

Study on Legal Problems of Overseas Purchasing and Its Countermeasures

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Abstract: This paper first analyzed the universal problems existing in overseas purchasing. The main problems are fraud of operators, protection of consumers' rights and interests, and loss of tariffs. Next, the paper explained the reasons for the existing problems and how to address the plight. Finally, the corresponding solutions are put forward to the problems involved in overseas consignment. Firstly, the measures to prevent fraud are to establish information publicity system and improve social credit system. Secondly, the countermeasures to protect consumers' rights and interests are to clarify the responsibility for infringing consumers' rights and interests. Thirdly, the problem of controlling the loss of tariffs in overseas purchasing will be addressed through improving the relevant legislation on taxation.

1. Introduction

With the rapid development of Chinese economy and the increase of people's access to information, together with the improvement of Internet technology and international logistic sector as well as the advent of global economic integration, the channels for Chinese people to shop or meet their needs are increasingly widened from offline to online, from domestic to foreign.[1] Under the background of this area, due to consumers' distrust for the quality of homemade brand and their craze for luxury brand, overseas purchasing is thriving as a popular industry with a rapid developing speed as well as a growing professional team. It also possesses a wide market and public attention.[2] It is known that new things are always born from nothing, from chaos to standard.[3] And there is no exception for this brand new industry, overseas purchasing which develops quickly and facilitates consumers but also generates many problems that cannot be all tackled in a short time.[4] Therefore, studying the issue of overseas purchasing on behalf of consumers will be conducive to the healthy development of this emerging industry, standardize the business behavior of purchasing practitioners, avoid the infringement of consumers' legitimate rights and interests as well as prevent the loss of tariffs to safeguard the interests of the country.

2. Analysis on the legal problems of overseas purchasing

2.1 Fraud of operators

Traditionally, fraud behavior mainly manifests itself in intentional non-disclosure or telling false information to the other party, causing the other party to sign a contract based on the wrong information.[5] Because overseas purchasing is primarily based on Internet, people have to be on the alert of being cheated when enjoying the convenience brought by Internet, especially the fraud issue of overseas purchasing products through Internet emerges one after another. Consumers are at a disadvantage compared to sellers. When buyer are shopping overseas products online, the fraudulent behavior of sellers to buyers chiefly includes refusing to deliver goods after receiving payment and the huge difference between the real goods and samples, etc.

2.2 Problems on protection of consumers' rights and interests

2.2.1 Problems existing in the protection of consumers' rights and interests in overseas purchasing

Buyers are not totally aware of the specific conditions of commodities during the process of overseas purchasing for the sellers only introduce the property, shape and feature of goods with some pictures instead of real goods. At this time, some overseas purchasing practitioners will create fraudulent schemes of foreign commodities according to this special situation in order to pass for genuine or sell seconds at best quality price. Once the substandard products such as medical products, cosmetics and skin care products and edible products are sold to consumers in China, it will cause huge potential safety hazards and even great harm to users' health.

2.2.2 Legal dilemma of consumer rights protection

It is hard to define the subjects of responsibility from the legal level. Overseas purchasing involves multilevel legal relations due to the particularity of the contract reflected in the following aspects: The business relationship between the overseas purchasing practitioners and the overseas merchants; the indirect legal relationship formed between the buyer and the real overseas seller; the tripartite legal relationship among buyers, purchasing practitioners and e-commerce websites generated by the purchasing behavior of the online e-commerce platform. Because many parties are involved in overseas purchasing while the situation is rather complex, once problems such as quality and after-sales of commodities emerge, there will inevitably be situations where all parties in the transaction refuse to shoulder responsibility.

2.3 Problems on loss of tariffs

"Cargo" and "goods" are two completely different terms in the process of customs tax supervision. According to the relevant provisions of the Customs Law, "cargo" refers specifically to commodities imported and exported in accordance with the law by companies with import and export rights or other legal persons approved by the state. According to Chinese law, "goods" refer to the luggage and articles brought in or out of the country by individuals by means of transportation or carrying, and goods sent in or out of the country by post, including currency, gold and silver. Those exceeding "self-use and reasonable quantity" shall be considered as "cargo". In the process of on-site investigation of customs taxation supervision, Chinese relevant laws and regulations does not clearly stipulate the standard of "self-use and reasonable quantity". Hence, customs supervisors often judge whether the goods carried by individuals belong to "self-use" or exceed "reasonable quantity" depending on their subjective feelings about whether the goods exceed "reasonable quantity" or according to their past experience whether the goods belong to "self-use". All these demonstrate that it is difficult to confirm whether there is any overseas purchasing behavior on site. In real practice process, if customs supervisors think individuals exceed the "self-use and reasonable" standards, they usually adopt the method of collecting postal tax to solve such behaviors instead of dealing with it according to the smuggling behavior, making the behavior of overseas purchasing exempt from due punishment.

3. Countermeasure of legal problems of overseas purchasing

This paper put forward solutions concerning overseas purchasing problems. First, fraud prevention issue is solved by establishing information publicity system and improving social credit system. Second, the countermeasures to protect consumers' rights and interests are to clarify the responsibility for infringing consumers' rights and interests. Third, the problem of controlling the loss of tariffs in overseas purchasing will be addressed through improving the relevant legislation on taxation. As shown in Figure 1.

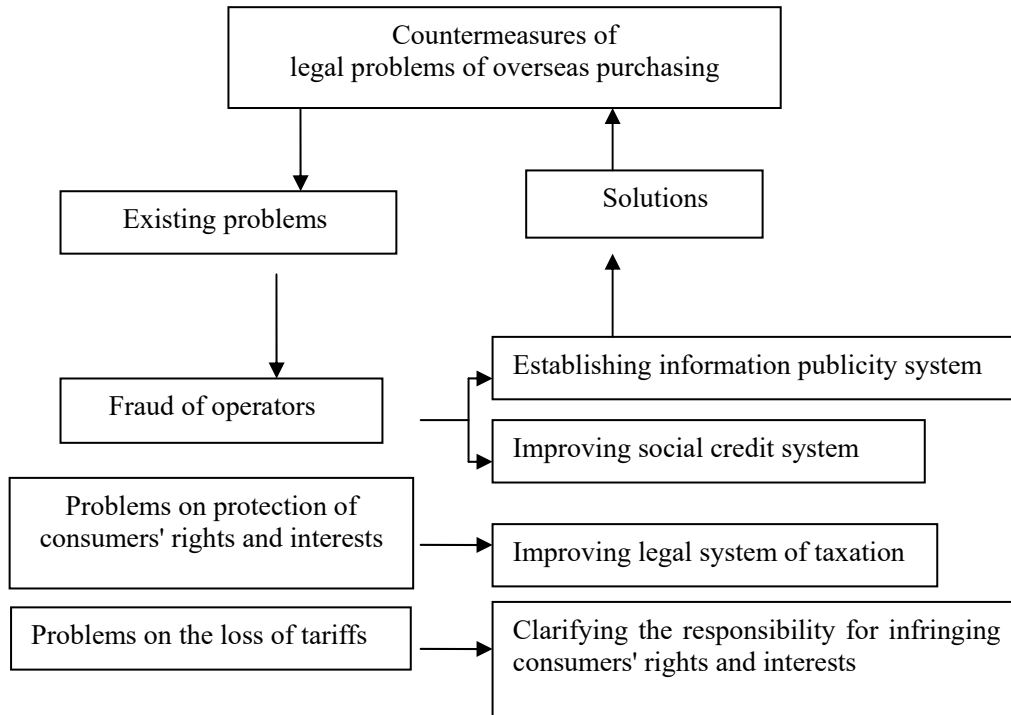


Figure 1 the Framework of Legal Problems of Overseas Purchasing

3.1 Establishment of Information Publicity System

It is an efficient way to reduce the frequent fraud behavior and better guarantee the trade safety between buyers and sellers by establishing information publicity system. In addition, the comprehensiveness, authenticity and timeliness of the displayed information should be taken into consideration. By doing so, bad practitioner can be restricted to some extent and pay price for their fraud behavior. The disclosure of mal-practitioners' bad credit will greatly influence their qualification as well as turnover rate, which will effectively protect the vital interests of consumers and reduce the occurrence of such conflicts. The type of information that should be publicized is as followings:

Firstly, the true identity of the seller. E-commerce platforms and real-name certification agencies as well as related departments should work together to confirm the true identity of purchasing agents, strengthening links with Household Registration Department of the public security organ, Administration for Industry and Commerce in charge of market supervision and Bank Card Authentication Department. After making close contact with these departments and establishing accurate information for the seller, they will be announced one by one to enable consumers to know all the information.

Secondly, goods purchased overseas and after-sales information. When consumers are making transaction with sellers, the reason for their dispute is that the goods purchased are not pre-order products, which demonstrates that the purchasing practitioner has a direct relationship with the degree of publicity of the purchased goods and after-sales information. In order to avoid the frequent occurrence of such situation, practitioner is obliged to publicize the details of the goods sold and after-sales service information in time and try to explain the real situation so as to avoid loss or personal injury caused by consumers' ignorance of the characteristics of the products or even their unknown use of the products.

3.2 Improving social credit system

Establishing complete credit system exerts great influence on the whole society, which can not only increase the authenticity and visibility of fair trade on e-commerce platforms, but also enhance the self-discipline of the industry to achieve the awareness of both parties, especially the buyer to the seller so as to help buyer make an accurate judgment.

Firstly, establishing credit evaluation system. Consumer credit refers to a credit loan measure introduced by banks under the existing trading environment to stimulate economic growth. During the online transaction, the level of credit has become the decisive factor for buyers to select sellers, so it is of great significance to establish credit evaluation system. Considering the convenience and interactive characteristics of online transactions, it is reasonable to establish an online credit evaluation system including the mutual evaluation system of traders and the credit evaluation mechanism of third-party professional institutions. The trader mutual evaluation system refers to the evaluation parameters such as “conformity between real goods and description”, “seller’s service attitude” and “seller’s delivery speed” given by the shopping website during the effective period after the completion of transaction. By giving a rating evaluation, the evaluation will accumulate consistently, generating credit rating. Then this information will be published on the Internet to share with the public, which will form a credit evaluation system.

Secondly, setting up supervision and punishment mechanism for breach of credit and irregular behavior. Currently, Chinese authorities have to build supervision and punishment mechanism for breach of credit and irregular behavior as soon as possible to standardize online transactions for overseas purchasing agents and severely crack down on and prevent speculation in fraudulent practices and bad motives in overseas purchasing. Besides, sanctions should be imposed on those who are dishonest or bring serious consequences, which includes imposing fines and ordering the termination of their dishonesty, recording while publishing their bad behavior at the same time, and limiting their access to industrial and commercial registration, bank loans and consumer credit within a certain period of time so that they can bear the adverse consequences of their own actions.

3.3 Improving legal system of taxation

The law for online platform trade still has a lot of room to improve in China. We should not only take China’s basic national conditions and the actual social and economic environment into consideration, but also further integrate the management methods accumulated by customs departments in practice and the various difficulties we encountered so as to formulate laws in an efficient way. Besides, the law for online platform trade should not only be complete and reasonable, but also the actual operability should be considered. It should also be distinguished from similar tax laws according to their own characteristics and not conflict with legal principles and the spirit of the rule of law as well as conform to the value system of the law but not overlap tax payment in the actual operation process. The follow-up legal system also needs to be constantly strengthened, especially the frequent entry-exit and tax evasion personnel in professional purchasing should be focused on tracking, and a comprehensive real-name registration record and tax payment information of customs clearance personnel should be established. Besides, we have to implement linkage management with all relevant departments, making tax information online searchable and controllable and achieving convenient measurement and screening. We could expand the range and depth of control through third-party payment websites like E-bank, Alipay, 1qianbao and Wechat wallet and enhance the supervision and inspection of e-commerce platform. If illegal or criminal acts such as smuggling occur, they shall be resolutely investigated.

3.4 Clarifying the responsibility for infringing consumers’ rights and interests

Consumers may claim compensation from the provider of online trading platform if they cannot provide the real name, address and the effective contact information of the seller or the server. And the provider of online trading platform shall fulfill their promise which are favorable for consumers. The providers have the right to recover compensation from sellers or service providers after compensation. All purchasing actions of buyers are based on Internet in the process of overseas online purchasing, which has characteristic of certain virtuality and concealment. So this requires law to constantly make improvement to fill the gap. With the progress of times and the rise of emerging professions, the law also needs to firmly grasp the pulse of the times. It is quite essential to deal with the emerging issues carefully through legislation or through the formulation of legal interpretation. Bringing emerging issues into the jurisdiction of the law in time can promote the orderly progress of the industry, protect the rights and interests of consumers and embody the

credibility and authority of the rule of law.

4. Conclusion

Overseas purchasing is a brand new but complicated emerging industry. Due to the hysteresis nature and passivity of law, there are no comprehensive laws and regulations for overseas purchasing in China at present, and we could only refer to the relevant department laws. This paper analyzed problems consumers may face in overseas purchasing which are sorted out one by one. The main problems existing in overseas purchasing such as fraud of operator, protecting consumer's rights and interests and loss of tax are analyzed in this paper. Corresponding legal regulations are put forward from the perspective of economic law to address these problems. To solve the problem of fraud of operators, we should establish information publicity system and improve social credit system; to protect consumers' rights and interests, we should make clear the responsibility for infringing consumers' rights and interest; to solve the problem of tariff loss, we should strengthen the supervision and increase the punishment. This paper also offers some suggestions on how to improve the aftermath mechanism of overseas purchasing based on the problems existing in the protection of consumers' rights and interest in cross-border purchasing.

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