of data showing the successful story of e-commerce in China, but, in reality, it is something much more concrete: it is a new way to make purchases that has pervaded the whole Chinese society. Thanks to this, China's e-commerce has become a trend breaking sales records every year. For instance, in 2017 during "Singles' Day" [6], the shopping event launched by China's largest e-commerce company Alibaba, Chinese shoppers spent 40 percent more than the previous year, with one billion dollars spent in only two minutes after midnight and reaching sales figures of 2016 in only 13 hours[7]. Once again, the competition between China and its major competitor, the United States, has seen China's "Singles' Day" being the world's largest retail event for the second consecutive year, surpassing the two biggest shopping events in the United States: Black Friday and Cyber Monday. In fact, Chinese online consumers have spent more than RMB 168.2 billion (USD 25 billion) on e-commerce giant Alibaba's different platforms, corresponding to four times the combined online sales totaled during Black Friday and Cyber Monday.

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[4] National Bureau of Statistics of China, *Total Retail Sales of Consumer Goods in December 2016*, January 22, 2017, http://www.stats.gov.cn/english/pressrelease/201701/t20170122_1456810.html

[5] eMarketer, *New eMarketer Forecast Sees Mobile Driving Retail Ecommerce in China*, July 2, 2017, https://www.emarketer.com/Article/New-eMarketer-Forecast-Sees-Mobile-Driving-Retail-Ecommerce-China/1016105

[6] Singles' Day, in China also known as "Single Sticks' Holiday" (光棍节 Guānggùn Jié), held every year on November 11th, began when in 1993 students at Nanjing University started celebrating their singledom, buying themselves presents as a kind of anti-Valentine's day. The event's date (11/11) was chosen because of the repetition of digit 1, that is meant to symbolize four single persons. It was then adopted by e-commerce giant Alibaba in 2009 and turned into a larger version of China's Black Friday, when companies offer deep discounts for a 24-hour period. Today is the world's largest online shopping day. https://en.wikipedia.org/wiki/Singles%27_Day

[7] HAAS, Benjamin, *Chinese shoppers spend a record $25bn in Singles Day splurge*, in "The Guardian", November 12, 2017, https://www.theguardian.com/world/2017/nov/12/chinese-shoppers-spend-a-record-25bn-in-singles-day-splurge

- *Cross-border e-commerce*

Thanks to the rapid development of the Internet and of information communication technologies, China's e-commerce trade volume not only grows exponentially year by year, but its reach has even gone beyond national borders, giving rise to another promising trend: cross-border e-commerce.

In China, the term "cross-border e-commerce" refers to the activity of foreign companies selling their products to Chinese consumers through Chinese e-commerce platforms. The foreign company, then, has two ways of shipping products: direct mail or bonded warehouses. Direct mail means that a customer places an order, either on a cross-border e-commerce platform or through the company's website, and then the product is directly shipped by mail to customers from abroad. It is the simplest way to ship products to customers, but transportation costs are high and delivery time is lengthy. Plus, depending on the product and the value of the parcel, it may be subject to tariffs and other import regulations, thus pushing up the price and increasing delivery time.

Consequently, usually a bonded warehouse is preferred when purchasing goods through a cross-border marketplace. Following this mode, products are shipped in bulk and stored in a bonded warehouse inside one of China's free trade zones[8]. So, when a customer purchases a product, the latter will be delivered from the bonded warehouse as personal parcel, thus cutting delivery time and also avoiding some regulations related to imported products. For instance, personal parcels are not required to go through customs inspection and quarantine procedures, plus, before April 2016, they were not taxed as general trade, so only a personal parcel article tax applied (this topic will be discussed in detail in Chapter 2).

Looking at the figures released by China's Ministry of Commerce, cross-border e-commerce in China, indeed, is emerging as a lucrative trend within the e-commerce industry and as a growth point for China's foreign trade. In fact, China's cross-border e-commerce reached RMB 6.5 trillion

[8] Free trade zones (FTZs) are a specific type of special economic zone (SEZ) where goods can be imported, handled, manufactured, and exported without direct intervention from Customs. They play an important role in modernizing China's business landscape and serve as areas where authorities can experiment with pro-business regulations. Currently, there are 11 FTZs in China, each with an industry focus and matching incentives to attract investment. The firs FTZ was the Shanghai FTZ inaugurated in 2013; then, in 2015, Fujian, Guangdong, and Tianjin followed; the last ones announced in 2016 were established in Chongqing, Liaoning, Henan, Hubei, Shaanxi, Sichuan, and Zhejiang. http://www.china-briefing.com/news/2017/09/21/investing-in-chinas-free-trade-zones.html

(USD 1.02 trillion) in 2016, accounting for 20 percent of China's foreign trade[9]. Moreover, a survey report on China's cross-border e-commerce by China Daily found that more than 15 percent of Chinese consumers purchased goods from abroad in 2016, representing a 4.2 percent of the total retail e-commerce market, with an estimated average spending of USD 473 dollars each[10].

Indeed, Chinese customers are increasingly demanding authentic foreign quality products, as the local market is affected by a high rate of counterfeit products and many scandals related to product safety.

Considering Chinese consumers' hunger for authentic foreign quality products, supportive measures by the government for promoting cross-border e-commerce, along with the rapid innovations brought on by technological developments, a joint report from Accenture and AliResearch expects the transaction volume of imported goods purchased online in China to reach USD 245 billion by 2020, thus, making China the world's largest cross-border consumer market[11].

1.2 China's e-commerce ecosystem

China's e-commerce is a complex business, as there are many stakeholders involved, who create an e-commerce ecosystem. China's online population keeps growing exponentially, as well as their disposable income and the demand for a wide range of quality products is also on the rise. In addition, companies have found an easier, low-risk and low-investment strategy to sell their products. The crucial role of connecting demand and supply is played by e-commerce marketplaces, such as Alibaba and JD. Although e-commerce platforms have facilitated market access by avoiding the need of intermediaries, they have eventually given rise to a full range of third-party service providers, in order to offer an increasingly comprehensive customer experience. Among the service providers participating in the e-commerce ecosystem, the following section briefly introduces electronic payment service providers, as well as logistics and delivery service providers.

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[9] Rabi Sankar Bosu, *Cross-border e-commerce, a boost for China's economic boom*, in "The State Council of the People's Republic of China", March 8, 2017, http://english.gov.cn/news/top_news/2017/03/08/content_281475588935821.htm

[10] Ibidem.

[11] Ibidem.

1.2.1 Consumers

China's online population has been a powerful source for the impressive performance of the e-commerce sector. Indeed, China has the world's largest online population, with more than 738 million internet users as of June 2017, meaning that only half of China's total population is online, but still equivalent to a fifth of the world's total online population and more than the entire online population of Europe[12].

E-commerce, of course, has particularly benefited from the impressive growth of the country's online population, as the number of online shoppers has increased from 74 million in 2008[13] to more than 500 million in 2016, based on recent data released by China's Ministry of Commerce[14]. Moreover, this upward trend won't stop for now, as 200 million new online shoppers are expected to join by 2020, according to a report from Goldman Sachs[15].

It should be noted also that, today, almost all of Internet users (96.3 percent as of July 2017[16]) access the Internet from a mobile phone, and, consequently, an increasingly larger share of online sales is expected to take place via a mobile phone in the next years, accounting for 75 percent of total online sales by 2018[17]. For this reason, in recent years e-commerce companies are increasingly focuses on adapting their platforms to mobile phones, with the purpose of taking advantage of this booming trend and increasing their sales volume.

Although China can count on a large online population, what really makes the difference for the prosperity of the e-commerce sector in China, is the continued rise of the upper middle-class and increasing disposable income. According to forecast by consulting firm McKinsey, China's middle class (those earning between RMB 60,000 and RMB 229,000 per year) will account for more than 75 percent of total urban consumers by 2022, thus representing a major consumer

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[12] Internet World Stats, last update June 30, 2017, http://www.internetworldstats.com/stats.htm

[13] Sovereign (China) Group, "An Introduction to E-Commerce in China", 2016, https://www.sovereigngroup.com/wp-content/uploads/2015/04/China-e-commerce-2016-for-website.compressed.pdf

[14] Ministry of Commerce of the People's Republic of China: http://english.mofcom.gov.cn/article/newsrelease/counselorsoffice/westernasiaandafricareport/201705/20170502577831.shtml

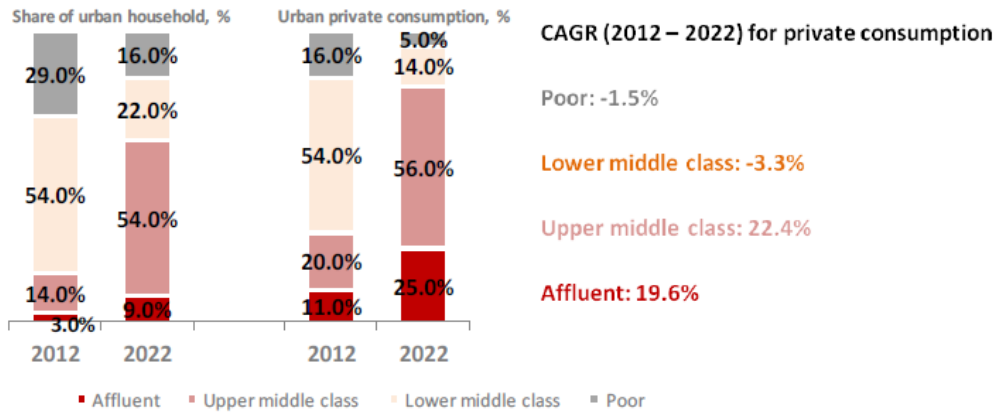
[15] Goldman Sachs, "China E+Commerce, Shopping Re-Imagined", 2017, https://sa6a7e963d4d197af.jimcontent.com/download/version/1488455696/module/9048628785/name/Download.pdf

[16] China Internet Statistics 2017 Whitepaper, https://www.chinainternetwatch.com/whitepaper/china-internet-statistics/

[17] eMarketer, *New eMarketer Forecast Sees Mobile Driving Retail Ecommerce in China*, July 2, 2017, https://www.emarketer.com/Article/New-eMarketer-Forecast-Sees-Mobile-Driving-Retail-Ecommerce-China/1016105

group in China[18]. In particular, based on McKinsey forecast, the upper middle class (those earning between RMB 106,000 and RMB 229,000 per year) is estimated to account for over 56 percent of urban private consumption in 2022, up from only 20 percent in 2012.

Exhibit 8: Share of urban household and urban private consumption, 2012 and 2022 (estimates)



Source: *Deutsche Bank; McKinsey& Co.; compiled by Fung Business Intelligence*

Income segment defined by annual disposable income per urban household, in 2010 real terms; affluent, >229,000 yuan (equivalent to >US$34,000); upper middle class, 106,000 to 229,000 yuan (equivalent to US$16,000 to US$34,000); mass middle class, 60,000 to 106,000 yuan (equivalent to US$9,000 to US$16,000); poor, <60,000 yuan (equivalent to <US$9,000).

Correspondingly, the average annual e-commerce spending in China continues to rise. In fact, forecasts by iResearch Consulting Group, expect the average online spending in China to reach about RMB 12,198 (USD 1,836) in 2017, corresponding to more than a quarter of the average disposable income, with an increase of 7 percentage points over 2016[19].

The reason why Chinese consumers are willing to spend a considerable proportion of their income online is because, as previously mentioned, thanks to e-commerce, they have access to a wider range of products and brands, that would not be available to them otherwise, especially in rural areas. Moreover, generally speaking, prices online are lower than in brick-and-mortar stores, although today quality and e-commerce related services have become more important than price to Chinese consumers, as Liu Qiangdong 刘强东, the founder and chief executive of the successful Chinese online retailer JD.com, has explained to Forbes[20].

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[18] BARTON, Dominic, *Mapping China's middle class*, in "McKinsey", June 2013, https://www.mckinsey.com/industries/retail/our-insights/mapping-chinas-middle-class

[19] KRESSMAN, Jeremy, *Average Spending of China's Online Shoppers to Top $1,800 in 2017*, in "eMarketer", April 24, 2017, https://www.emarketer.com/Article/Average-Spending-of-Chinas-Online-Shoppers-Top-1800-2017/1015731

[20] SCHUMAN, Michael, *JD.com's Richard Liu Takes On Alibaba In A Cutthroat Contest For China's Consumers*, in "Forbes", October 26, 2016, https://www.forbes.com/sites/michaelschuman/2016/10/26/jd-coms-richard-liu-takes-on-alibaba-in-a-cutthroat-contest-for-chinas-consumers/#6709f38d70ab

In brief, as Chinese consumers have become wealthier, online purchasing trends have changed consequently, propelled by more sophisticated consumers who like to purchase a more diversified range of quality products, which also enhance a personal sense of well-being, such as healthy foods, education, and travel.

1.2.2 Sellers

As e-commerce is of great ease for consumers to make purchases and have access to a wider variety of products, in the same way e-commerce has benefited domestic and international sellers and companies in accessing the world's largest e-commerce market that is China.

Indeed, opening an online shop is far easier than setting up a whole retail chain from the scratch, as both domestic and foreign entrepreneurs are supported by e-commerce platforms during this process. In fact, e-commerce platforms offer every sort of service and investment, starting from the digital infrastructure provided by the online platform, to smart logistics, financial services, big data analysis, cloud computing and cross-border trade services.

As for cross-border e-commerce, it has brought on unique opportunities for international companies. In fact, entering China's market through cross-border e-commerce represents a low-risk and low-investment strategy, thanks to the same support in services provided by e-commerce platforms to domestic companies, but that for a foreign company that means much more, as dealing with local authorities and adapting to the local market implies higher transaction costs. In addition, many foreign brands have also used cross-border e-commerce as a way to test the Chinese market, before actually establishing new operations there.

1.2.3 Marketplaces

Chinese consumers are indeed one of the main driving forces of e-commerce growth, however, without e-commerce companies providing customers with the tools to buy online, all this would not have happened.

The difference between China and other online markets is that, for instance, in America and Europe the e-commerce market is led by stand-alone websites, while in China company websites are mainly used for building brand awareness and online purchases are rarely made

directly on company websites. Marketplaces, instead, dominate the e-commerce sector in China, attracting more than ninety percent of online retail transactions[21].

Specifically, an e-commerce marketplace[22] is an online platform where products or services are offered for sale by multiple individual sellers or companies, while the transaction is processed by the platform operator itself. In this way, the platform operator does not own any inventory, but only shows what sellers have to offer, thus facilitating the matching of demand and supply.

Based on Sovereign's market research, the success of e-commerce marketplaces in China is due to the fact that Chinese traditional retailers are still highly underdeveloped and regionalized, so it is difficult for them to offer a uniform service in such a large and diverse country like China. On the contrary, online marketplaces are able to provide an easy access to a huge variety of foreign and domestic products, that were difficult to find before, especially in underdeveloped or developing regions of the country, which actually represent the majority of the country's geographical area. In developed countries, instead, retailers are everywhere, plus, they are able to provide a wide range of products, so consumers do not need to go online to find goods that they can't find offline. In addition, usually e-commerce marketplaces can provide customers with a better price compared to traditional brick-and-mortar stores.

In China, the first company to launch e-commerce and enjoy its success was Alibaba Group 阿里巴巴集团, founded by Jack Ma (Chinese name: Ma Yun 马云) in 1999 as a business-to-business (B2B) portal to connect Chinese manufacturers with overseas buyers[23]. Today Alibaba, with its consumer-to-consumer (C2C) platform Taobao 淘宝网 and its business-to-consumer (B2C) platform Tmall 天猫, dominates the overall e-commerce market. In particular, within the B2C segment, Tmall accounted for almost 60 percent of the market in 2016[24], as shown in the chart below.

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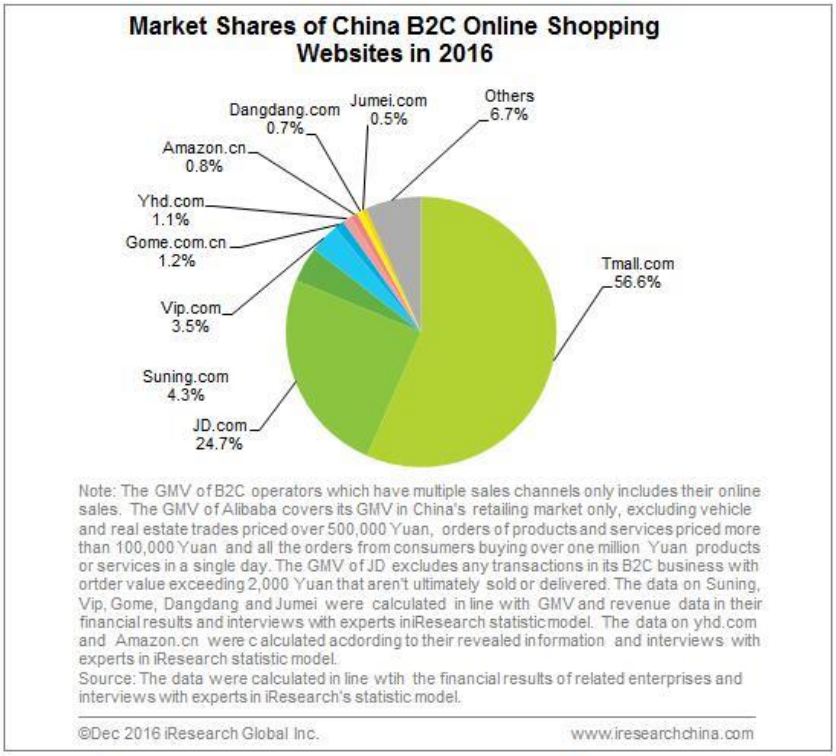
[21] Sovereign (China) Group, "An Introduction to E-Commerce in China", 2016, https://www.sovereigngroup.com/wp-content/uploads/2015/04/China-e-commerce-2016-for-website.compressed.pdf

[22] Online marketplace: https://en.wikipedia.org/wiki/Online_marketplace

[23] Alibaba Group: http://www.alibabagroup.com/en/about/history

[24] CHADHA, Rahul, *Alibaba's Tmall Maintains Reign Over China's Retail Ecommerce*, in "eMarketer", February 21, 2017, https://retail.emarketer.com/article/alibabas-tmall-maintains-reign-over-chinas-retail-ecommerce/58ada2369c13e50c186f6f32



Taobao 淘宝网, that today is the largest marketplace for C2C (consumer-to-consumer) retail in China, provides a platform for small businesses and individual entrepreneurs to open online stores that mainly cater to Chinese consumers. Tmall 天猫, instead, is more of a platform for local Chinese and international businesses to sell quality branded goods to Chinese consumers, especially with regard to clothes, cosmetics and food and beverage. As of March 2017, Taobao and Tmall registered 454 million annual active buyers[25], a figure equal to the population of the United States, Canada and the United Kingdom combined.

Unluckily for Alibaba, such a lucrative market couldn't go unnoticed and many other e-commerce companies have emerged over time, corroding a percentage of its share. Alibaba's main competitor within the B2C sector is JingDong (京东商城), mainly known as JD.com or JD, which had a 25 percent market share based on Gross Merchandise Volume (GMV) in 2016, as shown in the chart above. As of September 2017, it had 258.3 million annual active users[26].

JD has been able to gain that share by using a different business model than Alibaba. JD has built its own logistics network, through which it can manage its own inventory and ship directly to consumers. Moreover, while Tmall acts as a marketplace for connecting merchants

[25] Alibaba Group, "March Quarter 2017 and Full Fiscal Year 2017 Results", May 18, 2017, http://www.alibabagroup.com/en/news/press_pdf/p170518.pdf

[26] China Internet Watch, "Key stats for JD.com Performance in Q2 2017", August 16, 2017, https://www.chinainternetwatch.com/22172/jingdong-q2-2017/

and consumers, most of JD's revenues come from direct sales for which it acts as the merchant, so JD itself is responsible for delivering the items.

In response to the growing demand of Chinese consumers for foreign quality products and in an effort to reduce selling of counterfeits on its platform, in February 2014, Alibaba launched Tmall Global as a cross-border marketplace for foreign brands and merchants to sell directly to Chinese consumers.

In April 2015, JingDong replied with the launch of JD Worldwide to take on its bigger rival. They both provide Chinese consumers with a platform to purchase authentic imported products, including many not previously available in China, and enables international producers and suppliers to sell directly to Chinese consumers without requiring an established presence in China.

It is fair to say that Alibaba and JD are only the two main competitors in the e-commerce market, but many other e-commerce platforms exist, specialized in a particular business model (B2B, B2C, C2C, etc.) or in a specific industry (clothes, electronics, food and beverage, etc.), making this lucrative business very competitive.

In addition, following the incredible growth of mobile phones in China, e-commerce platforms have also developed their own mobile applications (APPs), allowing consumers to shop on their mobile phones as well.

Finally, it is worth mentioning that Chinese e-commerce giants, like Alibaba and JD, are not simply intermediaries connecting companies and customers in China and all over the world, but they are the main driving force behind the success of e-commerce. In fact, besides the digital infrastructure included in the e-commerce platform, they also provide domestic and foreign companies with every sort of services and investments they need to access the Chinese market, such as financial services, smart logistics, big data analysis, cloud computing and cross-border trade services.

Hence, e-commerce companies are completely changing the purchasing behavior of consumers and the way companies access the market to sell their products, making trade an increasingly technological and inclusive business.

1.2.4 Electronic payment providers

Along with e-commerce marketplaces and mobile APPs, electronic payments, or simply "e-payments", have played an important role in further facilitating, and so encouraging, online consumption. In addition, today e-payments have become so popular to the point of making

China the most cash-free economy in the world, with more than 358 million consumers who have virtually replaced the traditional wallet with an electronic wallet on their smartphone[27]. In particular, China's mobile payments have proved to be so convenient to use, that they have spread to offline purchases, too, hitting USD 5.5 trillion in 2016, equal to almost 50 times the United States market, according to data released by consulting firm iResearch[28].

In China the two main leaders for electronic payment services are: Alibaba's Alipay and Tencent's WeChat Pay (or TenPay), which work both as escrow payment providers[29]. In particular, they hold and settle the payment required between two parties involved in an online transaction. It is a safe way to buy online as the payment is kept in an escrow account, and funds are released only after the terms agreed between the merchant and the seller are met. Being perceived as a trusted intermediary, as they relieve both sellers and buyers from the risk of fraud, the success for the providers of this service is guaranteed.

In addition, payment platforms also provide foreign companies with cross border e-payment services, where Chinese customers pay in renminbi and sellers can then settle the payment in major foreign currencies. In addition, foreign companies do not need to open a bank account in China, as once the payment is converted it will be remitted into the seller's international bank account.

The first one to launch this service in China was Alibaba in 2004 with AliPay. AliPay serves both Taobao and Tmall, thus being of crucial importance for the growth of the said platforms. Today, AliPay has become the market leader in the e-payment industry with 600 million registered users and 30.7 percent of market share, against the 22.2 percent of its main competitor Tenpay[30].

TenPay, instead, was launched in 2005 by Tencent and adopted by JD, but it managed to take a consistent market share from AliPay only when introducing WeChat Pay in 2014, for its mobile messaging APP WeChat. This brilliant move, indeed, allowed Tencent to better compete with its rival Alibaba, however, even if only considering the mobile payment sector, AliPay is still

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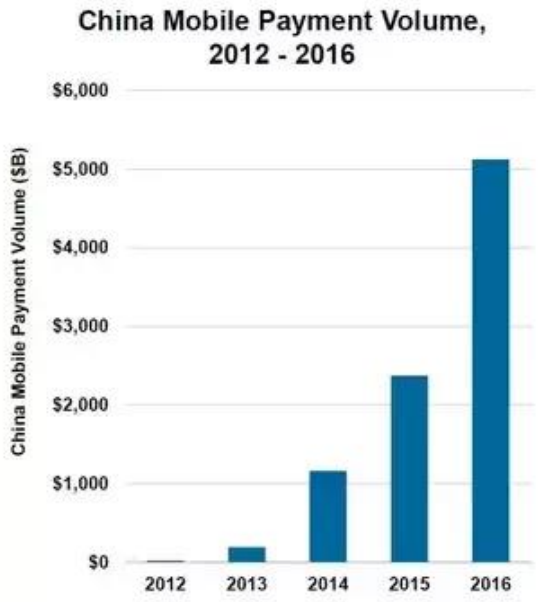
[27] Sovereign (China) Group, An Introduction to E-Commerce in China, 2016, https://www.sovereigngroup.com/wp-content/uploads/2015/04/China-e-commerce-2016-for-website.compressed.pdf

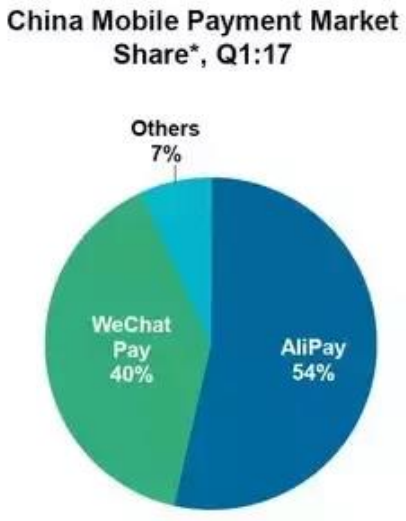
[28] WILDAU, Gabriel, *China mobile payments dwarf those in US as fintech booms, research shows*, in "Financial Times", February 13, 2017, https://www.ft.com/content/00585722-ef42-11e6-930f-061b01e23655

[29] Escrow: https://www.investopedia.com/terms/e/escrow.asp

[30] iResearch, "China's Third-Party Online Payment GMV Hit 6.4 Tn Yuan in Q1 2017", July 5, 2017. http://www.iresearchchina.com/content/details7_34511.html

leading the market, according to data of the first quarter of 2017 by iResearch, with nearly 54 percent share of mobile transaction value, while WeChat Pay gained a 40 percent share[31].





The success of mobile payments in China compared to the US can be explained by the lack of other equally efficient options for non-cash payments. In fact, credit card penetration in China is low, while paying online with debit cards is inconvenient, as it requires authentication through a combination of SMS messages, USB dongles and random code generators. By contrast, paying with Alipay or WeChat Pay requires only the scan of a QR code from a retailer's point-of-service (POS) terminal or a smartphone. In addition, third-party e-payments also offer lower costs per transaction compared to the banks.

Thanks to the successful implementation of third-party payment providers within e-commerce platforms and mobile APPs, Chinese online consumers are provided with a more complete and convenient purchasing experience.

1.2.5 Logistics and Delivery Services Providers

Once the order has been placed, other third-party service providers are responsible for managing the delivery process.

Considering that 70 percent of express delivery parcels originate from e-commerce, it is no wonder that e-commerce is driving growth in China's logistics and express delivery market as

[31] iResearch, "China's Third-Party Online Payment GMV Hit 6.4 Tn Yuan in Q1 2017", July 5, 2017, http://www.iresearchchina.com/content/details7_34511.html

well[32]. Moreover, according to AliResearch, the research institute of the Alibaba Group, the average distance between Alibaba platform's buyers and sellers is nearly 1000 kilometers, thus creating large demand for express delivery[33]. In particular, today in China there are seven cities which can expect same day delivery and other 88 cities which can have next day delivery through Alibaba's partners[34]. Alibaba's main competitor JD.com, instead, has 213 warehouses in 50 cities, and in total 5367 delivery stations and pick-up stations[35]. This systems of warehouses and fast delivery, allowed 31.3 billion parcels to be delivered in China in 2016, with a growth rate of 51.4 percentage points year-over-year, making China's express delivery market the largest in the world in terms of delivery volume[36]. Considering China's online population, each person sent or received 45 parcels during 2016, meaning one sent or received a parcel per week[37].

However, e-commerce companies, driven by their desire to satisfy their customers' request of a fast delivery, are constantly spurring growth, innovation and development in the logistics and parcel delivery industries in order to better satisfy their customers. For instance, in September 2017, Cainiao Network 菜鸟网络, Alibaba's logistics affiliated, offered RMB 1.5 billion to its Chinese merchandisers and logistics partners to build more warehouses and improve delivery efficiency, in view of the Singles' Day online shopping frenzy[38]. In particular, Cainiao's goal was to set up 40,000 pick-up facilities close to residential areas, so that consumers could fetch their goods by themselves, instead of waiting for them to be delivered at home. Indeed, the improved efficiency of logistics and delivery industry is evident. Taking 2016 Singles' Day as example, the number of parcels in 2016 Singles' Day was 4 times the number in 2013, but the time to finish delivery of 100 million parcels in 2016 was 3.5 days, compared with 6 days in 2014 and 9 days in 2013 for the same shopping event[39].

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[32] AliResearch, "Inclusive Growth and E-commerce: China's Experience", April 2017, http://www.alizila.com/wp-content/uploads/2017/04/AliResearchReportApril2017.pdf

[33] Ibidem.

[34] TANNER, Mark, *The 5 keys behind eCommerce's rise in China,* in "Ecommerce Worldwide", May 10, 2016, https://www.ecommerceworldwide.com/expert-insights/expert-insights/the-5-keys-behind-ecommerces-rise-in-china

[35] Ibidem.

[36] Fung Business Intelligence, "Spotlight on China Retail 2017", April 9, 2017, https://www.fbicgroup.com/?q=publication/spotlight-china-retail-2017-full-report

[37] AliResearch, "Inclusive Growth and E-commerce: China's Experience", April 2017, http://www.alizila.com/wp-content/uploads/2017/04/AliResearchReportApril2017.pdf

[38] LI, Tao, *Alibaba and JD.com commit nearly US$330m to beef up parcel delivery efficiency, ahead of Singles' Day shopping festival,* in "South China Morning Post", September 20, 2017, http://www.scmp.com/business/china-business/article/2112072/alibaba-and-jdcom-commit-nearly-us330m-beefing-parcel

[39] AliResearch, "Inclusive Growth and E-commerce: China's Experience", April 2017, http://www.alizila.com/wp-content/uploads/2017/04/AliResearchReportApril2017.pdf

In conclusion, it is evident that e-commerce has completely changed the retail industry, by spurring growth in other related industries, such as electronic payments, logistics and delivery. As electronic payments and door-to-door delivery services are inexpensive and convenient for Chinese consumers, e-commerce has become part of Chinese people's daily life.

1.3 The economic importance of e-commerce in China: a story of inclusive growth

The first reason why e-commerce matters so much for Chinese government is because it has proved to be a prosperous as well as a very lucrative industry driving growth in China. For this reason, the sector has become of strategic importance for China's economy. In particular, the following sections explain, first, the economic background which has benefited the success of e-commerce and, then, the specific benefits brought by e-commerce to the country's entire economy and society.

1.3.1 Economic background

China is now the world's second largest economy, after the United States, in terms of nominal Gross Domestic Product (GDP)[40], hitting USD 11 million in 2016[41], but it is the largest economy (21,45 million of international dollars[42]) if adjusted in terms of Purchasing Power Parity (PPP).

However, this outstanding result did not happen overnight. China began an unprecedented economic catch-up starting in 1978, when the then leader of PRC Deng Xiaoping 邓小平 launched the "reform and opening-up" policy. These reforms led China to emerge as an industrial economy, supported by strong investments in manufacturing and basic infrastructure. In a few years, China became the "world's factory", specialized in labor-intensive industries, which produced lower-cost goods mainly intended for export[43]. This industry and export-based economy model led China to experience an average GDP growth rate close to 10 percent per year

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[40] Gross Domestic Product (GDP) can be measured in terms of nominal GDP or Purchasing Power Parity (PPP). Nominal GDP is GDP given in current prices, without adjustment for inflation. Current price estimates of GDP are obtained by expressing values of all goods and services produced in the current reporting period.
Purchasing Power Parity (PPPs) converts national currencies to a single international currency that equalize the purchasing power of different currencies by eliminating the differences in price levels between countries.
(International Monetary Fund: http://www.imf.org/external/pubs/ft/fandd/basics/gdp.htm)

[41] Gross domestic product 2016: World Bank, 15 December 2017, http://databank.worldbank.org/data/download/GDP.pdf

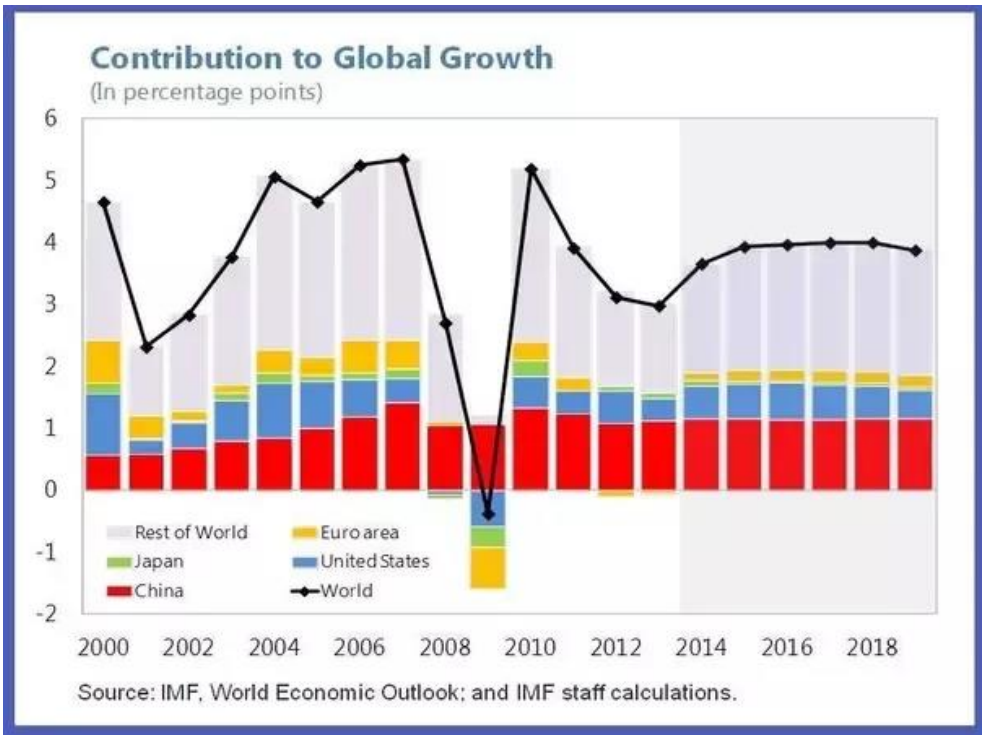
[42] Gross domestic product 2016, PPP: World Bank, 15 December 2017, http://databank.worldbank.org/data/download/GDP_PPP.pdf

[43] ECKART, Jonathan, *Eight things you need to know about China's economy*, in "World Economic Forum", June 23, 2016, https://www.weforum.org/agenda/2016/06/8-facts-about-chinas-economy/

until 2014, raising its per capita GDP almost 49-fold since the beginning of the economic reforms[44].

Another important move boosting China's economy, and in particular its trade volume, was becoming the 143rd member of the World Trade Organization (WTO), the intergovernmental organization that regulates international trade, on 11 December 2001[45]. Since then, China started playing an increasingly important and influential role in the global economy.

In fact, China's GDP increased by almost eight times in the period 2001-2014, thus ranking up from being the world's sixth largest economy to being the second[46], as well as the largest contributor to world growth since the global financial crisis of 2008[47], as shown in the picture below.



In addition, China's overall merchandise trade was worth 0.51 trillion dollars in 2001, ranking the 6th in the world, while it grew over 8 times up to USD 4.3 trillion in 2014, thus ranking

[44] Ibidem.
[45] Ms. Yuan Yuan, Director of the Division of Trade Policy Review and Notification, Department of WTO Affairs of the Ministry of Commerce of China.
YUAN, Yuan, "Looking Back 14 Years after Accession: Case of China", Intervention at the Third China Round Table on WTO Accessions, June 2, 2015,
https://www.wto.org/english/thewto_e/acc_e/Session2YuanYuanPostAccessionLookingback14yearafter.pdf
[46] Ibidem.
[47] ECKART, Jonathan, *Eight things you need to know about China's economy*, in "World Economic Forum", June 23, 2016, https://www.weforum.org/agenda/2016/06/8-facts-about-chinas-economy/

first in the world for two years in a row[48]. In particular, China's export of goods recorded USD 2.34 trillion in 2014, representing 12.4 percent of the world's total, thus, succeeding in being the biggest exporting economy for the second consecutive year; China's import of goods, instead, registered USD 1.96 trillion, accounting for the 10.3 percent of the global total, thus, making China the world's second largest country attracting exports[49].

However, being a manufacturing and export-based economy, although propelling the country's GDP, indeed had its own flaws, so that China eventually had to address many domestic and international challenges, such as industrial overcapacity, high inequality between urban and rural China, environmental sustainability, trade imbalance, as well as wages increase. In addition, although the global financial crisis in 2008 did not have a direct negative impact on China as on other countries, being highly dependent on exports, eventually affected also China's economy and trade, as a consequence of reduced investments coming from foreign country, as well as a decrease in demand for exports.

All these factors have been the reason for a major setback of China's economic growth. In fact, China stopped growing at a double-digit rate, reaching in 2015 an all-time low GDP growth rate of 6,9 percent, the slowest rate in 25 years[50].

Still, it is fair to say, that China's explosive growth could not last forever, but sooner or later had to follow a natural path of development, which means a slower growth. Indeed, after more than three decades of rapid economic growth, China has entered the "new normal" (新常态) phase, meaning that the country's economy is more mature now and, therefore, is growing more slowly, but following a more sustainable and quality path.

> It is like height -- a man cannot continue to grow forever. When maturing, we will pursue intelligent development.[51]

In particular, the "new normal" theory, presented by Chinese President Xi Jinping during the CEO Summit of the Asia-Pacific Economic Cooperation (APEC) in November 2014, is defined as an economic restructuring driven by the following characteristics[52]:

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[48] YUAN, Yuan, "Looking Back 14 Years after Accession: Case of China", Intervention at the Third China Round Table on WTO Accessions, June 2, 2015, https://www.wto.org/english/thewto_e/acc_e/Session2YuanYuanPostAccessionLookingback14yearafter.pdf

[49] Ibid.

[50] PANG, Xinglei, *China Headlines: China lowers growth target, eyes better quality*, in "Xinhuanet", March 5, 2015, http://www.xinhuanet.com/english/2015-03/05/c_134041702.htm

[51] Ibidem.

[52] HUANG, Haifeng, *China's Economic Transition: The "New Normal" is here to stay*, in "The Brics Post", Januay 22, 2015, http://thebricspost.com/chinas-economic-transition-the-new-normal-is-here-to-stay/#.WnsKGejOXIV

- deceleration of economic growth from high to medium-high speed;
- relying more on the tertiary industry rather than on manufacturing, as well as shifting from exports to domestic consumption;
- industrial upgrading through innovation rather than imitation of foreign companies' skills;
- a more balanced and inclusive economy through mass entrepreneurship.

In brief, the Chinese government realized that the country's economy couldn't rely any longer on external sources (exports and investments), but it had to rebalance and upgrade its economic system by looking at its own internal resource, meaning that the country's economy needs to shift towards services and domestic consumption.

Against this background, to further support the country's economic restructuring, on March 5, 2015, the Prime Minister Li Keqiang in his Government Work Report[53] launched the "Internet Plus" (互联网+) action plan, with a view to integrate the Internet with traditional industries, spur innovation and boost economic growth. The target of the "Internet Plus" action plan is to make Internet a fundamental pillar of economic and social development by 2025. The action plan provides for important measures in support of strategic emerging industries, among which there are e-commerce and mobile Internet, but also as logistics, express delivery services and many other sectors which had registered an impressive growth in previous years. Some of the measures presented include:

- development of Internet technology and infrastructure;
- lowering market entry barriers in Internet-related industries products;
- training of local and foreign talent;
- financial support and tax benefits for key projects related to the Internet Plus plan
- encouragement of local governments in welcoming domestic and foreign investors;

Thanks to these reforms, China's economic upgrading and restructuring is having the expected results. Fixed investment used to be the largest source of China's GDP growth until 2013, while in 2014 private consumption started increasing, and then largely exceeding fixed investment from 2015, becoming the new driving force of GDP growth, as showed in the chart below[54].

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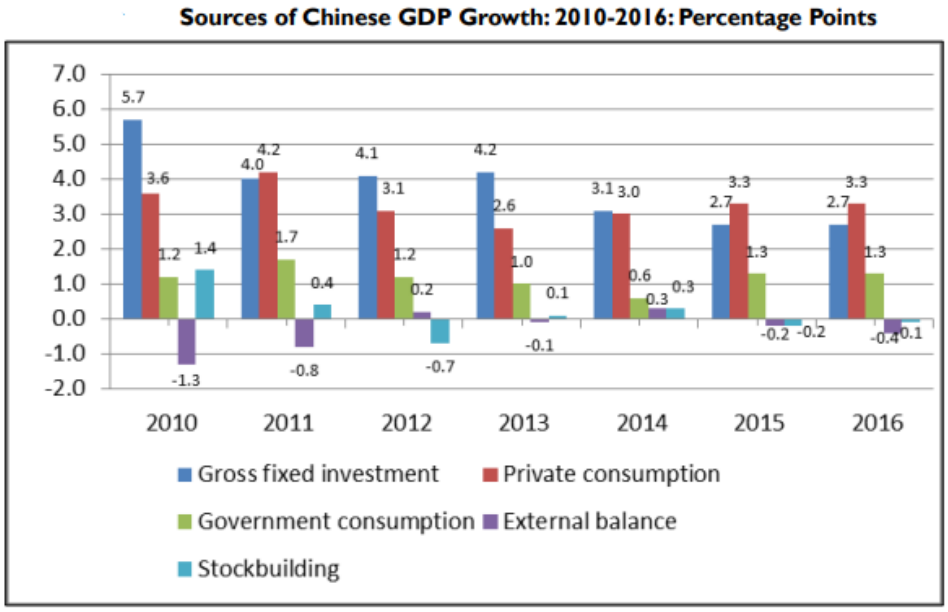
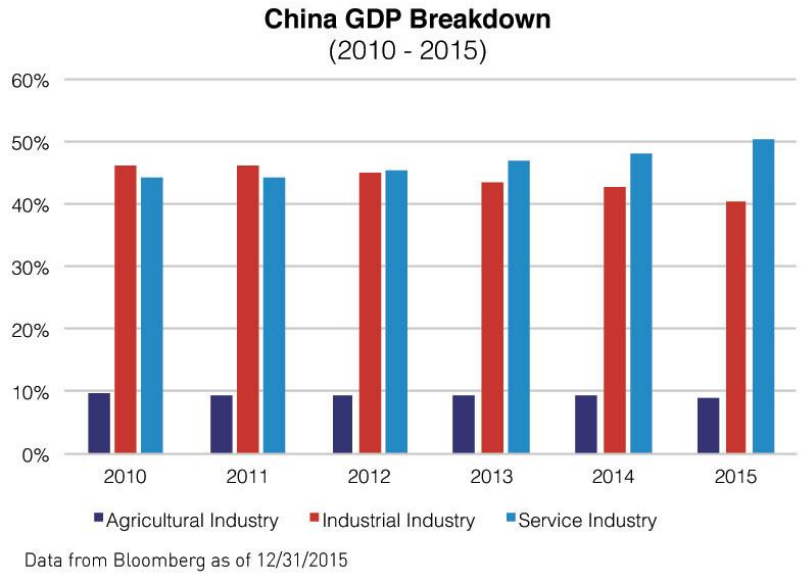
[53] Report on the Work of the Government (2015), delivered by Premier Li Keqiang at the Third Session of the 12th National People's Congress on March 5, 2015 and adopted on March 15, 2015. http://english.gov.cn/archive/publications/2015/03/05/content_281475066179954.htm

[54] US Congressional Research Service Report, *China's Economic Rise: History, Trends, Challenges, Implications for the United States*, September 15, 2017, https://fas.org/sgp/crs/row/RL33534.pdf



Source: Economist Intelligence Unit.

In addition, the services industry overtook the industrial industry as a percentage of GDP for the first time in 2012 and since then has kept growing, as showed in the chart below[55].



In conclusion, China is undergoing an economic restructuring, in order to face some domestic and international challenges that have emerged in recent years. In particular, the Chinese government aims at achieving a more balanced, inclusive and sustainable growth. The next section will further explain the remarkable results achieved by e-commerce in supporting the Chinese government's goals, that make an e-commerce law greatly needed, in order to promote the further development of this sector as well as of the country's overall economy.

[55] US Congressional Research Service Report, China's Economic Rise: History, Trends, Challenges, Implications for the United States, September 15, 2017, https://fas.org/sgp/crs/row/RL33534.pdf

1.3.2 Benefits of e-commerce for China's economy: inclusive growth

The fact that e-commerce has drawn Chinese government's attention, which is now highly committed to elaborating a national e-commerce law, is mainly related to the fact that the e-commerce sector, thanks to its booming growth, has become a fundamental pillar of China's economy. Consequently, the Chinese government wants to keep it under control in order to share the gains of such an outstanding success.

However, the importance of e-commerce for the Chinese government does not rely only on the fact that it is a sector driving growth in the country, but it is more related to the fact that e-commerce has fostered a new growth model, the so called inclusive growth[56], where the gains coming from the success of e-commerce are distributed more evenly to every section of society, thus, alleviating in many ways the problem of social inequalities. Indeed, in light of the government's economic goals presented in section 1.3.1, e-commerce in China has succeeded to match perfectly with the needs of the country's economic restructuring. In particular, e-commerce has proved to be a successful tool for boosting consumer spending, increasing imports, narrowing the development and income gap between urban and rural citizens, as well as promoting entrepreneurship and innovation.

According to a report by AliResearch[57], e-commerce in China has stimulated inclusive growth mainly from three points of view: micro, small and medium enterprises' (MSMEs) competitiveness, rural areas development, empowerment through employment.

With regard to MSMEs', digital technology and e-commerce have increased MSMEs' competitiveness by significantly reducing the trade costs associated with physical distance, as opening an online shop is far cheaper and easier than building a brick-and-mortar shop, plus no intermediaries are required to be present in a market. Moreover, e-commerce companies, besides sharing the digital infrastructure (i.e. the e-commerce platform), also offer many services that used to be expensive before, such as building brand awareness, acquiring and managing customers, data analysis. So, virtually any company or even individual can compete on the same level, despite their size and means. In addition, MSMEs, by having direct access to consumers, are more motivated to make further efforts in self-brand building, innovation and upgrade.

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[56] Inclusive growth: Organisation for Economic Co-operation and Development (OECD) http://www.oecd.org/inclusive-growth/

[57] AliResearch, "Inclusive Growth and E-commerce: China's Experience", April 2017, http://www.alizila.com/wp-content/uploads/2017/04/AliResearchReportApril2017.pdf

Then, it comes as no surprise that the mission of Alibaba is "to make it easy to do business anywhere" (in Chinese: 让天下没有难做的生意)[58]. This slogan translates in Alibaba's serious commitment to empowering global MSMEs through its e-commerce platform, by providing new business infrastructure, including financial services, logistics, big data analysis, cloud computing and cross-border trade services. An example is the "Big Taobao" strategy announced in 2008, a five-year investment of RMB 5 billion, with the aim of shifting from being only an online shopping platform to becoming a provider of e-commerce infrastructure services for all e-commerce market participants. In order to achieve all this, Alibaba Group expanded by buying competitors and integrating them in their own system. Today, no one can question the success of this strategy, that, in a more general perspective, has resulted in an increased overall growth of the Chinese online trading industry. Hence, providing MSMEs with all the services needed in order to start a business online, thus enabling them to access global markets and participate in international trade at the same level of large enterprises, is one of the ways in which e-commerce has promoted inclusive growth.

Second, e-commerce is inclusive because it makes no discriminations between urban and rural areas of China. On the contrary, thanks to e-commerce platforms, rural residents can purchase the same goods at the same price as urban residents. In addition, a multi-stakeholder approach, where market, government and society join forces, has enhanced development in rural areas. In particular, the market is responsible for allocating resources, the Government provides infrastructure, e-commerce companies are responsible for the promotion and talent training, while individuals and enterprises actively participate in the ecosystem.

However, it is fair to say also that e-commerce companies have dedicated significant resources for the development of rural areas, by favoring a greater adoption of the internet in the more backward areas of China, not because moved by a philanthropic instinct, but mainly because they were aiming at developing a larger customer base and seize an important emerging trend. In fact, in recent years, growth in online sales by rural residents has outpaced growth in online sales by urban counterparts.

In any case, apart from what are the true intentions of e-commerce companies, they do have significantly contributed to fight poverty in rural areas, by fostering a strong entrepreneurial culture in poor villages. An example of this commitment, is represented by Alibaba's Taobao

[58] Alibaba Group: http://www.alibabagroup.com/en/global/home

villages 淘宝村[59]. A model of poverty alleviation through e-commerce is Pingxiang County (平乡县)[60], in Hebei province, a national-level poverty county, which is more a Taobao Village Cluster 淘宝村集群[61], as it is formed by several neighboring Taobao Villages. The multi-stakeholders approach mentioned before has been applied as follows. First, the local government launched the e-commerce development policy and listed RMB 3 million of e-commerce development fund in the annual fiscal budget. Meanwhile, they built the county-level logistics system and talent training system. This investment allowed more than 40 out of 78 poverty villages in the county to engage in e-commerce projects. In 2016, ten of them became Taobao Villages. Among all the villages of the cluster, the results achieved by Aicun (艾村) village are remarkable. The village, specialized in the bicycle industry, employed more than 800 poor villagers and increased the annual per capita income by more than RMB 20,000.

In brief, e-commerce by contributing to the digital development of rural areas, has boosted the overall economic development of these areas as well, as it has provided many people with the opportunity of substantially increasing their income, thus lifting them out of poverty and narrowing the wealth gap between rural and urban China.

Finally, the third form in which e-commerce has been inclusive is by fostering mass entrepreneurship and employment. Indeed, e-commerce in China has helped to lift out of poverty many people, especially in rural areas, but the way this has happened has not been by receiving monetary assistance, but by actively participating in the e-commerce business.

More precisely, e-commerce has provided Chinese people with a huge variety of job opportunities, considering that Alibaba's ecosystem alone has created 30.83 million job

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[59] As defined by AliResearch, a Taobao Village is a cluster of rural e-tailers within an administrative village where:

- residents got started in e-commerce spontaneously primarily with the use of Taobao Marketplace;
- total annual e-commerce transaction volume is at least RMB10 million ($1.6 million);
- at least 10% of village households actively engage in e-commerce or at least 100 active online shops have been opened by villagers.

http://www.alizila.com/an-introduction-to-taobao-villages/

[60] AliResearch, "Inclusive Growth and E-commerce: China's Experience", April 2017, http://www.alizila.com/wp-content/uploads/2017/04/AliResearchReportApril2017.pdf

[61] A "Taobao Village Cluster" is defined as a group:

- of more than 10 neighboring Taobao Villages that develop together;
- where e-commerce entrepreneurs, service providers, the regional government and industry associations work closely together;
- whose annual e-commerce transaction volume reaches or exceeds RMB100 million.

http://www.alizila.com/an-introduction-to-taobao-villages/

opportunities in China[62]. Many of these jobs are directly related to e-commerce, such as customer service, marketing, sales, goods packing and parcel delivery, but many others are indirectly related, like tailors, carpenters, express delivery men, photographers, etc. However, in recent years, also many professional services have emerged in some Taobao Villages, including lawyers, accountants, patent agents, etc.

Indeed, e-commerce has turned out to be a powerful tool not only to empower poor villages in rural areas, but also other disadvantaged groups of the Chinese society, who might have been sidelined by traditional technologies. Among them, there are young people, migrant workers and people with disabilities. In fact, many graduates and migrant workers have decided to return back at their hometowns to start a private online business or to contribute to the development of their home villages. This happens because, thanks to the services and financial aid provided by Alibaba, e-entrepreneurs can count on low investments and high growth typical of this sector.

In particular, young people are definitely more advantaged than the older generations, as they represent the majority of users on e-commerce platforms, enjoy better education and are much more familiar with technology. In addition, they no longer regard work as a duty or something necessary for the basic living, but they are enthusiastic to create and to innovate something for self-fulfillment.

Then, also many migrant workers have decided not to move anymore to the big cities in search of a remunerative job, but they found in the e-commerce sector a good opportunity to make money at home. However, still there are some migrant workers who decide to go to bigger cities to take advantage of the huge development led by e-commerce in other sectors. So, today, thanks to e-commerce, they are no longer confined to manufacturing and construction sectors, but they are provided with a wider range of jobs related not only to e-commerce in a strict sense, but to the overall service industry. For instance, with the boom of e-commerce, logistics and delivery services have expanded rapidly, too, in order to keep up with growing and fast deliveries, thus leading to the creation of more jobs. To be precise private e-commerce logistics employees in China are more than 2 million[63].

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[62] AliResearch, "Inclusive Growth and E-commerce: China's Experience", April 2017, http://www.alizila.com/wp-content/uploads/2017/04/AliResearchReportApril2017.pdf

[63] AliResearch, "Inclusive Growth and E-commerce: China's Experience", April 2017, http://www.alizila.com/wp-content/uploads/2017/04/AliResearchReportApril2017.pdf

This trend has really pleased the government, since, as already mentioned before, China is undergoing a serious labor shortage and especially with the increasing automatization of many manufacturing companies, unskilled migrant workers have many difficulties in finding a job and this can cause several social problems.

Finally, as any barrier related to geographical distance and physical presence of merchants in a market are removed, e-commerce has proven to be particularly important for disabled people as well. As of 2015, there were more than 316,000 disabled sellers on the Taobao retail platform, who made sales for more than RMB 10 billion. There are many significant examples in this regard, such as Cui Wanzhi, who has physical disability, has opened an online apparel shop and provides 500 job opportunities; Meng Hongwei, who has physical disability, and his paralyzed younger brother, instead, sell cattle and sheep online and are awarded as "Global Top 10 e-Entrepreneurs".

E-commerce has, indeed, boosted China's overall economic development by distributing the benefits of its success to every section of society, thus enhancing a new development model of inclusive growth. In particular, the contribution of e-commerce to the goals established by the Chinese government for a "new normal" growth, can be summed up as follows:

- development of the services industry;
- spread of competitiveness and innovation inside MSMEs, thus enabling them to access global markets and compete with large companies on an equal footing;
- promotion of a more balanced and inclusive economy through mass entrepreneurship, as e-commerce has proved to be a successful tool to boost development, fight poverty in rural areas and empower disadvantaged groups of Chinese society.
- encouragement of domestic consumption.

Finally, e-commerce in China has contributed to the creation of new business models, an open and transparent market environment, and has transformed the country's economic landscape by integrating technology with traditional sectors[64]. Thus, thanks to information technology, not only products and services innovation have significantly improved, but trade efficiency has increased too, supported by an accurate technological matching of demand and supply. In addition, China's successful story in using digital technology and e-commerce to drive inclusive growth, indeed, deserves attention. In particular, China's experience suggests that

[64] AliResearch, "Inclusive Growth and E-commerce: China's Experience", April 2017, http://www.alizila.com/wp-content/uploads/2017/04/AliResearchReportApril2017.pdf

developing countries too, given the right policies and investment in infrastructure, can use e-commerce as an important tool for a growth model that doesn't leave behind disadvantaged groups of society, such as MSMEs, the rural population and the handicapped.

1.4 Problems to solve

As discussed in the previous section, e-commerce, indeed, is a lucrative industry in China, driving the country's growth and bringing many benefits to the country's overall economy and society. However, despite the prosperity brought on by e-commerce in China, it is still a developing industry characterized by many problems that hinder its further growth.

One of problem existing in all the aspects of the e-commerce business is related to a widespread lack of reliability in the e-commerce system. As e-commerce includes a wide range of business activities, the reliability issue comes in many and different forms, including high rate of counterfeits, unlawful commercial practices, transaction security, etc. Other serious challenges for the further growth and development of e-commerce exist in areas such as "brushing", fake reviews, competition between traditional and online retail, cross-border e-commerce customs procedures and taxation.

In addition, e-commerce-related legislation, being fragmented, vague and outdated, has not been able to keep the pace with the rapid development of this sector, thus revealing many loopholes in both commercial and legal practices, which have contributed to the raise of unlawful behaviors.

1.4.1 Market order: counterfeits, brushing and fake reviews

One of the main issues when speaking about e-commerce is represented by the selling of counterfeits and poor-quality products, misleading discounts and false ratings, which are quite common in online trading, despite repeated prohibitions and the government's efforts in upgrading the country's industrial system through innovation rather than imitation. Inevitably, this kind of illegal behaviors cast a shadow on the overall credibility of the online business, thus being a factor that hinders the further growth of online sales.

In particular, Alibaba is often under the spotlight, both by foreign countries and domestic government, due to continuous accusations of allowing unlicensed merchants to sell shoddy commodities on its platforms, thus failing to protect consumers' rights.

In fact, in 2011 Taobao was added by the United States commerce department to a blacklist of "notorious markets" selling pirated and fake goods, but it was removed the following year[65].

Then, in 2015, a State Administration for Industry and Commerce (SAIC)'s sample testshowed that only 37.25 percent of products sold on Taobao were authentic, while the average of other major e-commerce platforms accounts for a 58.7 percent[66]. Plus, the report added that Alibaba was aware of these illegal behaviors happening on its platforms, but failed to take necessary measures to stop them. Besides, the report also accused Alibaba of allowing illegal misleading advertising, promoting fake low prices and discounts. Alibaba's employees, too, had their faults, according to the report, as they were found to accept bribes.

Of course, Alibaba didn't take it well, answering the previous accusations with the results of its commitment in fighting counterfeits. Alibaba claimed that USD 161 million were spent from 2013 to 2014 in order to block counterfeits, thus succeeding in removing 90 million goods that had violated intellectual property rights[67].

According to the minister of the SAIC Zhang Mao, the high rate of market violations is caused by too low penalties in case of law violations[68]. So, he suggested that only if penalties are unaffordable for e-commerce players, the market order will improve.

Besides counterfeits and poor-quality products, another serious issue detrimental to the reliability of the sector concerns the dubious authenticity of business, personal and product information provided by online sellers on e-commerce platforms, as many of them open anonymous or pseudonymous accounts.

In addition, fictitious orders, fake product reviews and flawed statistics are largely widespread on e-commerce platforms, as well. This happens mainly because each online shop is ranked according to its reputation, customer traffic and sales volume, but being the competition very fierce, with millions of individual vendors selling many same or very similar products,

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[65] Associated Press, *Alibaba breaks with custom to berate Chinese authorities over highly critical report*, in "The Guardian", January 28, 2015, https://www.theguardian.com/business/2015/jan/28/alibaba-defies-chinese-authorities-critical-report-trading-practices

[66] Ibidem.

[67] Associated Press, *Alibaba breaks with custom to berate Chinese authorities over highly critical report*, in "The Guardian", January 28, 2015, https://www.theguardian.com/business/2015/jan/28/alibaba-defies-chinese-authorities-critical-report-trading-practices

[68] AN, Lu, *China to strictly regulate online commerce*, Xinhua, March 9, 2015, http://www.xinhuanet.com/english/2015-03/09/c_134051166.htm

individual sellers have come up with many tricks in order to boost their own online reputation and so increasing orders for their products.

The most widespread practice currently under the spotlight in China is known as "brushing" [69], that basically consists in online sellers creating fake orders. In practice, online traders recruit their friends, relatives or even professional fraudsters ("brushers") to make fake orders. Once the order is placed, the seller sends out an empty box and refunds the money. The aim of all this is to artificially inflate one's own online reputation on an e-commerce platform, as a way to rank first in the product search page and receive more real orders from customers., once a good reputation has been created, the sales volume will increase soon and easily, thus covering the high expenses for advertising and registering on the platform.

Not only brushing, but many other ways are adopted by online sellers to improve their own online reputation, such as modifying or deleting negative ratings, exchanging good ratings with other online sellers, or even threatening customers to write great reviews.

However, while trying to increase their own online reputation, sellers basically cheat their customers, thus ruining their own reputation (and gains), as well as the overall credibility of the sector.

From a legal point of view, the problem is that policies for preventing and punishing this kind of practices are mainly set out by e-commerce platforms, so there is lack of a superior supervising agency to control the sector[70]. In addition, the existing legislation only sets out responsibilities for the sellers engaging in "brushing", but does not involve punishments or penalties for all the other people who are involved in this fraud, such as the companies who ask money in order to leave a good rating or couriers which fake delivery.

In brief, regulatory gaps have allowed many unlawful traders to swoop in with a series of illegal behaviors altering the market order. However, as e-commerce includes many and different business, finding one single ministry or state agency to supervise the sector is quite a hard challenge.

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[69] WONG, Jillian, *They Call It 'Brushing': The Dark Art of Alibaba Sales Fakery*, in "The Wall Street Journal", March 3, 2015, https://blogs.wsj.com/chinarealtime/2015/03/03/they-call-it-brushing-the-dark-art-of-alibaba-sales-fakery/

[70] WONG, Jillian, *Inside Alibaba, the Sharp-Elbowed World of Chinese E-Commerce*, in "The Wall Street Journal", March 2, 2015, https://www.wsj.com/articles/inside-alibaba-the-sharp-elbowed-world-of-chinese-e-commerce-1425332447

1.4.2 Cybersecurity and users' privacy

Cybersecurity and privacy are other two main key challenges affecting e-commerce, with regard to both companies and consumers. In particular, as more and more Chinese consumers shop online using a mobile device, they are increasingly concerned of having their personal information hacked, especially during and after online payments.

According to a report released by the leading Chinese internet security company Qihoo 360, more than six billion pieces of personal information were leaked in 2016, growing of 9.4 percentage points from 2015[71]. Specifically, the Qihoo 360 report argued that 96.1 percent of detected loopholes were of severe vulnerability, while 0.3 percent were of low vulnerability.

Pei Zhiyong, chief researcher for China's first anti-fraud platform 110.360.cn, explained that a large part of the leaks was due to loopholes on websites, to the point that some breaches may have even been conducted by some employees within the hacked companies[72]. For instance, a case that raised serious concerns in China, was related to an internet engineer of the e-commerce platform JD.com, who was involved in a hacker gang that stole around 5 billion pieces of personal information from the platform, including bank and personal accounts data[73].

Hence, given the dreadful impact of a potential cyber breach, it is crucial for online retailers to develop a secure online platform to protect their customers' personal information, but, Pei Zhiyong believes that, as personal information leakages harm only minimally e-commerce platforms, they fail in addressing the problem properly.

However, the government in recent years does have attempted to fight this kind of threat. In fact, starting from the 1 June 2017, companies have a new cybersecurity law (discussed in the next chapter) to refer to for managing users' personal information and data.

1.4.3 Traditional and online retail: brothers yet enemies

E-commerce has exploded in China over the last decade, but to some extent its success has not benefited the growth of China's retail industry at large. On the contrary, online sales have corroded the country's traditional economy, taking customers away from traditional retail channels, as more and more people prefer the ease of purchasing products online to the less

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[71] JIANG, Jie, *Personal information leakage on the rise in China: report*, in "People's Daily Online", March 31, 2017, http://en.people.cn/n3/2017/0331/c90000-9197748-2.html

[72] Ibidem.

[73] Ibidem.

efficient traditional retail channels. As a consequence, many brick-and-mortar shops, supermarkets, hypermarkets have closed in recent years.

This is the result of a particularly fierce competition with regard to prices and taxation. Indeed, e-commerce by cutting transaction costs and intermediaries, reduces heavily the final prices. Plus, with millions of the same kind of product being sold by a correspondent number of online sellers, many try to use a low-price strategy, in order to attract more customers.

In addition, a different fiscal treatment contributes to worsen the competition between tradition and online retailers. In fact, China's coffers suffer from a huge VAT gap, meaning that there is an enormous difference between the taxes which the government might collect from e-commerce activities and the taxes it actually collects[74]. OECD's report "Tax Policy and Tax Reform in the People's Republic of China" has estimated that nearly 55 percent of all VAT revenue is not accounted for in China, thus representing a huge loss for state coffers[75].

Thus, being easier for online sellers avoiding taxes by not invoicing the goods sold, they are able to offer consumers a lower price than brick-and-mortar stores. Hence, it is important that the government finds a way to level the playing field between online and offline trade.

1.4.5 Cross-border e-commerce

A number of blocking issues in cross-border e-commerce still remain to be solved. As cross-border e-commerce allows sellers outside China to directly sell to Chinese consumers without going through intermediaries, many foreign companies have been able to legally bypass a number of Chinese laws and regulations, among which import taxes.

According to Matthew Dresden, expert lawyer in Chinese intellectual property law, one of the major issues related to imported goods in China is represented by "parallel imports" or "grey market goods", among which the most known channel is daigou 代购, literally meaning "buying on behalf of"[76]. The expression "parallel imports" refers to authentic products legally purchased in a foreign country, imported into China, and then sold again on e-commerce platforms. Dresden explains that, China seems to follow the "international exhaustion of trademark rights" standard, which means that once a product protected by trademark has been sold, the proprietor of the

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[74] KPMG, "VAT and the digital economy in China", 2016, https://home.kpmg.com/content/dam/kpmg/pdf/2016/05/tnf-china-vat-digital-economy-march-2016.pdf

[75] OECD Taxation Working Papers, "Tax Policy and Tax Reform in the People's Republic of China", 2013, http://dx.doi.org/10.1787/5k40l4dlmnzw-en

[76] DRESDEN, Matthew, *China Trademarks: Counterfeit Goods and Parallel Imports*, in "China Law Blog", February 7, 2017, https://www.chinalawblog.com/2017/02/china-trademarks-counterfeit-goods-and-parallel-imports.html

trademark does not have exclusive rights to this product anymore, so reselling that product does not constitute trademark infringement. Against this background, it may be difficult to claim trademark infringement and stop these kind of illegal activities, but, as Dresden suggests, in case an online seller claims to be an authorized reseller, this issue can turn into a matter of unfair competition and consumer protection, through which it could be easier to handle the problem of "parallel imports".

In addition, according to the professional services firm Dezan Shira & Associates, loopholes in import taxes regulation have attracted many unlawful traders, both Chinese and foreign ones. On one hand, many foreign manufacturers have started using cross border e-commerce as a tax-free channel to export raw materials to China. On the other hand, many Chinese merchants have purchased products from abroad with business purposes, but declaring that they were for personal use, in order to avoid the many taxes which normally applies to general trade[77].

In addition, a legal different fiscal treatment of goods imported either as "personal parcel articles" or as "general trade", adopted by the Chinese government as a way to encourage cross-border e-commerce, has generated heated discussions between traditional retailers and cross-border e-commerce operators, as the first ones had to fully pay many different types of taxes, while importers using cross-border e-commerce only had to pay a "personal parcel article tax" (more details about this issue are provided in Chapter 2).

Furthermore, according to Kevin Luo, taxation of imported goods used to be a big concern also for Chinese consumers purchasing goods through cross-border e-commerce platforms. In particular, when calculating import duties, it was not clear whether the customs authority would consider the product as being for personal use or as general trade[78].

Part of the above-mentioned problems has already been provided with a solution thanks to new tax policies on goods imported through cross-border e-commerce issued in 2016, which will be discussed more in detail in next chapter. However, it is fair to say also, as noted by WTO Deputy Director-General Xiaozhun Yi, that cross-border e-commerce development does not depend on a single country. So, although digital technologies are making a borderless world

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[77] LIDDLE, Jake, *China Removes Parcel Tax for Cross Border e-Commerce Retail Imports*, in "China Briefing", April 14, 2016, http://www.china-briefing.com/news/2016/04/14/china-removes-parcel-tax-for-cross-border-ecommerce-retail-imports.html

[78] Kevin Luo is the General Manager of Microsoft's Asia R&D Group. Luo is also responsible for China's IP and security policy and is an Assistant General Counsel of Microsoft Corporation.
LUO, Kevin, *E-commerce Laws and Practices in China*, Arizona Journal of International & Comparative Law Vol. 33, No. 1, 2016, p. 225.

possible for e-commerce, if trade restrictions and heavy trade procedures still remain an obstacle to the movement of goods across borders, then all the efforts in improving information technology for facilitating the worldwide matching of demand and supply will go wasted[79].

1.4.6 Legislative framework

E-commerce in China has reached a rapid growth, but, because of the fragmentation of the sector's regulatory framework, related legislation has not been able to keep the pace.

According to Xun Yang, lawyer at Simmons&Simmons in Shanghai, Chinese companies are generally not concerned about legal vagueness, as they tend to grasp the general direction conveyed by the government in the basic laws and then they wait for more detailed guidelines to be released by industry-related ministries and state agencies, each within the limits of their area of responsibilities[80]. This statement perfectly represents the legislative path that China's e-commerce legislation has fallowed in all these years.

Notwithstanding the government's initial approach to e-commerce legislation, today obvious problems have appeared in e-commerce legislation and they need to be solved, in order to promote the further development of the e-commerce sector. Wu Changjun from the School of Labor Science and Law of Beijing Wuzi University, has pointed out three main problems with regard to China's e-commerce legislation: a legislative low rank, lack of coordination between different ministries and state agencies, lack of a superior supervisory authority[81].

First of all, China has not developed yet a statutory law regulating the e-commerce sector. When problems related to e-commerce arises, a series of other statutory laws or administrative regulations, issued by both state and non-state institutions, must be applied. For instance, of particular importance for e-commerce are the regulations concerning the field of e-commerce-related services, such as electronic payments and third-party e-commerce platforms. Being this the case, law enforcement becomes quite difficult.

The second problem identified by Wu is represented by the lack of coordination among the many and different institutions regulating e-commerce at present. Indeed, coordination is not an easy task to achieve considering that e-commerce comprises many business activities and so

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[79] AliResearch, "Inclusive Growth and E-commerce: China's Experience", April 2017. http://unctad.org/meetings/es/Contribution/dtl_eWeek2017c11-aliresearch_en.pdf

[80] YUAN, Yang, *China's cyber security law rattles multinationals*, in "Financial Times", May 30, 2017, https://www.ft.com/content/b302269c-44ff-11e7-8519-9f94ee97d996

[81] WU Changjun, "Chinese E-commerce Legislation Current Situation, Problems and Ways to Improve", 2016, http://dpi-proceedings.com/index.php/dtem/article/download/8776/8345

there is a corresponding amount of laws and regulations, each enacted by different authorities at different times, each regulating only specific subjects based on their area of competence. As a result, e-commerce legislation has developed in a fragmented way, which couldn't keep up with the rapid development of e-commerce, thus revealing many loopholes and regulatory gaps. In addition, this confused regulatory framework did not favour a clear division of responsibilities and failed to establish efficient coordination mechanisms which could improve law enforcement.

Lastly, the third problem related to China's e-commerce legislation consists in the absence of a comprehensive supervisory authority, which could ensure a better control of the whole sector. As a result, regulatory gaps have allowed unlawful behaviors to spread in each and every aspect of e-commerce, from selling of counterfeits and shoddy commodities to cybersecurity issues. Moreover, because of regulatory gaps, both opportunities and challenges present in the e-commerce sector have not been addressed properly.

Although recently the efforts in formulating a comprehensive e-commerce legislation have started providing these issues with initial solutions, China's e-commerce legislation has still a long way to go, especially with regard to law enforcement and the promotion of a sound and healthy development of e-commerce.

Chapter 2 THE CURRENT REGULATORY ENVIRONMENT

2.1 Basic laws

The National People's Congress (NPC), that is China's top legislative body[82], has enacted several laws at national level laying the foundation for implementing China's e-commerce legislation. The main statutory laws related to e-commerce include: Contract Law and E-Signature Law, Law on the Protection of Consumer Rights and Interests, Cybersecurity Law.

In recent years, following the works for the formulation of a comprehensive e-commerce law, many of the above-mentioned laws have been amended and improved, thus providing initial solutions to the problems affecting the sector and also narrowing the gap between e-commerce development and legislative progress.

Below follows a brief overview of the above-mentioned statutory laws, with a particular focus on the legal problems and flaws related to the e-commerce sector.

2.1.1 Contract Law and Electronic Signature Law

First and foremost, the Contract Law of the People's Republic of China[83] (hereinafter "Contract Law"), effective since the 1st October 1999, explicitly recognizes the electronic forms of contract.

In particular, article 11 of the Contract Law stipulates that if the parties decide to make the contract in writing, a memorandum of contract, letter or electronic message (including telegram, telex, facsimile, electronic data exchange and electronic mail, etc.) are equivalent because they all can provide a tangible form of the content of the contract. In addition, many articles (i.e. art. 16, art. 26, art. 33, art. 34) provide for the recognition and validity of e-contracts, as they clearly specify when and where the e-contract is formed.

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[82] Article 7 of Legislation Law of the People's Republic of China provides that:
"The National People's Congress and its Standing Committee exercise the legislative power of the State.
The National People's Congress enacts and amends basic laws governing criminal offences, civil affairs, the State organs and other matters.
The Standing Committee of the National People's Congress enacts and amends laws other than the ones to be enacted by the National People's Congress, and when the National People's Congress is not in session, partially supplements and amends laws enacted by the National People's Congress, but not in contradiction to the basic principles of such laws."
Legislation Law of the People's Republic of China, issued on April 29, 2000 and amended for the last time on March 15, 2015, http://eng.mod.gov.cn/publications/2017-03/02/content_4774201.htm

[83] Zhonghua Renmnin Gongheguo Fa 中华人民共和国合同法, Contract Law of the People's Republic of China, adopted by the National People's Congress on March 15, 1999, and promulgated by the Presidential Order No. 15, effective since October 1, 1999. http://www.wipo.int/wipolex/en/details.jsp?id=6597

However, as observed by Stephen E. Blythe, Professor of Law and Accounting at New York Institute of Technology[84], although the Contract Law recognizes that an electronic message is equal to a writing, it fails to identify the other two equivalencies requested by the United Nations Commission on International Trade Law (UNCITRAL)'s Model Law on Electronic Commerce of 1996, signed and ratified by China in 2004[85]. The other two characteristics for a functional equivalency consists in: same legal validity of electronic and written signature, as well as same legal status of electronic record and original record.

Hence, according to Blythe, there was a problem related to the validity and enforceability of e-signatures. In particular, if considering e-signature as "documentary evidence", and, thus, admissible in court, it should be an original document. However, when working with e-contracts, the recipient only receives a copy and not the original. So, this explains the importance of elaborating an electronic signature law.

The Electronic Signature Law of the People's Republic of China[86] (hereinafter "E-Signature Law") was adopted in China on 28 August 2004 and is effective since 1 April 2005. It is entirely based on the UNCITRAL Model Law on Electronic Signatures of 2001[87], that China signed and ratified in 2004.

It is considered the first law which has paved the way for China's e-commerce booming growth, as it has removed the biggest legal obstacle for the development of e-commerce in the country, which was related to the validity and enforceability of e-contracts in Chinese courts, as mentioned above. In fact, under article 14 electronic signatures have the same legal validity as that of signatures made by hand or seal.

However, the fact that the law has granted e-signatures legal validity does not mean that any e-signature is authentic and reliable. As a consequence, in order to provide a more reliable transaction environment, under the E-Signature Law, only an organization licensed by the

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[84] BLYTHE, Stephen, "China's New Electronic Signature Law and Certification Authority Regulations: A Catalyst for Dramatic Future Growth of E-Commerce", *Chicago-Kent Journal of Intellectual Property*, 2007.

[85] The United Nations Commission on International Trade Law (UNCITRAL)'s Model Law for Electronic Commerce, was adopted on 12 June 1996 and revised in 1998, but was signed and ratified by China only in 2004. http://www.uncitral.org/pdf/english/texts/electcom/V1504118_Ebook.pdf

[86] Zhonghua Renmin Gongheguo Dianzi Qianming Fa 中华人民共和国电子签名法, Electronic Signature Law of the People's Republic of China, was adopted at the 11th Meeting of the Standing Committee of the Tenth National People's Congress on 28 August 2004 and is effective since 1 April 2005. http://www.npc.gov.cn/englishnpc/Law/2007-12/05/content_1381960.htm

[87] UNCITRAL Model Law on Electronic Signatures, adopted on 5 July 2001. http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2001Model_signatures.html?lipi=urn%3Ali%3Apage%3Ad_flagship3_pulse_read%3BYZ0Ech0NRcGH3Qz%2BY8ooOQ%3D%3D

Ministry of Industry and Information Technology can act as Certification Service Provider and provide third-party verification, by issuing a certificate confirming the identity of the parties involved in the exchange of electronic data[88].

In conclusion, the Contract Law and the E-Signature Law, have been the first steps in China's e-commerce legislation. While, the Contract Law only recognizes the equal validity of written and electronic messages, the E-Signature Law has played a bigger role in upgrading the legal status of e-contracts and promoting a more secure environment for e-commerce transactions.

2.1.2 Law on Protection of the Rights and Interests of Consumers

In order to strengthen consumers' confidence in business accountability and, so, to boost domestic demand, it is important to ensure consumers' rights protection. Thus, the Law on the Protection of Consumer Rights and Interests[89] (hereafter referred as the "Consumer Protection Law") of 1993, has been revised for the last time in 2013.

The amendments, effective since March 2014, aim at increasing consumer' powers, adding rules for retailers and strengthening punishments for businesses that mislead shoppers. In addition, they introduced new issues specifically related to e-commerce, such as consumers' personal information, online trading security and liabilities of e-commerce platforms.

Under article 25, a new provision introduced with the amendments clearly defines the period in which the consumer, at his own expense, can return a product through the Internet, phone, mail or television, that is seven days within the date of receipt of the product[90]. No justification for returning the good is required and the seller must refund the consumer in full within seven days from receipt of the returned good, provided that the products are returned in "good condition". An exception for returning goods is made for custom-made goods, perishable

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[88] BLYTHE, *supra* note 88.

[89] Zhonghua Renmin Gongheguo Xiaofeizhe Quanyi Baohu Fa 中华人民共和国消费者权益保护法, People's Republic of China Law on Protection of the Rights and Interests of Consumers, adopted at the 4th meeting of the Standing Committee of the Eighth National People's Congress on October 31, 1993, amended for the last time on October 25, 2013 to take effect on 15th March, 2014, http://www.npc.gov.cn/npc/xinwen/2013-10/26/content_1811773.htm, (unofficial English reference available at: http://www.hongfanglaw.com/upload/Law%20of%20the%20People%E2%80%99s%20Republic%20of%20China%20on%20the%20Protection%20of%20Consumer%20Rights%20and%20Interests%20(2013%20Amendment)%E3%80%90English%E3%80%91.pdf)

[90] In case of purchase of defective durable goods, such as motor vehicle, computer, television, refrigerator, air conditioner, washing machine, or renovation services, instead, the consumer has a six-months period for return, replacement or repair of the defective product. Plus, the online operator is required to proof that the good is not defective and should bear the cost of transportation. (Id., *supra* note Art. 23 and Art. 24)

goods, audio-visual works or computer software downloaded online, newspapers, as well as goods that are not suitable for return based on their nature and the case in which, at the time of purchase, the consumer has agreed that the product is not returnable. For instance, an online seller clearly stating that goods are not returnable is the typical case of a daigou 代购[91] agent, who often purchases abroad only one single item of a product, so they don't provide for neither exchange nor refund.

However, as noted by Professor of Civil and Commercial Law at Renmin University of China Yang Lixin, this provision results quite vague, as the Consumer Protection Law doesn't specify which products are not proper to return based on their nature, as well as it doesn't explain what "good condition" means[92]. Professor Yang suggests that, as usually delivered food or medicines need to be unpacked and tasted to know whether they are defective, it is impossible to return this kind of products in "good conditions". Consequently, they can be considered as products that are not suitable for return based on their nature and no reimbursement is possible, although they can still be exchanged for a new product. If, eventually, the seller still refuses to accept an exchange of the product, then the consumer might file a complaint to the third-party platform, the consumer association or the Ministries for Commerce and Industry, but, if the dispute cannot be solved, consumers might also bring the case before a court. Being this the case, it seems that returning goods can become a very troublesome process, making consumers to give up receiving a proper refund or exchange, thus having their rights not protected in full.

In trying to better protect consumers' rights, the Consumer Protection Law sets out clear requirements for online operators concerning the use of standard contracts[93]. Online retailers can, for sure, subject consumers to their own policies and terms of service, such as longer period for returning goods or free return shipping, and once the consumer agrees to the terms of services, the latter should prevail on the provisions contained in the Consumer Protection Law.

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[91] Daigou is a Chinese phrase that means "purchasing on behalf of". The Daigou agent purchase overseas quality products, then he promotes the products through social networks or e-commerce platforms and finally ships the product back China. This business first emerged in China as a way for consumers to buy goods that are unavailable or too expensive in the country because of import tariffs. https://www.techinasia.com/daigou-sites-becoming-popular

[92] CHENG, Hui 成慧, "San Wen Xin《Xiaofa》" 三问新《消法》(Three Questions on the New "Consumer Law"), *Zhongguo Renda Wang*, (http://www.npc.gov.cn/npc/xinwen/lfgz/lfdt/2013-11/08/content_1813028.htm), November 8, 2013.

[93] A standard contract is a form of contract that is not specifically set out for the transaction in question, but is drawn up in advance and applied to numerous transactions. The concept is that one party, the signatory, can only accept and trade on a set of terms set by the other party and has little or no ability to negotiate more favorable terms. https://legal-dictionary.thefreedictionary.com/standard+form+contract

However, under Article 26, the online retailer can by no means restrict consumers' rights (for example by shortening the period for returning goods) or exempt itself from liabilities through the use of standard contracts or unfair rules towards the consumer.

Other provisions specifically related to the e-commerce sector and aiming at promoting a more transparent market environment, require a stricter regulation of e-commerce third-party platforms. In particular, online sellers of both goods and services[94] are required to provide consumers with information such as their business address, contact methods, the quality and quantity of goods or services, prices or costs, safety precautions and risk warnings, after-sales service, and civil liability (Art. 28). In case the consumer who purchase goods or services through e-commerce platforms have his lawful rights harmed, they have the right to ask for a compensation from the seller (Art. 44). However, if the consumer is not able to retrieve the online seller's contact information on the e-commerce platform, then, the online platform will be directly responsible for the compensation and might seek reimbursement from the vendor later (Art. 48). In addition, if any e-commerce platform is aware that there are sellers or service providers using the e-commerce platform to deliberately harm the legitimate consumer' rights and interests, but at the same time it fails to take any measure to stop them, then the e-commerce platform operator and the online seller should bear joint responsibility (Art. 44).

In doing so, a heavy burden is placed on e-commerce platforms, as a way to enforce them to take responsibility for business operators' misconduct. However, the burden doesn't seem that heavy, considering that the SAIC survey in 2015 accusing Alibaba of not taking proper measures against intellectual property rights infringements on its platforms (see section 1.4 for further details) arrived when the new Consumer Protection Law was already effective. According to the minister of the SAIC Zhang Mao, if there is such a high rate of market violations is because penalties for who breaks the rules are too low[95]. So, he suggested that only if penalties are unaffordable for e-commerce players, the market order will improve.

In fact, under Article 56, in case of violation of the provisions in the Consumer Protection Law, online sellers can be ordered to suspend their business operations and have their business license revoked. In addition, when unlawful profits have been made, the fine to pay must be from double to ten times the illegal profit; if there is any illegal profit, then the fine has been increased

[94] The Consumer Protection Law includes also financial services, such as certifications, insurance and banking services, which instead will not be covered under the E-commerce Law.

[95] AN, Lu, *China to strictly regulate online commerce*, Xinhua, March 9, 2015, http://www.xinhuanet.com/english/2015-03/09/c_134051166.htm

so that it can reach a maximum of RMB 500,000. Plus, the new Consumer Protection Law introduced the possibility that the punishing organs may include the violator into a credit file and disclose it to the public. In worst cases in which the violation constitutes a crime the violator may even be subject to criminal liability (Art. 57).

The Consumer Protection Law also provides for the protection of consumers' personal information. However, as recently the Cybersecurity Law has been issued, this topic is more properly discussed in the following section.

2.1.3 Cybersecurity Law

The vigorous promotion of Internet set under the "Internet Plus" action plan (see section 1.3.1 "Economic background) has lifted serious question about the country's situation with regard to data protection and cybersecurity. In addition, the boom of e-commerce and the explosive rise of third-party services providers, has brought many companies to collect and process a large amount of data from users' behavior, in an attempt to develop targeted marketing strategies. Considering China's huge Internet population, it means that Chinese consumers' personal information is increasingly exposed to cybersecurity and privacy risks, such as telecom frauds and personal information leaks. Hence, a national-level cybersecurity law was a key priority for the Chinese government in order to better protect consumers' privacy, but also for companies in order not to suffer from potential leak risks and enjoy a more trustworthy reputation in the eyes of the consumers.

The Cybersecurity Law of the People's Republic of China (hereinafter "Cybersecurity Law") was adopted at the 24th Session of the Standing Committee of the 12th National People's Congress on 7 November 2016 and effective since 1 June 2017[96].

According to Scott Thiel[97], partner at law firm DLA Piper in Hong Kong, the provisions for the protection of personal data are in line with worldwide practices and in particular with Europe's General Data Protection Regulation[98]. In fact, for the first time in China's legislation, the

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[96] 中华人民共和国网络安全法, Cybersecurity Law of the People's Republic of China, adopted by NPC's Standing Committee on 7 November 2016. Chinese version: http://www.npc.gov.cn/npc/xinwen/2016-11/07/content_2001605.htm. Translation of selective articles taken into consideration in this thesis may be found at: https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/02/overview-of-cybersecurity-law.pdf.

[97] YUAN, Yang, *China's cyber security law rattles multinationals*, in "Financial Times", May 30, 2017, https://www.ft.com/content/b302269c-44ff-11e7-8519-9f94ee97d996

[98] The European Union's General Data Protection Regulation (GDPR), also Regulation (EU) 2016/679, was enacted by the European Parliament and the Council in 27 April 2016. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG&toc=OJ:L:2016:119:TOC

Cybersecurity Law has succeeded in providing for a detailed definition of "personal information", which was missing in other previous laws and regulations. In particular, under Article 76, "personal information" 个人信息 includes "all kinds of information, recorded electronically or through other means, that taken alone or together with other information, is sufficient to identify a natural person's identity, including, inter alia, name and surname, date of birth, identification number, biometric data[99], address and phone number".

On the contrary, the definition of "network operator" 网络运营者 includes owners and administrators of networks, as well as online service providers, thus virtually including any organization or individual who owns and runs a website. According to Carly Ramsey, associate director at Control Risks, a risk-management consultancy firm, PRC's Cybersecurity Law being so broad in scope puts any company running a website at risk of regulatory enforcement. This means that even if a company does not deal with cybersecurity, the Chinese government may have political interests in controlling that company and restricting its operations[100].

With regard to collection of personal information, the Cybersecurity Law introduces more clear and stricter obligations for network operators, also enhancing the market transparency and preventing information leaks. In fact, under Article 41, network operators are required to keep strict confidentiality of users' data and establish a sound mechanism for protecting users' data. However, before collecting users' personal data, network operators are required to publish rules for collection and processing of data, to clearly state the purpose, means and scope of collection, as well as to obtain the user's consent.

In addition, network operators cannot disclose, tamper with, destroy or provide to third-parties the data collected (Art. 42). Plus, they should also take proper measures in order to protect user's data and prevent disclosure, damage or loss. In case one of these situations occur, they should take remedial measures, promptly inform the user and report to competent authority.

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[99] The EU GDPR, under Article 4, paragraph 14, defines biometric data as "personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data". http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG&toc=OJ:L:2016:119:TOC

[100] YUAN, Yang, *China's cyber security law rattles multinationals*, in "Financial Times", May 30, 2017, https://www.ft.com/content/b302269c-44ff-11e7-8519-9f94ee97d996

However, the following provisions of the Cybersecurity Law regulating "critical information infrastructure operators" 关键信息基础设施的运营者[101] are particularly controversial and believed by some business representatives and analysts to be discriminatory towards foreign companies[102]. In particular:

- Article 35 provides that "critical infrastructure information operators, when procuring products and services which may affect national security, are required to go through a national security review"[103];
- Article 37 states that "personal information and important data[104] collected and generated by critical information infrastructure operators in the PRC must be kept inside the country. In case information and data has to be transferred overseas due to business needs, a security assessment will be conducted in accordance with measures jointly defined by China's cyberspace administration bodies and the relevant departments under the State Council"[105];
- Article 39 charges China's cyberspace administration bodies with the task of "conducting random inspections for assessing security risks of crucial information infrastructures and their operators"[106].

First of all, the provision requiring the storage of data inside China's borders will heavily affect foreign firms from both an operational and economical point of view. Indeed, foreign companies will have to change their modus operandi, as they are not allowed anymore to share data in cloud servers across the world, but they must store data on China-based servers, thus leading to fragmentation and increased costs[107]. In addition, the above provisions are also believed to

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[101] A definition of "critical information infrastructure operators" is not explicitly included in the PRC's Cybersecurity Law. However, under article 35 of the PRC's Cybersecurity Law, there is mention of important industries, such as public communications, energy, transportation, water, finance, public services and e-governance, that if encounter damage, loss or leak of controlled data, may pose a serious threaten to national security or people's livelihoods. (PRC's Cybersecurity Law, *supra* note 99).

[102] YUAN, Yang, *China's cyber security law rattles multinationals*, in "Financial Times", May 30, 2017, https://www.ft.com/content/b302269c-44ff-11e7-8519-9f94ee97d996

[103] Translation of selective articles taken into consideration in this thesis may be found at: https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/02/overview-of-cybersecurity-law.pdf.

[104] A definition of what "important data" refers to is not included in the PRC's Cybersecurity Law.

[105] Translation of selective articles taken into consideration in this thesis may be found at: https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/02/overview-of-cybersecurity-law.pdf.

[106] Translation of selective articles taken into consideration in this thesis may be found at: https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/02/overview-of-cybersecurity-law.pdf

[107] YUAN, Yang, *China's cyber security law rattles multinationals*, in "Financial Times", May 30, 2017, https://www.ft.com/content/b302269c-44ff-11e7-8519-9f94ee97d996

represent the government's intention of preventing foreign governments to collect data about Chinese people.

In addition, also the other two provisions requiring companies to go through national security review and security risk assessment have created serious concerns among foreign companies about the fact that security risks assessments might become a tool of industrial espionage used by the Chinese government, in order to steal trade secrets from foreign companies, while giving Chinese companies a consistent advantage[108].

As for legal liabilities, network operators which violates the provisions contained in the Cybersecurity Law may be ordered to temporarily suspend their business operations, have their website shut down or have their business license revoked. Penalties can range between a minimum of RMB 10,000 and a maximum of one million yuan in more serious cases and fines for the personnel directly in charge of managing the data can be subject to legal liabilities and sanctions as well.

According to Xun Yang, a lawyer at Simmons&Simmons in Shanghai, the promulgation of this law means clearly that cybersecurity and data protection have become two key priorities for the government[109]. While the provisions covering personal information security, that result mainly in line with worldwide regulations, have been greeted very favorably as a major breakthrough in data protection in the country, many concerns, instead, have aroused among foreign companies, concerning the possibility of industrial espionage by Chinese government, as well as potential costs in order to comply with China's Cybersecurity Law.

2.2 Departmental regulations[110]

The above mentioned basic laws are meant to provide only a broad guideline, which explains why most of the times they are deemed to be too vague. In order to be implemented

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[108] YUAN, Yang, *China's cyber security law rattles multinationals*, in "Financial Times", May 30, 2017, https://www.ft.com/content/b302269c-44ff-11e7-8519-9f94ee97d996

[109] Ibidem.

[110] Article 71 of Legislation Law of the People's Republic of China (Order of the President No.31) provides that "The ministries and commissions of the State Council, the People's Bank of China, the State Audit Administration as well as the other organs endowed with administrative functions directly under the State Council may, in accordance with the laws as well as the administrative regulations, decisions and orders of the State Council and within the limits of their power, formulate rules.

Matters governed by the rules of departments shall be those for the enforcement of the laws or the administrative regulations, decisions and orders of the State Council." http://english1.english.gov.cn/laws/2005-08/20/content_29724.htm

more effectively, it is necessary that each ministry transforms them into concrete measures, made of specific policies, procedures and rules.

With regard to e-commerce, it is a business that includes not only trading, but also many other sectors, such as information technology, taxation, customs clearance and so on, consequently, it is regulated by multiple state agencies, such as the Ministry of Industry and Information Technology and Ministry of Commerce.

Although the current regulatory framework is fragmented, the launch of legislative works on the formulation of an e-commerce law, along with the implementation of the "Internet Plus" action plan, have prompted most of the related ministries to issue a growing number of regulations to close legislative gaps. In addition, driven by the government's support, e-commerce related ministries and state agencies have started cooperating and jointly releasing supplementary regulations for facilitating e-commerce growth. For instance, this is the case of the new policies regulating customs and taxation with regard to products imported through cross-border e-commerce channels.

2.2.1 Electronic payments

On 28 December 2015, the People's Bank of China, that is China's central bank, issued the Administrative Measures for Online Payment Business of Non-Bank Payment Institutions (hereinafter "Measures for Online Payment"), effective since 1 July 1 2016[111].

"Non-bank payment institutions" are defined, under Article 2 of the Measures for Online Payment, as institutions that are not banks, but which, if licensed, can provide online payment services through the Internet, mobile devices, landlines and interactive digital television.

The Measures for Online Payment also intend to limit the scale of payments transferred, as, based on Article 3, non-bank payment institutions should "provide fast and convenient payments in micro and small amounts", so they are not meant to be a tool for the transfer of large amounts of money[112], but a way to better develop the e-commerce sector.

In addition, in order to address the problem of the proliferation of anonymous and fake payment accounts, which threaten the security and accountability of the e-payments industry,

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[111] Feiyinhang Zhifu Jigou Wangluo Zhifu Yewu Guanli Banfa 非银行支付机构网络支付业务管理办法, Administrative Measures for Online Payment Business of Non-Bank Payment Institutions of the People's Bank of China, issued on 28 December 2015, effective since 1 July 2016, Chinese version: http://www.pbc.gov.cn/zhifujiesuansi/128525/128535/128629/3301282/index.html

[112] ZOU, Roy, *China regulates online payment business of non-bank players*, in "Winter/Spring 2016 TMT China Brief", Hogan Lovells, February 26, 2016, https://www.hlmediacomms.com/files/2016/02/China-regulates-online-payment-business-of-non-bank-players-.pdf

as well as of the e-commerce sector, the Measures for Online Payment require a registration of the account on a real-name basis. In particular, under Article 6, licensed non-bank payment institutions are allowed to open payment accounts for their costumers only on a real-name basis, meaning that a valid identity card is the only document accepted for the identification of the customers. In addition, non-bank payment institutions should also take efficient measures in order to verify the authenticity of the identity document provided and keep a copy of it.

However, non-bank payment institutions are prohibited from opening payment accounts for financial institutions or any other organization providing financial services, including credit, financial management, guarantees, trust services, foreign exchange services (Art. 8), as a way to redirect financial institutions towards the traditional banking system, so to better control them and avoid the risk of money laundering.

Besides the Measures for Online Payment, the People's Bank of China on 4 January 2018 has issued the Interim Notice on Issuing Provisions on Barcode and QR Code Payment Business Standards, which will become effective on 1 April 1 2018[113]. Based on the Interim Notice, the main purpose of this regulation is to limit the risks related to the use of QR codes for payments, such as frauds, but also information breaches. In particular, all transactions exceeding RMB 500, and then RMB 1,000 and RMB 5,000, will be subject to additional levels of verification for security reasons[114]. In addition, all companies providing any code-based payment services must obtain both an online payment license and a bank card receipt business license; plus, all transactions between bank and non-bank payment providers occurring through bar codes must go through the People's Bank of China's clearing system.

The above policies show a clear intention to close the legislative gaps, which have allowed the booming development of e-payments, but also fraudsters to take advantage of regulatory loopholes and engage in unlawful activities. Thanks to these supplementary measures, such as account registration on real-name basis, different level of verification depending on the transaction value, as well as the improvement of the overall supervisory system, the electronic payment industry can provide a more reliable and secure service experience.

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[113] The People's Bank of China, *PBC Issues Barcode and QR Code Payment Rules*, January 4, 2018, http://www.pbc.gov.cn/english/130721/3456052/index.html

[114] LENG, Sidney, *China's central bank tightens security in US$5.5 trillion QR code payment services*, in "South China Morning Post", 28 December 2017, http://www.scmp.com/news/china/economy/article/2126025/chinas-central-bank-tightens-security-us55-trillion-mobile

2.2.2 Cross-border e-commerce

Cross-border e-commerce, as it was the case of other sectors discussed before, when started having success in China, has developed in a quite unregulated environment. However, since the overall e-commerce sector has drawn Chinese government's attention, things are changing in all related businesses, cross-border e-commerce included, which until a couple of years ago had enjoyed particularly preferential policies[115].

Based on a Sovereign's market research on Chinese e-commerce, foreign companies that want to sell their products through Chinese cross-border e-commerce platforms do not need to obtain any licensing or business registration from the Chinese government. However, they still need to register their business information on the e-commerce platform and provide the required documentation[116]. There are, instead, restrictions concerning product categories, considered that some products are restricted or forbidden from entering the country without a specific license, such as when exporting seafood in China.

With this regard, in 2016, new policies have been introduced in China with a view to regulate cross-border e-commerce, that are the Announcement on Issuing the List of the Cross-border E-commerce Retail Imports (hereinafter "Positive List")[117], the Notice Concerning Import Tax Policy on Cross-border Retail E-commerce and the Notice on Relevant Issues Concerning the Adjustment of Import Duties on Inbound Articles (the last two policies which are related to taxation will be discussed in next section).

The Positive List contains a list of 1142 types of products[118], which are allowed to be imported in China through cross-border e-commerce, most of them are daily products with high demand in the country, such as food and beverage, apparel, home appliances, cosmetics and

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[115] LIU, Xinyu, *Legal Risks Confronting Cross-Border E-Commerce*, in "China Law Insight", October 23, 2017, https://www.chinalawinsight.com/2017/10/articles/uncategorized/legal-risks-confronting-cross-border-e-commerce/

[116] Sovereign (China) Group: *An Introduction to E-Commerce in China*, 2016, https://www.sovereigngroup.com/wp-content/uploads/2015/04/China-e-commerce-2016-for-website.compressed.pdf

[117] Guanyu Gongbu Kuajing Dianzi Shangwu Lingshou Jinkou Shangpin Qingdan de Gonggao 关于公布跨境电子商务零售进口商品清单的公告，（2016 年第 40 号）, Announcement on Issuing the List of the Cross-border E-commerce Retail Imports (No. 40 [2016]), issued by the Ministry of Finance and other ministries and state administrations on April 6, 2016, effective since June 2016, http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201604/t20160401_1934275.html

[118] A few days after the introduction of the Positive List (*supra* note 118), on April 15, 2016 a list with other 151 types of product categories was announced, including fresh fruit, seafood, liquid milk, cooking oil, as well as nutritional and health products. https://2016.export.gov/china/doingbizinchina/industryinfo/ecommerce/eg_cn_099994.asp

toys. Products included in the list do not need any import license, but they should still go through customs procedures.

In addition, the said products, before entering China, have to include a declaration for the customs in order to be classified as "personal articles" or "general trade". Under the General Administration of Customs of China (GACC) Announcement No. 56 on Cross-Border E-commerce Trade Supervision, effective since August 2014, personal parcels are defined by the two following criteria:

> "1. The value of the parcel must be lower than RMB 1,000;
>
> 2. The goods in the parcel are for personal use.
>
> The customs officer has the authority to determine if the parcel is for personal use or not."[119]

As for the inspection and quarantine process, personal parcels are not required to go through the China Inspection and Quarantine (CIQ) process, but if products are imported in bulk as commercial cargo, then they must go through CIQ procedures.

Although the above policies may increase prices paid by consumers purchasing foreign products through cross-border e-commerce, they will help to narrow the gap between cross-border e-commerce and traditional retailers, thus promoting a more pacific competition between these two sectors of the retail industry.

2.2.3 Taxation

The problem of taxation has always generated heated discussions due to the different fiscal treatment of traditional retailers and e-commerce operators. In addition, taxation used to be a big concern also for most of Chinese consumers purchasing goods through cross-border e-commerce platforms. In particular, when calculating importation duties, it was not clear whether the customs authority would consider the product as being for personal use or as general trade[120].

In order to solve these problems, two new policies, effective from April 2016, were issued: the Notice Concerning Import Tax Policy on Cross-border Retail E-commerce (hereafter "Import

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[119] Sovereign (China) Group, *An Introduction to E-Commerce in China*, 2016, https://www.sovereigngroup.com/wp-content/uploads/2015/04/China-e-commerce-2016-for-website.compressed.pdf

[120] LUO, Kevin, E-commerce Laws and Practices in China, Arizona Journal of International & Comparative Law Vol. 33, No. 1, 2016, p. 225.

Tax Policy")[121] and the Notice on Relevant Issues Concerning the Adjustment of Import Duties on Inbound Articles (hereinafter "Import Duties Policy")[122].

Before these policies, goods imported through direct mail or stored in bonded warehouses were regarded as personal consumption items. Consumers where exempted from paying import duties, consumption taxes and value-added tax (VAT) [123] and they only had to pay personal postal articles taxes, dived in four rates (10%, 20%, 30%, 50%) depending on the product category. In addition, if the due tax did not exceed RMB 50, consumers were exempted from paying it.

Under the Import Tax Policy, jointly issued by the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation, instead, goods purchased online through cross-border e-commerce platforms are treated as imported goods, so, they are subject to customs duty[124], VAT and consumption tax[125]. Taxes include retail price of goods, transportation costs and insurance costs. The consumer corresponds to the tax payer, although cross-border e-commerce platforms can offer to pay taxes on behalf of their customers. The differences, before and after the new Import Tax Policy, between import taxes applied to goods imported through cross-border channel and import taxes applied to other traditional import channels ("general trade") is showed in the table below[126].

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[121] Guanyu KuajingDianzi Shangwu Lingshou Jinkou Shuishou Zhengce de Tongzhi 关于跨境电子商务零售进口税收政策的通知 (财关税), 2016 年第 18 号，Notice Concerning Import Tax Policy on Cross-border Retail E-commerce (No. 18 [2016]) issued by the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation on March 24, 2016, effective since April 8, 2016, http://tax.mofcom.gov.cn/tax/taxfront/en/article.jsp?c=30111&tn=1&id=faaaa90d546e4b4ba932682a924de247

[122] Guanyu Tiaozheng Jinjing Wupin Jinkou Shui Youguan Wenti de Tongzhi 关于调整进境物品进口税有关问题的通知 (税委会), 2016 年第 2 号, Notice on Relevant Issues Concerning the Adjustment of Import Duties on Inbound Articles (No.2 [2016]), issued by the Customs Tariff Commission of the State Council on 16 March 2016 and effective since 8 April 2016. http://www.chinatax.gov.cn/n810341/n810755/c2044092/content.html

[123] A value-added tax (VAT) is a type of consumption tax that is placed on a product whenever value is added at each point in the manufacturing-distribution-sales process of an item. Sales tax, instead, is only paid by the consumer at the very end of the supply chain. VAT is based on a taxpayer's consumption rather than his income and applies equally to every purchase. https://www.investopedia.com/terms/v/valueaddedtax.asp

[124] Import duty is a tax collected on imports and some exports by the customs authorities of a country. It is usually based on the value of the goods that are imported. https://www.investopedia.com/terms/i/import-duty.asp

[125] A consumption tax is a tax levied on consumption spending on goods and services. The tax base of such a tax is the money spent on consumption. https://en.wikipedia.org/wiki/Consumption_tax
Considered that there are different types of consumption tax, this section will discuss only VAT and customs duties.

[126] Fung Business Intelligence, "Cross-border E-commerce (Import)", March 2017, https://www.fbicgroup.com/sites/default/files/SCR2017_Issue7.pdf

Comparison of different business models, as of April 2016

	CBEC model	General import model
Tax levied	• Before April 8, 2016: **Personal postal articles tax** • After April 8, 2016: **Tax for CBEC***	• **Import duties + VAT + consumption tax**
Tax rates	• Before April 8, 2016: **Personal postal articles tax:** 10%, 20%, 30%, 50% varies from products • After April 8, 2016: **Tax for CBEC:** Import duties (0%) + 70% of VAT and consumption tax	• **Import duties**: varies from products • **VAT**: 17% • **Consumption tax**: varies from products (e.g., 30% for cosmetics)

Source: *Various Internet sources; compiled by Fung Business Intelligence*

** Note: From April 8, 2016, a new tax for CBEC has replaced the tax for personal postal articles tax.*

As for tax rates, individuals who purchase imported goods through cross-border platforms within a limit of RMB 2,000 per single transaction or RMB 20,000 in one year are exempted from paying customs duty, but are now subject to 70% of the standard rate of VAT and consumption tax payable. Considering that VAT for most of imported goods is charged at a standard rate of 17%, it makes imported products subject to an 11.9% (calculated as 17% x 70%) VAT. The previously existing exemption for goods whose tax does not exceed RMB 50 has been eliminated. Moreover, if the good imported through cross-border e-commerce is returned within 30 days from the date on which customs release the commodity, tax payers can apply for tax refund and adjust their individual annual total transaction amount.

In addition, under the Import Tax Policy, when a transaction value exceeds the limit for single or annual transaction, goods will then be treated as general trade and taxed in full. With this regard, under the Import Duties Policy[127], three new types of import tax rates (instead of four) apply, depending on the product category. The table below shows the difference in personal postal article tax rates before and after the new Import Tax Policy[128].

[127] Id., *supra* note 117.

[128] Fung Business Intelligence, "Cross-border E-commerce (Import)", March 2017, https://www.fbicgroup.com/sites/default/files/SCR2017_Issue7.pdf

Comparison of the current and new personal postal articles tax

	Personal postal articles tax BEFORE April 8, 2016	Personal postal articles tax AFTER April 8, 2016
10%	• Food & beverage, leather clothes & accessories, bags & shoes, furniture, toys	--
15%	--	• Food & beverage, furniture, toys • Products with a zero most-favored-nation (MFN) tariff rate
20%	• Apparel & textile, general watches	--
30%	• Luxury watches (>10,000 yuan)	• Leather clothes & accessories, bags & shoes, apparel & textile, general watches
50%	• Cosmetics, skin care products	--
60%	--	• Luxury watches, cosmetics • Luxury products applicable to consumption tax

Source: *China Customs; compiled by Fung Business Intelligence*

The new policies have been implemented with the purpose of better regulating cross-border e-commerce and improving tax collection, as a way to reduce the tax gap between cross-border e-commerce and traditional import channels, as well as to provide a fairer market environment for all the players engaging in import of goods. In addition, also consumers have been provided with clearer rules with regard to import taxes.

2.2.4 SAIC's Administrative Measures for Online Trading

The State Administration for Industry and Commerce (国家工商行政管理总局, SAIC) is the competent authority of ministerial level directly under the State Council in charge of market regulation and supervision[129]. On 26 January 2014 the SAIC promulgated the Administrative Measures for Online Trading [130] (hereinafter referred to as "Measures for Online Transaction"), which have come into force on March 15th of the same year, replacing the prior Interim Measures for the Administration of Online Commodities Trading and Relevant Services. Since its issue in 2014, the Measures for Online Transactions have acted as the main regulatory reference for e-commerce in China, due to the lack of a comprehensive e-commerce law.

[129] State Administration for Industry and Commerce (SAIC) of the People's Republic of China, Mission: http://www.saic.gov.cn/english/aboutus/Mission/

[130] Wangluo Jiaoyi Guanli Banfa 网络交易管理办法, Administrative Measures for Online Trading, issued by Order No. 60 of the State Administration for Industry and Commerce (SAIC) of the People's Republic of China on January 26, 2014 and effective since March 15, 2014, in Chinese: http://gkml.saic.gov.cn/auto3743/auto3745/201402/t20140217_141847.htm

The Measures for Online Transactions apply to all products and services purchased through the Internet and mobile applications as well, considering the increasing number of people who make purchases through mobile phones, and they regulate the activities of anyone who engages in online trading, including individuals (both buyer and seller), enterprises and service providers, such as the third-party trading platform or providers of services like advertisement, credit rating, payment, logistics, courier services, Internet access, server hosting, as well as webpage design (Art. 3).

The Measures for Online Transactions have been the first effort in enhancing overall online business credibility, as a way to boost online shopping. In this respect, clear obligations of online business operators and service providers are defined, starting from the requirements for real-name registration, especially with regard to individual sellers. The Measures for Online Transaction, under Article 7, stipulate that any business operator engaging in online transactions of commodities and services should undergo industrial and commercial registration; as for natural persons, they may engage in online business through a third-party platform, to which they are required to submit their registration on a real-name basis, by providing authentic identity information, such as name and surname, address, valid identity certificate and valid contact information. This clarification of the real-name registration requirements is a significant contribution to making the market more transparent and reliable, as well as in improving consumers' protection rights, when customers wish to return products or launch complaints.

Other important provisions recall the Consumer Protection Law with reference to the protection of consumers' personal information. However, under the Measures for Online Transactions, privacy protection does not refer merely to consumers' personal information, but is extended also to trade secrets of enterprises that engage in commercial transactions online as well (Art. 18). Consequently, online operators and their employees must keep strict confidentiality of any personal or business information collected, and penalties are set out in case they illegally provide or sell it to others.

A specific section of the Measures for Online Transactions is dedicated to the obligations of third-party platforms. First of all, a third-party platform is defined as an information network system which offers services, such as cyberspace, virtual business location, trading rules, intermediation between bilateral or multilateral transactions, publication of information, so that the parties may engage in autonomous online business activities. In addition, third-party platforms should be registered at the SAIC and obtain from it a license (Art. 22).

Among the obligations of a third-party platform, it should perform the following tasks:

- to examine the information of any seller who applies to register on the platform (Art. 23);
- to enter into agreement with the seller in order to define the modes of entering and exiting the platform, as well as products and services quality guarantee and consumer's rights protection. Whether the sellers are in disagreement with the platform's policies, they may leave the platform without liabilities (Art. 24);
- to establish internal management system concerning trading rules, the security of transactions, the protection of consumers' rights and the processing of harmful information. All this information must be displayed in a visible part of the website (Art. 25);
- to establish internal control systems and, if any illegal behavior is discovered, the platform should report the case to the local administrative agencies and take any necessary measure to prevent the online operator from operating through the platform (Art. 26)

Through the above provisions it is clear that the government's intention is to seek for third-party platforms' cooperation, also with regard to business supervision and law enforcement. However, as noted by Prof. Hong Xue [131], e-commerce platforms do not have any law enforcement power, so should not be considered as regulatory agencies. In addition, this may lead to the risk of over-regulation, which may eventually have a negative impact on consumers' lawful rights, as well as on the further development of the sector, limiting their potential capability of innovation. Furthermore, an even serious risk is that e-commerce platforms, being pressured to take measures for preventing illegal behaviours, could go beyond their powers and and ignore the public interest.

As for penalties, fines can reach up to RMB 30,0000. Nevertheless, they may be too low to be significant for punishing big companies, so it may be necessary to recur to other higher-ranking legislation in order to have own's own rights protected. Still, the problem is that these laws may

[131] Prof. Dr. Xue Hong is the Director of Beijing Normal University (BNU) Institute for the Internet Policy & Law and Co-Director of BNU-UNCITRAL Joint Certificate Program on International E-Commerce Law. She is the National Expert on E-Commerce appointed by Chinese Ministry of Commerce and the only Chinese member on the Advisory Committee of United Nations Network of Experts for Paperless Trade in Asia and the Pacific (UNNExT). She is the Co-Lead of the Expert Supporting Platform assisting the Chinese National People's Congress to draft the Chinese E-Commerce Law.
HONG, Xue, "Regulation of e-commerce intermediaries: an international perspective", in "Trade Development through Harmonization of Commercial Law", Victoria University of Wellington, Hors Serie Vol. XIX, 2015, pp. 378-379.

not be specifically intended for e-commerce, so it may be not easy to find protection for one’s own lawful rights as well.

Chapter 3 E-COMMERCE LAW LEGISLATIVE PROCESS

3.1 Initial stage: the research team and the drafting group

The exponential growth of e-commerce and its strategic importance for China's economy have put the sector under the spotlight. In order to allow the further development of e-commerce, many problems needed to be sorted out, especially from a legal point of view. In fact, China's regulatory framework couldn't keep the pace with the booming development of e-commerce, thus revealing many loopholes in legal and commercial rules, as well as unlawful behaviors.

Hence, on 27th December 2013 the Financial and Economic Affairs Committee of the National People's Congress (NPC) 全国人民代表大会财政经济委员会 officially initiated legislative work related to e-commerce[132]. Based on the PRC's Legislation Law, Article 25, "as a rule, a legislative bill placed on the agenda of a meeting of the Standing Committee must be put to vote after three reviews by the Standing Committee"[133]. Although the law doesn't set any limit concerning the duration of legislative works, during the same meeting, a working group was charged with the task of drafting a comprehensive e-commerce law according to the following indicative schedule:

- 2013 launch 启动: NPC's Financial and Economic Affairs Committee officially initiated legislative work related to e-commerce;
- 2014 research 研究: carrying on extensive research on the issues affecting the e-commerce sector;
- 2015 submission 送审: submission of the final version of the law for review by the drafting groups;
- 2016 deliberation 审议: the NPC Standing Committee reviews the draft;
- 2017 publication 出台: E-commerce Law officially coming into force.

In addition, the formulation of the e-commerce law has not come without its own peculiarities with regard to the extensive studies conducted on the sector and the modalities of drafting the law. In fact, in 2014, after one year since the official launch of legislative works, the Financial and Economic Affairs Committee of the NPC had developed 16 thematic studies on the

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[132] LIU Xueying 刘雪莹, "Qian Fangli zhuren tan dianzishangwu fa" 骞芳莉主任谈电子商务法 (Director Qian Fangli discusses E-commerce Law), *Zhongguo fuwu waibao wang,* (http://chinasourcing.mofcom.gov.cn/news/120/66188.html), March 17, 2016.

[133] Legislation Law of the People's Republic of China (2000), http://www.npc.gov.cn/englishnpc/Law/2007-12/11/content_1383554.htm

overall e-commerce sector, including, among the main issues, the regulatory system, market access and exit, e-contracts, e-payments, protection of intellectual property rights, taxation, dispute resolution mechanisms, protection of consumers' rights, cybersecurity, cross-border e-commerce, product quality supervision, express services providers, credibility of e-commerce sector.

Moreover, during the first year of legislative work, 14 special research groups, including experts and academics from relevant departments of the State Council, e-commerce companies and industry associations, as well as e-commerce model cities, were formed, with a view to conduct several systematic studies on the main issues concerning e-commerce legislation[134].

Director General of Chinese Service Outsourcing Research Center Qian Fangli, who has taken part to the legislative process for the formulation of China's e-commerce law, explained that the said legislative process had developed following a peculiar path, a "four-in-one" "四合一" process, that had been rarely undertaken in Chinese legislation before[135]. "Four-in-one" means that, initially, four different versions of the law were formulated, which had to converge, first, in two versions and, then, in one single version of the law, the official "First Draft E-commerce Law", to submit to the NPC Standing Committee by the end of 2016. In particular, the first four versions of the law included:

- a government's version, drafted by State Council's relevant departments;
- an industry-specific's version, drafted by national e-commerce associations;
- an academic version, drafted by academics from Beijing University;
- a local version, drafted by local Financial and Economic Affairs Committees.

After thorough discussions, the four versions converged into two versions:

- one was formed by the combination of the versions outlined by State departments, industry associations and academics;
- the other combined Shanghai, Jiangsu and Zhejiang's local versions

According to Director Qian, this especially long legislative process was necessary in order to monitor the fast-changing e-commerce sector, as well as to formulate a scientific and democratic

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[134] MENG Yu 孟玉, "Yin Zhongqing: dianzishangwu fa lifa dagang yijing qicao wancheng" 尹中卿：电子商务法立法大纲已经起草完成" (Yin Zhongqing: outline of e-commerce draft has been laid down), *Zhongguo Renda Wang*, (http://www.npc.gov.cn/npc/xinwen/2015-03/11/content_1921013.htm), March 11, 2015

[135] LIU Xueying 刘雪莹, "Qian Fangli zhuren tan dianzishangwu fa" 骞芳莉主任谈电子商务法 (Director Qian Fangli discusses E-commerce Law), *Zhonghua Renmin Gongheguo Shangwubu (PRC's Ministry of Commerce),* (http://www.mofcom.gov.cn/article/shangwubangzhu/201603/20160301274283.shtml), March 14, 2016.

legislation. Indeed, only by conducting extensive and in-depth studies on the sector, they could gather insights from every party involved in the e-commerce business and develop a more objective legislation that suits national characteristics.

Indeed, the final version presented in October 2015 to the drafting groups for final examination was quite comprehensive, covering all the 16 topics studied at the beginning of the legislative process.

Once the "four-in-one" process had been completed, during the following year, the drafting group started working on the formulation of the first official draft of E-commerce Law, in accordance with "five principles" 五项原则, aiming at improving the following areas:

- 监管体制: the regulatory system;
- 诚实信用: honesty and credibility;
- 线上线下一致性: uniformity between online and offline activities;
- 对数据开发利用保护均衡: balance between development, exploitation and protection of data;
- 行业自律和社会共治: industry self-regulation and social governance.

Finally, after three years of preparation, on 19 December 2016, the NPC's Financial and Economic Affairs Committee submitted to the National People's Congress Standing Committee Chinas' First Draft E-commerce Law for the first reading. Then, a few days later, on 27 December, the First Draft E-commerce Law was published on the NPC website to solicit public opinion until 26 January 2017.

On 31 October 2017, the NPC Standing Committee conducted a second reading of the draft, which was then published on 7 November to solicit public opinion by 26 November[136].

According to the indicative schedule proposed at the beginning of legislative works, the final E-commerce Law was supposed to be published in 2017, but, for the moment, the draft still needs to go through the third review.

It is worth mentioning also that, international legal experts from the United Nations Commission on International Trade Law (UNCITRAL), the United States, the European Union, Germany, Singapore, Japan, etc., were also invited to comment on the development of the e-

[136] LOW, Eugene, *China issues its second Draft E-Commerce Law*, in "LimeGreen IP News", 22 December, 2017, https://www.limegreenipnews.com/2017/12/china-issues-its-second-draft-e-commerce-law/

commerce draft at the two international seminars held respectively in Beijing in November 2014 and in Shanghai in June 2016[137].

3.2 The First Draft E-commerce Law

The People's Republic of China's E-Commerce Law (First Draft)[138] (hereinafter "First Draft") was published on 27 December 2016 on the NPC website to solicit public opinion.

According to Prof. Hong Xue, China's First Draft E-Commerce Law is unique for three reasons. First of all, it is a comprehensive law, meaning that its seven chapters and ninety-three articles address all the main issues related to e-commerce, including e-payments, logistics and express delivery, data protection, market competition, consumer protection, online dispute resolution, cross-border e-commerce, governmental supervision and regulation. Even other countries that have already enacted their own e-commerce law have not gone so far, as they regulate the electronic transaction per se, but not also the other related businesses.

Secondly, the First Draft is sufficiently flexible, in order not to restrict the sector's future potential growth, considered that it still represents a developing industry. The First Draft only sets out clear and basic legal principles to enable, to fill the major gaps that are not covered by other laws. For instance, this is the case of provisions covering cybersecurity and data protection, as at the moment of the drafting, the Cybersecurity Law (see Chapter 2) had not been approved yet.

Lastly, the First Draft organically coordinates with the current laws, such as Contract Law, Electronic Signature Law, Consumer Protection Law, thus improving the coordination mechanisms among different ministries and State agencies, much advocated by Wu, as discussed in Chapter 1 (see section 1.4.6 Legislative framework).

Generally speaking, the aim of the First Draft is to promote the healthy and sound development of e-commerce and to enhance fair competition and credibility in the industry through the regulation of the market order and the protection of the legitimate rights of all the parties that engage in e-commerce activities[139].

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[137] HONG, Xue, "An Overview of China's Draft Electronic Commerce Law", speech held during a conference of the APEC Expert Committee for E-Commerce Business Alliance, 2017, http://img.apec-ecba.org/pdf/201712/201712013.pdf

[138] Zhonghua Renmin Gongheguo Dianzi Shangwu Fa 中华人民共和国电子商务法（草案一次审议稿）, People's Republic of China's E-Commerce Law (First Draft), 2016, http://www.ictplus.gr/files/PDF%20FILES/Draft_E_Commerce_Law.pdf

[139] Id. Art. 1.

The First Draft applies to the e-commerce activities which take place within the territory of the People's Republic of China or the e-commerce activities in which domestic business entities or consumers are involved[140].

Under the First Draft, "e-commerce" is defined as the transaction of goods or services through the Internet, with the exception of financial products and services[141], broadcasting of audio and video programs, as well as online publications, which are not covered by this law. In addition, special provisions related to e-commerce contained in other existing laws and administrative regulations remain unaffected by the First Draft, as those specific provision should prevail on the First Draft[142].

As the main objective of this law is to promote the further development of the sector, the First Draft highlights how it is of great importance to create a favorable environment for the application of new-technologies, in order to encourage the continuous innovation of new forms of e-commerce and business models[143]. Moreover, the First Draft also encourages the establishment of an e-commerce credit system, as a way to boost the overall credibility of the sector and, being more pragmatic, to increase sales[144].

In devising the First Draft policymakers were well aware that China's e-commerce, although at a booming stage when looking at the profits, is still at a developing stage from a regulatory point of view, so it requires a more open environment, as a strict regulation could only strangle this promising sector. As a consequence, policymakers' strategy is not to adopt a top-down regulation, but to let the market play a central role in resource allocation and to encourage business entities' self-regulation, by seeking for the support of the major players of the sectors, such as third-party platforms, providers of electronic payment service and providers of express logistics service, as well as e-commerce industry associations and consumers[145].

In addition, it is true that the First Draft intends to regulate the e-commerce industry, however, it is not formulated as a discriminatory law against offline trading activities. As the underregulated boom of e-commerce has corroded to a certain extent the country's traditional economy, the First Draft stresses that a healthy market environment can only take place as a

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[140] Id. Art. 2.
[141] As for the regulation of financial services, one may refer to the Consumer Protection Law, *supra* note 89.
[142] Id. Art. 3.
[143] Id. Art. 4.
[144] Id. Art. 5.
[145] Id. Art. 6 and Art. 8.

result of a better equilibrium between traditional and online retail and their integrated development[146].

Finally, the First Draft also underlines the importance of safeguarding the security of transactions and users' data protection, two main problems concerning e-commerce[147].

Hereafter, this work presents the most significative provisions introduced in the First Draft with regard to: the obligations of e-commerce business entities, e-commerce transactions (from e-contract, e-signature to e-payment) and services (express logistics and delivery), protection of personal information, intellectual property rights, as well as consumers' rights, cross border e-commerce, supervision and administration of e-commerce activities and, finally, clear legal liabilities.

- *OBLIGATIONS OF E-COMMERCE BUSINESS ENTITIES*

The First Draft intends to regulate all kinds of e-commerce business entities, which include e-commerce business operators and e-commerce third-party platforms, with a particular focus on the specific obligations of e-commerce third-party platforms.

In particular, under the First Draft, an "e-commerce third-party platform" is defined as a legal person or other organization that provides services, such as cyberspace, virtual business premises, business intermediation, dissemination of information, to two or more parties, that can consequently engage in independent transactions. An "e-commerce business operator", instead, means any natural person, legal person or other organization different other than a third-party platform that sells goods or provides services through the Internet[148].

The First Draft stipulates that any e-commerce business entity, meaning both e-commerce platforms and e-commerce operators, must file a business registration to the State Administration for Industry and Commerce (SAIC) and obtain a business license to conduct online business. There are some exceptions to this requirement, such as individuals who use personal skills to provide services, family cottage firms, self-produced agricultural products and other businesses which according to other laws and regulations are exempted from the industry and commerce registration. In addition, the First Draft clarifies the set of information that natural persons should provide to the third-party platform where they intend to operate, including their

[146] Id. Art 9.
[147] Id. Art. 10.
[148] Id. Art. 11.

authentic name, address, ID card and contact information [149]. Plus, the business and administrative licenses should be displayed in a prominent position of the business entity's homepage[150].

These provisions are of particular significance because they reflect the willingness of the government to ensure transparency and honesty in the sector, also making it easier for consumers to acquire information about and report or sue a vendor in a dispute[151].

Moreover, besides granting the business license needed to operate in online business, the First Draft clearly states that e-commerce business entities have the duty to pay taxes and enjoy tax deduction[152].

According to Cai Ron, lawyer at Davis Wright Tremaine LLP in Shanghai, this seems to be the first step towards a more comprehensive taxation system under which individual sellers, in addition to registered enterprises, on e-commerce platforms are taxed as well, a matter that is currently in a tax-free gray zone[153].

However, Cai notes that no details about how the government will tax online sellers are provided by the First Draft. For instance, under the current business registration system, in order to apply for a business license a seller should have a business address, while a residential address does not qualify, except in certain cities. Since the majority of individual sellers run their online shop from their houses, they cannot provide a business address, so it will be difficult for them to obtain the business license. As a consequence, if they cannot register as a business, it would be difficult for the government to tax them. In addition, even if the government finds a way to tax individual online sellers, it should pay attention not to impose high taxes, that will make e-commerce operators increase the price of their products and services, and, eventually, will heavily reduce the prosperous profits and the success of the whole sector, that can lead to far worst consequences, as e-commerce so far is an important driver for the country's economic development and for the creation of millions of jobs. Hence, the business registration provision is likely to meet a lot of resistance from individual sellers.

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[149] Id. Art. 12
[150] Id. Art. 17
[151] CAI, Ron, *Draft New Law Will Change the Regulatory Landscape for E-Commerce in Chin*a, on Davis Wright Tremaine LLP website, June 9, 2017, https://www.dwt.com/Draft-New-Law-Will-Change-the-Regulatory-Landscape-for-E-Commerce-in-China-01-09-2017/
[152] Id. Art. 15
[153] CAI, Ron, *Draft New Law Will Change the Regulatory Landscape for E-Commerce in Chin*a, on Davis Wright Tremaine LLP website, June 9, 2017, https://www.dwt.com/Draft-New-Law-Will-Change-the-Regulatory-Landscape-for-E-Commerce-in-China-01-09-2017/

Besides setting out the obligations of e-commerce business entities, the First Draft also provides for specific provisions dedicated to e-commerce third-party platforms. In particular, third-party platforms are given a prominent role in the supervision process and in supporting relevant authorities in law enforcement.

In fact, e-commerce platforms are required to examine and register all the business and administrative information provided by the individual operator that applies to sell goods or to provide services through the platform, and also to establish a registration file and regularly verify and keep it updated. Moreover, a third-party platform should also monitor goods and services sold on the platform and, when suspected violations of the law related to the business license or to the goods sold and the services provided are observed, they should promptly report to the relevant authority and take necessary measures, such as issuing a warning or even suspending or revoking the license and suspending the business operator's online business[154].

Finally, e-commerce platforms have also the duty to ensure the normal operation of the platform itself, in order to provide a reliable, open and fair business environment and to safeguard transaction security. In particular, the third-party platforms are required to:

- establish a contingency plan for emergencies;
- formulate a platform service agreement and trading rules regulating the entry and exit of the platform, ensuring commodities and services quality and protecting consumers' rights and interests;
- to create and publicize the platform credit rating system, with objective and fair credit rating rules, as well as to implement a punishment mechanism against those with serious bad credit records[155].

Generally speaking, the above provisions concerning third-party platforms seem to confirm the obligations set out in the existing SAIC's Administrative Measures for Online Trading in seeking cooperation from third-party platforms. So, the concerns pointed out by Prof. Hong Xue have not been taken into account in the formulation of the First Draft[156].

As for legal liabilities, if an e-commerce business law violates the above-mentioned provisions concerning publication of business license, termination of e-commerce activities, measures

[154] Id. Art. 19 and Art. 20.
[155] Id. Art. 21, Art. 22 and Art. 78.
[156] See section 2.2.4 SAIC's Administrative Measures for Online Trading, *supra* note 131.

against a business operator, platform's trading rules and service agreement, platform's credit rating rules, it could be punished with a fine between RMB 30,000 and RMB 100,000[157].

While, for an e-commerce third-party platform which fails to perform its obligations, relevant departments of People's Governments at all levels can order suspension of business or a fine between RMB 30,000 and RMB 100,000. In case of serious violations, the platform's business license could be revoked and the fine to impose raises between RMB 100,000 and RMB 500,000[158].

- *E-COMMERCE TRANSACTIONS AND SERVICES*

The third chapter clearly intends to fulfill the goal of a comprehensive e-commerce law. In fact, it not only contains rules related to the transaction process in a strict sense, meaning, for instance, e-contracts and e-signatures, but it also sets forth rules for the main services related to e-commerce, such as electronic payment and express logistics and delivery.

With regard to e-contracts, the First Draft only regulates e-contracts between parties, while for other matters not covered by the First Draft the Contract Law of the People's Republic of China and the Electronic Signature Law of the People's Republic of China should apply[159]. In particular, under the First Draft, an e-contract is established when the information about goods or services are released by an e-commerce business entity satisfies the conditions for an offer and a party chooses the said products and submits an order, unless the parties agree otherwise. As for the time of arrival or acceptance of an electronic offer, the time considered as valid is when the said offer could be searched and identified by the recipient[160].

Finally, the First Draft also regulates the use of automatic transaction information systems, that are equally legally binding on the parties[161]. In case during the human-computer interaction a user enters erroneous data, but the automatic system doesn't provide an option for correcting the mistake, then the said user can withdraw the erroneous data in two situations: if the user promptly notifies the other party about the error; if the user has not obtained any considerable benefit from the other party[162].

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[157] Id. Art. 83.
[158] Id. Art. 84.
[159] Id. Art. 26.
[160] Id. Art. 28.
[161] Id. Art. 29.
[162] Id. Art. 30.

With regard to services related to e-commerce, the First Draft sets forth some general provisions concerning electronic payments, which is a major breakthrough in online payment law in China. Under the First Draft, "electronic payment" is defined as the transfer of money through electronic payment instructions for e-commerce activities purpose only. The People's Bank of China and the State Council banking regulatory authority are identified as the two government bodies responsible for the supervision and regulation of electronic payment service providers[163].

In addition, following the intention of establishing a multi-party governance, the First Draft also relies on electronic payment service providers to ensure a secure electronic payment service. As a consequence, if, for instance, an electronic payment service provider fails to conform with the State requirements related to the security of financial information, then the service provider will be held responsible for any loss suffered by the payment recipient and should return the money, make up the shortfall or compensate due interest losses. Furthermore, in accordance with the principle of transparency, the electronic payment service provider can open an account for an electronic payment recipient only on a real-name registration and any account could have an anonymous or based on a false-name registration. In addition, the electronic payment recipient should be notified of the functions, use methods, risks and charges of the service, as well as provided free of charge with the account statement and record of transactions of the recent three years[164].

Where an electronic payment provider doesn't perform its obligations, it could receive a fine between RMB 100,000 and RMB 500,000, as well as a fine between RMB 30,000 and RMB 100,000 to the manager or staff directly responsible for the violation. In addition, the *First Draft* requires also that any illegal income is confiscated and, in case of serious violation, may be adopted measures such as suspension of business or revocation of business license[165].

On the other hand, the electronic payment recipient also has some obligations to perform. Under the First Draft, the electronic payment recipient should provide the said service provider with authentic and valid identity and contact information. Plus, the electronic payment recipient shouldn't use such service for a use other than the one agreed with the service provider and permitted by law, besides being directly responsible for the safety of his own passwords, electronic signature and other security tools. Furthermore, in case of any loss or theft of security

[163] Id. Art. 31.
[164] Id. Art. 32.
[165] Id. Art. 85.

tools or unauthorized transactions it is the electronic payment recipient duty to promptly notify the electronic payment service provider[166].

Under the First Draft, the liabilities of electronic payment service provider and recipient are well balanced. While the service provider is responsible for issuing a payment confirmation to the service recipient and notify the recipient in case of problems with the confirmation issue, the service recipient in turn must be held responsible for the correctness of the payment order information, such as amount, payee, etc. In case of erroneous electronic payment order, the service provider will be liable for compensation, unless it could prove that the erroneous payment is not attributable to it[167].

With regard to the services related to the e-commerce industry, not only electronic payment, but also couriers, logistics and delivery for e-commerce purposes are covered by the First Draft. The main obligations of express service providers include:

- ensuring the safety of operations, by performing the duty of examining the goods and not collecting goods that are prohibited or restricted under national provisions[168];
- providing compensation in case of delay, loss, destruction or shortage of products[169];
- establishing strict cash management, safety management and risk control systems, when collection on delivery is provided[170];

In addition, an e-commerce business entity cannot charge consumers with a courier fee that is higher than the fee offered by the express service provider, thus limiting consumers in freely choosing the express service provider that they want[171].

In case of violations of the previous provisions, express service providers could receive a warning, have any illegal income confiscated or, in the most serious cases, be fined up to RMB 500,00[172].

- *PROTECTION OF USER'S PERSONAL INFORMATION*

Enhancement of protection of the user's personal information is also included in the First Draft, where "personal information" refers to name, identification number, address, contact

[166] Id. Art. 33.
[167] Id. Art. 34 and Art. 35.
[168] Id. Art. 40.
[169] Id. Art. 39.
[170] Id. Art. 42.
[171] Id. Art. 43.
[172] Id. Art. 86.

information, position information, bank information, transaction record, payment record, delivery information and other information that alone or combined can identify a specific user[173].

Under the First Draft, an e-commerce business entity cannot force users to consent his personal information collection, processing and use by refusing the provision of its services. In addition, it is prohibited for e-commerce business entities to collect personal information without user's authorization or through illegal activities, such as hacking, fraud or threat[174].

In case the e-commerce business entity intends to modify the terms agreed with the user concerning collection, processing and use of user's personal data, the e-commerce business entity should notify the user and obtain the latter's consent.

Finally, upon expiration of the agreed termed of preservation, the e-commerce business entity should stop processing and use, delete or destroy the user's personal information[175].

Furthermore, the First Draft requires business entities to establish and improve their own internal control system, in order to prevent data disclosure, loss or destruction and to ensure e-commerce data security. In case an accident concerning a user's personal data security occurs, an e-commerce business entity should promptly take remedial measures, notify the user and report the case to the relevant authority[176].

Where an e-commerce business entity fails to perform its obligations related to protection of consumer's data, a warning and/or a fine up to RMB 100,000 can be imposed, while serious violations would require other measures, such as suspension of business, revocation of business license and a fine up to RMB 500,000[177].

- *MARKET ORDER AND UNFAIR COMPETITION*

As said before, in regulating the e-commerce sector, the Chinese government does not want to adopt a top-down strategy, imposing strict rules that could strangle the success of this booming industry. On the contrary, the government intends to promote the self-regulation of the sector and establish a multi-party governance for the supervision and administration of e-commerce activities.

Thus, for instance, e-commerce business entities support the government in maintaining market order, as they have the duty to protect intellectual property rights. In particular, e-

[173] Id. Art. 45.
[174] Id. Art. 46.
[175] Id. Art. 48.
[176] Id. Art. 49.
[177] Id. Art. 87.

commerce third party platforms, if aware of infringement of intellectual property rights by an operator on their platform, should take necessary measures, such as removing, blocking or disabling the link, as well as terminating the operator's transactions and services[178]. Moreover, when an intellectual property right holder notifies the e-commerce third-party platform with a notice of intellectual property infringement, the platform should forward the notice to the business operator and take necessary measures. However, if the business operator is able to provide a declaration of non-infringement, the intellectual property right holder should assume civil liabilities for eventual losses caused to the business operator, while the latter could file a complaint to the relevant authority or even bring a suit to the people's court[179]. Where an e-commerce third-party platform is aware of intellectual property infringement, but fails to take necessary measures, then it could be ordered of suspending the business or, in case of serious violation, the business license can be revoked and a fine up to RMB 500,000 can be imposed[180].

The above provisions granting third-party platforms a semi-regulatory power and apparent law enforcement capabilities, leave the concerns expressed by Prof. Hong without an answer.

However, the First Draft seems to take seriously the problems existing in e-commerce with regard to unfair competition (see section 1.4.1 "Market order"), by explicitly listing a set of prohibited activities that could cause a situation of unfair competition, including:

- using, without authorization, a trademark that is identical or similar to the domain name, website name, webpage of a well-known trademark;
- using a fake or confusing link; attacking or hacking another business operator's network system or engaging in other activities that might alter the normal business operations;
- using terms of service in order to restrict transactions or impose unreasonable charges or trading conditions[181].

In addition to prohibited activities related to unfair competition, for the first time in China also behaviors harmful to e-commerce credit evaluation are explicitly prohibited and punished under the First Draft, such as:

[178] Id. Art. 53.
[179] Id. Art. 55.
[180] Id. Art. 88.
[181] Id. Art. 55.

- to use fake transactions (brushing), to delete unfavorable ratings and evaluations, to buy or exchange favorable ratings and evaluations in order to improve one's own online business reputation;
- to use malicious reviews in order to damage others' business credibility;
- to harass or threaten the other party in order to urge him or her to provide, amend or delete reviews of products or services against his or her own will;
- to publicize false credit rating information[182].

With regard to penalties, violations of the previous provisions concerning unfair competition and behaviors harmful to e-commerce credit evaluation can be punished not only by the Anti-Unfair Competition Law of the People's Republic of China, but also by the First Draft, that requires suspension of business, or, in case of serious violation, revocation of business license and a fine up to RMB 500,000[183].

- *PROTECTION OF CONSUMER'S RIGHTS AND INTERESTS*

Under the *First Draft*, it is the e-commerce business entity's duty to disclose genuine, complete and accurate information about goods and services provided, so to ensure the consumer's right to be informed and to choose[184].

Moreover, producers and sellers are also responsible for the quality of goods and services traded, so that, when a consumer's right is violated, the consumer is entitled to claim for a compensation against them. In particular, if goods and services are sold on an e-commerce third-party platform and the latter is not able to provide the consumer with information about the business operator, the consumer can request an advance compensation by the platform, which later can request the business operator to pay back the due amount[185].

More guarantees in the interests of consumer's rights protection include:

- consulting consumers and consumer organizations when an e-commerce business entity intends to modify trade rules or terms of service[186];
- a goods and services quality guarantee system inside the third-party platform;

[182] Id. Art. 56.
[183] Id. Art. 89.
[184] Id. Art. 57.
[185] Id. Art. 58.
[186] Id. Art. 60.

- a "deposit for protection of consumer rights" agreed upon between the third-party platform and the business operator, with specific mention about the amount, management and methods for the refund, in order to protect consumers' rights[187];
- assistance by the third-party platform towards a consumer, who is involved in a dispute with a business operator[188].

Where an e-commerce business entity violates these provisions, as well as the *Law on the Protection of Consumer Rights and Interests of the People's Republic of China*, the *Law Products Quality of the People's Republic of China* and the *Law of Measurement of the People's Republic of China*, the *First Draft* doesn't provide for penalties other than the ones included in the above-mentioned laws.

- *CROSS BORDER E-COMMERCE*

The First Draft for the first time gives a specific definition of "cross-border e-commerce" (CBEC), meaning the business activity of importing and exporting goods or services through the Internet or other information networks[189].

The First Draft promotes the development of CBEC, as well as of all the enterprises engaged in CBEC activities, including SMEs, enterprises providing related services and "cross-border e-commerce comprehensive service providers", meaning those business operators which undertake import and export formalities, such as customs clearance, inspection, quarantine clearance, and that provide credit and financing services to e-commerce business entities[190]. When all these activities are not provided by a CBEC comprehensive provider, then it is the State import and export administration responsibility to establish customs clearance, taxation, inspection and a quarantine system for goods and services traded through CBEC[191].

In order to support, promote and ensure the sound development of CBEC, according to the First Draft, the government promotes the following activities:

- the establishment of a suitable supervision and management system for cross-border e-commerce, in order to improve customs clearance efficiency, safeguard trade security and promote trade facilitation[192];

[187] Id. Art. 61.
[188] Id. Art. 62.
[189] Id. Art. 67.
[190] Id. Art. 68.
[191] Id. Art. 69.
[192] Id. Art. 69.

- the digitalization of customs clearance, tax payment, inspection and quarantine and other sectors of cross-border e-commerce activities[193];
- the exchange and cooperation of cross-border e-commerce among countries, participating in the formulation of international rules for e-commerce and promoting the international recognition of electronic signatures and other documents[194].

The First Draft also recognizes that cross-border e-commerce plays a fundamental role in Chinese international trade, so the First Draft chapter on cross border seeks to ensure that the Chinese law is consistent with the international trade law and standards[195]. Consequently, the parties engaging in CBEC activities not only have to abide by the said law, but they have also to take into consideration international treaties and agreements concluded by the People's Republic of China or to which it has acceded[196]. However, the First Draft does not specify whether national law or international treaties and agreements should prevail.

Cai has observed that the First Draft shows a clear intention of narrowing the gap between cross-border e-commerce and traditional import channels. However, many improvements are still needed. For instance, nothing is specified about the quality and labeling standards for the goods imported, as well as there is no mention about the requirements for parallel import[197].

3.3 The Second Draft E-commerce Law

The PRC's Second Draft E-commerce Law 电子商务法（草案二次审议稿）[198] (hereinafter "Second Draft") was published on 7 November 2017 to solicit public opinion. Compared to the first draft, it has undergone substantial simplification, as many sections have been completely or partially eliminated and included in other broader sections. The table below, concerning the titles of the sections contained in the two versions of the draft, provides a clear understanding of such a simplification.

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[193] Id. Art. 70.
[194] Id. Art. 73.
[195] HONG, Xue, "An Overview of China's Draft Electronic Commerce Law", speech held during a conference of the APEC Expert Committee for E-Commerce Business Alliance, 2017, http://img.apec-ecba.org/pdf/201712/201712013.pdf
[196] Id. Art. 72
[197] CAI, Ron, *Draft New Law Will Change the Regulatory Landscape for E-Commerce in China*, on Davis Wright Tremaine LLP website, June 9, 2017, https://www.dwt.com/Draft-New-Law-Will-Change-the-Regulatory-Landscape-for-E-Commerce-in-China-01-09-2017/
[198] Zhonghua Renmin Gongheguo Dianzi Shangwu Fa 中华人民共和国电子商务法（草案二次审议稿）, People's Republic of China's E-commerce Law (Second Draft), 2017, http://www.100ec.cn/detail--6421980.html

First Draft	Second Draft
1. General Principles 2. E-commerce Business Entities (1) General Provisions (2) E-commerce Third-party Platforms 3. E-commerce Transactions and Services (1) E-contract (2) Electronic Payment (3) Express Logistics and Delivery 4. Guarantees for E-commerce Transactions (1) E-commerce Data Information (2) Market Order and Fair Competition (3) Protection of the Rights and Interests of Consumers (4) Dispute Settlement 5. Cross-border E-commerce 6. Supervision and Administration 7. Legal Liabilities	1. General Principles 2. E-commerce operators (1) General provisions (2) E-commerce Third-party Platforms 3. E-contract 4. E-commerce Dispute Settlement 5. Promotion of e-commerce 6. Legal Liabilities

First and foremost, the Draft, in its second version, seems to have lost part of the "comprehensiveness" that prompted the start of legislative works on e-commerce in the first place. For instance, e-commerce-related services, such as e-payments and express services, or other "hot topics" (i.e. cybersecurity, market order, consumers' rights, supervision and cross-border e-commerce), which have been the subjects of a heated debate in China, have been pushed into the background.

However, as observed by Prof. Hong, this may be due to the fact that the e-commerce law, being a basic law, does not aim at being a lengthy and complete collection of a set of laws, but its purpose is rather to set out clear and basic legal principles, which may still enable future legal improvements, in accordance with the development of the overall e-commerce sector[199].

Besides the significant simplification, looking at the content of the two drafts, they show little but significative changes.

[199] HONG, Xue, "An Overview of China's Draft Electronic Commerce Law", speech held during a conference of the APEC Expert Committee for E-Commerce Business Alliance, 2017, http://img.apec-ecba.org/pdf/201712/201712013.pdf

Starting from the scope of application, the Second Draft still "applies to all e-commerce activities within the Chinese territory", but there is no more mention to "the activities in which domestic e-commerce entities or consumers are engaged". In addition, there are more specific definitions about e-commerce entities, which besides e-commerce platforms, have divided a more general "e-commerce operator" (电子商务经营者)[200] in: e-commerce operators who sell on their own website (自建网站经营的电子商务经营者) and e-commerce operators who sell on e-commerce platforms (平台内电子商务经营者).

As for data protection, in the Second Draft most of the provisions included in the First Draft have been eliminated, including, instead, a direct reference to the PRC's Cybersecurity Law effective since June 2017. With this regard, third-party platform operators are explicitly required, among the basic rules left, to apply any necessary measure, in order to ensure Internet security and the stable operation of the platform, as well as to prevent the occurrence of criminal activities and efficiently address these cases, so to guarantee the overall security of e-commerce transactions. In case an emergency related to cybersecurity happens, third-party platforms operators should take remedial measures and report the case to relevant authorities (Art. 20).

The same has happened with regard to protection of consumer's right. General rules are still present in the Second Draft, but detailed provisions were replaced by references to the PRC's Law on Protection of the Rights and Interests of Consumers. For instance, under Article 18, e-commerce business operators are required to fully, truly and accurately disclose information related to products and services, and not to carry on misleading advertising, fictitious transactions and fake users' reviews, in order to guarantee consumers' right to be informed and to freely choose what to buy. This article, although is not the only one addressing consumers' rights protection, is a good example showing the simplification undergone by the draft.

A new provision introduced with the Second Draft, instead, aims at fighting misleading advertising, which was not included in the First Draft. In particular, the Second Draft provides that when products or services are shown in advertisements, they should clearly show the word "advertisement" 广告 (Art. 34).

Moreover, the Second Draft also better regulates service agreements and transaction rules. As provided under Article 29, when third-party platform operators want to amend service

[200] In the First Draft "e-commerce operator" (电子商务经营者) refers to any natural, legal or other organization selling goods or providing services through the Internet. Hence, it doesn't differentiate between the ones operating on their own website and the ones operating on e-commerce platform. See *supra* note 148.

agreements and transaction rules, they should solicit public opinion at a conspicuous position of their homepage and, then, publish the amended content seven days before implementation.

As for intellectual property rights (IPR) protection, the Second Draft adds that when a holder of IPR issues a note of IPR infringement to the platform operator, he should also include a *prima facie* evidence[201] of infringement in the notice (Art. 36). This provision, although, may result to further protect consumers against unlawful traders, it may make difficult for IPR holders to have their rights protected.

With regard to delivery services, the Second Draft provides more detailed rules for delivery of goods and the time of delivery, distinguishing between the delivery of goods, services and digital products. In particular, Article 19 confirms, as stated in the First Draft, that e-commerce operators should respect the terms according to the modalities and time agreed with the consumers; but, the Second Draft, adds also that they should take risks and responsibilities for the goods during the shipment.

By adding this clause there is a clear intention of encouraging e-commerce operators to take on more responsibilities, in order to better protect the consumers, which correspond to a more general trend in the formulation of this law.

[201] Prima facie evidence refers to evidence that is sufficient to establish a fact or to raise a presumption of the truth of a fact unless controverted. https://www.collinsdictionary.com/it/dizionario/inglese/prima-facie-evidence

Conclusions

Since December 2013 the Chinese government has undertaken a long legislative process with a view to promulgate a comprehensive e-commerce law. The aim of this thesis has been to research the reasons that have led to the urgent need of an e-commerce law in China, as well as to monitor the legislative process and understand the improvements adopted by the government in order to regulate this booming sector.

One of the government's key priorities in formulating the e-commerce law is to enhance the further development of this sector, as it represents today one of the growth points for the country's economy. Indeed, e-commerce has proved to be a prosperous industry in China, breaking any sales records year after year, not only from a domestic point of view, but also at global level. Another emerging trend is cross-border e-commerce, which is virtually changing international trading rules, giving any company in the world, regardless of their nationality, size and means, the opportunity to access the Chinese market more easily. In addition, thanks to e-commerce, Chinese consumers are provided with a wider range of products, particularly authentic foreign quality products, which was not available before to them, especially in rural areas.

However, e-commerce in China is much more than a tool to facilitate the matching of demand and supply. It has developed a whole complex ecosystem, which, besides consumers, merchants and marketplaces, involves many other parties providing e-commerce-related services, such as e-payments and express delivery and logistics. An interesting fact that has emerged from this work, is that, although e-commerce has removed the need for intermediaries, it has eventually spurred the development of third-party service providers, who still act as intermediaries facilitating e-commerce transactions, with the difference that they are less physical and more technological. In order to cover any aspect of the e-commerce business, a huge amount of departmental and administrative regulations is constantly issued. Since e-commerce was launched in China, the government has adopted a pragmatic approach to e-commerce regulatory framework. At the beginning, a fragmented regulation was crucial for allowing the full development of the sector and for testing the response of the sector to the introduction of gradual regulations. Today, instead, e-commerce is more mature and ready for a comprehensive legislation which is able to address both opportunities and problems arising from this sector.

In addition, the Chinese government has another important reason for pushing towards an e-commerce law: e-commerce perfectly serves the achievement of the country's macroeconomic goals. Indeed, for more than thirty years China has based its exponential growth on exports and foreign investments. However, this system has started to be less efficient in recent years, so China is now undergoing an overall economic restructuring, which focuses more on domestic consumption (more imports less exports), industrial upgrading (innovation instead of imitation) and mass entrepreneurship (domestic growth instead of foreign investments). Against this background, e-commerce turns out to be a useful tool in order to respond to the government's major goals and so it deserves to be further encouraged through a law that is able to address the opportunities brought on by this sector.

In fact, another reason why e-commerce has been getting considerable attention from the Chinese government, is not merely due to the impressive sales and growth figures, but is also because this sector has promoted a new inclusive growth model, where growth and profits are shared within the whole society and in particular with disadvantaged groups of society, such as rural residents, migrant workers, young people and graduates, disabled people. It is fair to say that these are the results of an AliReasearch report, so, being AliReasearch an Alibaba's affiliate, the report may be too much enthusiastic about the work done by Alibaba. In addition, we should not forget that e-commerce companies, of course, are not providing these services moved by philanthropic reasons, given that their ultimate aim is still increasing their own profit. Nevertheless, notwithstanding which are the true reasons of e-commerce giants, such inclusive growth still constitutes a successful model from which any country can draw a significative lesson for enhancing development and poverty alleviation at national as well as at global level. Under these circumstances, it is clear that the government has many reasons to formulate an e-commerce legislation which can spur further growth and development.

However, besides the many benefits brought on by e-commerce, there are also many problems that the Chinese government needs to address in order to enhance a sound development of this sector. Generally speaking, e-commerce is still believed not to be secure from many points of view: high rate of counterfeits, cybersecurity issues, distorted credit system, protection of consumers' rights, etc. Part of these problems are due to loopholes in legal and commercial rules, which have given unlawful traders the chance to swoop in with illegal behaviours. As remarked in Chapter (Section 1.4, "legislative framework") Wu Changjun has noted that China's e-commerce legislation needs three main improvements. First of all, China

needs to substitute the huge number of departmental rules with a basic law, as the higher legislative rank could better facilitate law enforcement. Secondly, a single comprehensive law could also improve the coordination among the different ministries and State agencies involved in e-commerce activities, thus successfully addressing opportunities and challenges. Thirdly, the e-commerce sector needs a higher supervisory authority to control the overall industry and promptly take necessary measures in case of violations.

On the basis of these considerations, the Second Chapter has attempted to reflect the problems in the legislative framework stressed by Wu and provide a general overview of the main basic laws concerning the e-commerce sector (Contract Law, E-Signature Law, Law on Protection of the Rights and Interests of Consumers, Cybersecurity Law), as well as of the main departmental regulations, which include areas such as e-payments, taxation and cross-border e-commerce. In addition, this thesis also introduces the most significant provisions included in the Administrative Measures for Online Transactions issued by the SAIC in 2014, given that, at the moment, in absence of a comprehensive e-commerce law, they act as the main regulatory reference for the e-commerce sector in China.

Enacting an e-commerce law is proving to be so important to the extent that it is spurring improvements also in all the other laws which regulate e-commerce-related matters. For instance, the Law on Protection of the Rights and Interests of Consumers has been revised for the last time in 2013 and the Cybersecurity Law has been enacted in 2016, plus, ministries and State agencies continuously issue notices and administrative measures, in order to clarify the main regulations or provide further details supporting law enforcement. Considering the many regulations existing and the fact that they keep changing and being improved, the fragmentation of the regulatory framework has been an obstacle also to the elaboration of this thesis, which, for the same reason, should not be considered exhaustive.

Finally, this thesis focuses on the peculiarities which have characterized the e-commerce legislative process. As this law is expected to be comprehensive, the legislative process has been characterized by extensive researches conducted by all the parties involved in e-commerce at institutional, industrial and local level. Thanks to this lengthy process, all the main aspects concerning e-commerce have been brought up and included in the formulation of the First Draft, published in December 2016. The government has put emphasis on some critical issues, such as market order, consumer's right protection, data protection, obligations of third-party service providers, cross-border e-commerce and legal liabilities. Being so comprehensive, it seems that

the government has succeeded in covering any aspect of the e-commerce business. Although, some have noticed that, as any basic law, some provisions are still vague and need to be improved. Moreover, as for penalties, they are still too low to be effective in contrasting illegal practices. In addition, it has been surprising that the central government has been willing to give up part of the control over the sector and allow its self-regulation. Of course, policymakers were well aware of the fact that a too much strict regulation could only harm the growth of this sector, thus running counter the intention of promoting the further development of e-commerce.

As a rule, the draft needs to go through three reviews by the NPC Standing Committee before being approved as basic law. In the current situation, a Second Draft has been reviewed on November 2017, showing little but significative changes compared to the first version. In particular, it has undergone substantial simplification, as many sections have been eliminated, including only general rules in other broader sections, while for more detailed rules one should refer to other basic laws (i.e. Cybersecurity Law and Consumer Protection Law).

The general trend emerging from the e-commerce legislative process, at the present date, seems to move towards a stronger protection of consumer's rights, considering that higher reliability in transaction security can significantly boost consumer spending, which is one of the macroeconomic targets set by the central government. In addition, also cybersecurity and data protection issues have been provided with important solution, although the enactment of the Cybersecurity Law has allowed policymakers to eliminate detailed provisions from the First Draft and include a reference to the the said law in the Second Draft. Furthermore, another topic which is increasingly drawing the government's attention is cross-border e-commerce, which has seen many regulations being published in recent years, in order to narrow the gaps between cross-border e-commerce and traditional import channels, stop unlawful traders and collect taxes.

Taking into account the size of the China's e-commerce market, from both a domestic and international perspectives, its widespread benefits towards the society at large and the many and different problems affecting the sector, the Chinese government, indeed, needs to better regulate the e-commerce market. On the basis of the improvements adopted until now, it seems that China has undertaken the right path towards a comprehensive E-commerce Law.

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