

e-commerce law: *daigou*... going... gone

7 December 2018



E-commerce Law set to raise costs

The long-debated *E-commerce Law* enters into force 1 January 2019. [New rules released 30 November 2018](#) directly confront *daigou* trade, explicitly forbidding domestic resale of goods bought overseas by individual consumers.

what is the policy?

The *E-commerce Law* requires nearly all e-businesses to register as formal businesses. The only exception is farmers selling online, supporting the [rural revitalisation policy](#). Online stores must now pay taxes, while consumers are protected by regulations such as the *Food Safety Law*. E-commerce platforms are also required to fight counterfeits. The law's intention is straightforward: increase tax revenue and reign in unregulated online businesses.

inconsistency with CBEC regulations

This is not the state's first attempt to regulate online business. The '[8 April 2016 New Deal](#)' cross-border e-commerce (CBEC) customs regulation was postponed three times by State Council—[most recently in mid-November 2018](#), and this time without a deadline. Aiming to create a level online/offline playing field, the failure of the New Deal reflects design deficiencies. Treating e-commerce as traditional instead of personal goods backfired: General Administration of Customs (GAC) lacks the capacity to inspect and clear CBEC parcels.

These clearance issues are compounded by inconsistencies between the New Deal and the *E-commerce Law*. Article 26 of the law states that all CBEC businesses must comply with import and export rules. However, in the latest State Council delay announcement, CBEC retail imports will continue to be considered personal goods exempt from import licensing, registration and filing requirements. [As one expert put it](#), the CBEC chapter in the law is more a statement of principles than practical rules.

enforcement and impact

an integrated data system will render tax enforcement and regulatory compliance less difficult

Tax enforcement and regulatory supervision will hinge on data. Tracking low value, scattered purchases that are difficult to authenticate is a hurdle. The *E-Commerce Law* requires platforms and electronic payment services to ensure integrity and availability of data for customs. On 12 November, GAC announced it is setting up an integrated system for CBEC platform data collection, which operators must use starting 1 January 2019. Capturing data along the whole transaction chain, the new platform is expected to streamline enforcement.

Although China has no specific tax rules on e-commerce yet, 'Regulations on Value Added Tax (VAT)' stipulate that enterprises and individuals selling goods in China should pay VAT, but that small taxpayers with monthly sales less than C¥30,000 enjoy [an exemption between 2018 and 2020](#).

Unlike registered Tmall stores, most individual sellers (which account for roughly 95 percent of stores) are exempt from VAT since they generally make less than C¥30,000 in sales per month. GAC's system will render these sellers easy tax enforcement targets after 2020, and prevent sellers from faking records to boost their credit or store rating.

how will things look in 2019?

Over 10,000,000 individual businesses on Taobao must now register, pay tax and comply with regulations. Online sellers and platforms are also now responsible for late shipments, a potentially consequential detail given Trump's decision to [withdraw from the Universal Postal Union](#). Withdrawal from the UPO will enable the US to hike shipping prices, pushing costs up further for CBEC retailers selling low-value, small-package goods.

Increasing compliance costs will spur industry consolidation. Larger CBEC businesses may begin using bonded warehouses or buying from domestic distributors to minimise shipping risk. [Tax exemptions](#) and other preferential policies offered in CBEC pilot zones—[recently expanded to 22 from 15](#)—are another carrot meant to steer e-commerce into regulated waters.

Despite providing support in CBEC pilot zones, the 30 November announcement made clear that *daigou* trade is forbidden, further squeezing the previously grey area in which many sellers manoeuvred. Those relying on e-commerce platforms will be monitored by the GAC data system. *Daigou* businesses operating on Wechat or their own websites might be able to stay in business, but they will face greater risks. Some legal scholars insist purchasing goods overseas on behalf of friends [is not a 'business activity'](#) until one factors in profits, volume of purchases and time spent.

Regulation will be followed by efforts to standardise e-commerce. The State Administration for Market Regulation's (SAMR) affiliated National Institute of Standardisation will lead a working group to set up a national CBEC standards system for managing online products, transactions and disputes. With three weeks to go before coming into effect, the law will also be buttressed by new regulations guiding implementation, such as SAMR's 3 December 2018 ['Opinions on e-commerce business registration'](#).

the state aims to crowd out illegal *daigou* players and standardise the industry

still more challenges

Beijing is walking a tightrope, trying to bring regulation to an industry whose growth seems conditioned on its absence. The government's trial and error approach to e-commerce regulation reflects broader challenges. Defining online business is hard enough; data globalisation and consumer privacy protection will be even harder to coordinate.

what are the experts saying?

Fu Weigang 傅蔚冈

Shanghai Institute of Finance and Law executive director



The *E-commerce Law's* underlying assumptions are that the industry has thrived by evading taxes, and the state can now treat online and offline business as equals. This view is illusionary. E-commerce has succeeded through reducing information asymmetry and expanding consumer choice by breaking local protectionism in offline retail. In other words, the fast growth of e-commerce depends on a market free of improper administrative interference.

Li Mingtao 李鸣涛

Ministry of Commerce E-commerce Research Centre director



The latest delay for CBEC customs regulation is a buoy for e-commerce firms. Unexpectedly high demand for overseas products is prompting the government to recalibrate policies by raising the price cap on products eligible for preferential tax rates and adding 63 items to the CBEC retail import positive list. However, *E-Commerce Law* still holds CBEC platforms accountable for quality control. Platforms will need to act as gatekeepers and set up safeguard mechanisms.

Ma Ce 麻策

Kin Ding Law Firm lawyer



When individuals engage with overseas *daigou* on WeChat, they form a commission [instead of consumption] contractual relationship, meaning these activities do not fall under the *Law on Protection of Consumer Rights*. CBEC is still experimental and mostly regulated with administrative policies rather than laws. While the *E-Commerce Law* covers CBEC, it lacks enforceability. It is ambiguous on issues such as Chinese labels for imported foods, cross-border taxation and consumer rights protection.

context

30 nov 2018	MoF and 12 other ministries release 'Notice on adjusting cross-border e-commerce import commodity list' and 'Notice on adjusting cross-border e-commerce import taxation policies', with both documents effective 1 January 2019
21 oct 2018	State Council again postpones the CBEC customs regulation, prolonging the grace period for a third time—this time without a deadline
31 aug 2018	<i>E-Commerce Law</i> passed by National People's Congress
22 sep 2017	State Council prolongs transition period of CBEC customs regulation to end 2018
25 may 2016	'8 April New Deal' customs element given a one-year transition period ending 2017
8 apr 2016	State Council levies tax on CBEC retail imports

Copyright © 2018 China Policy. All rights reserved.