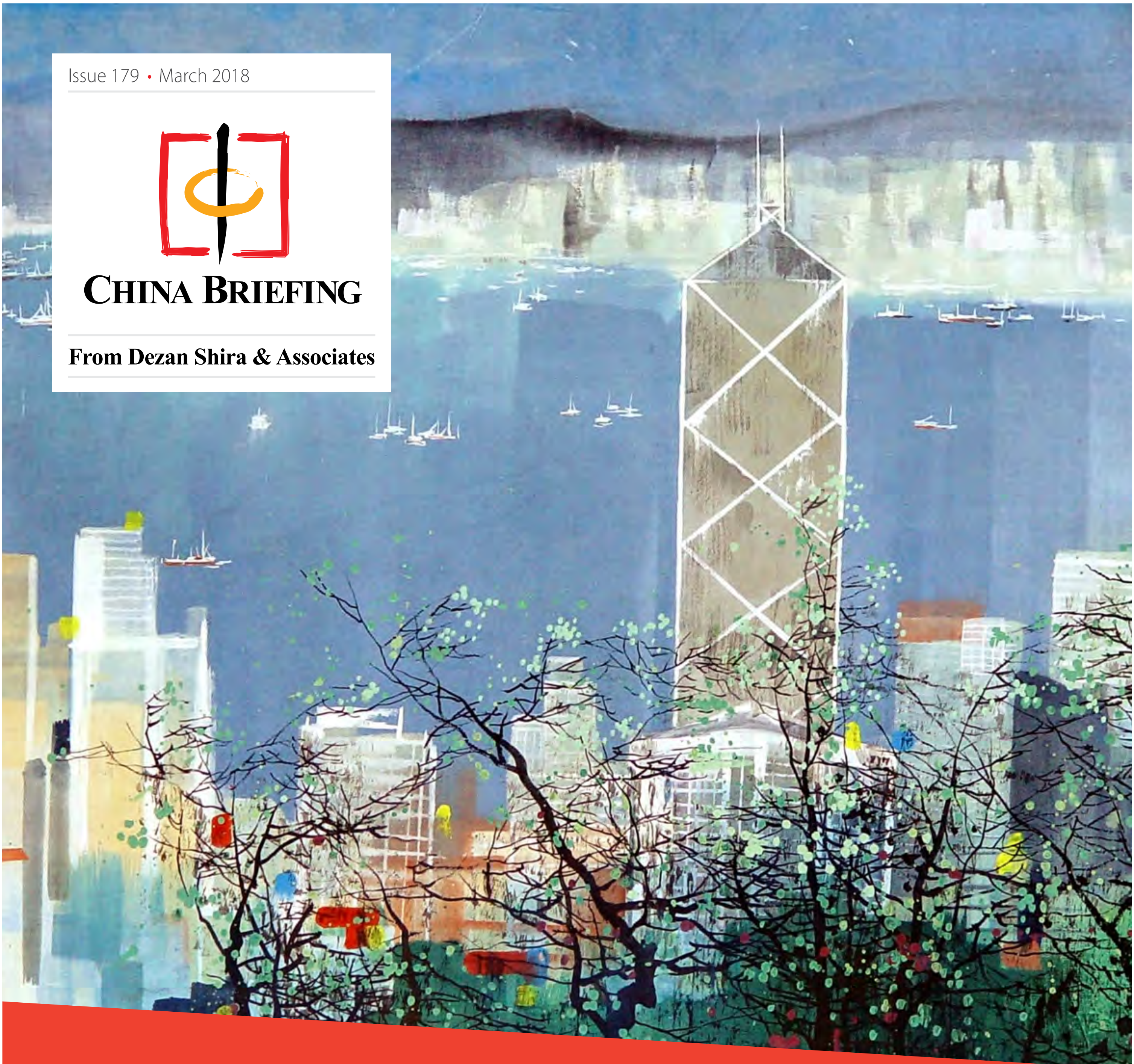
Issue 179 • March 2018



CHINA BRIEFING

From Dezan Shira & Associates

Cross Border e-Commerce in China

www.china-briefing.com

Introduction

ALBERTO VETTORETTI
Managing Partner
Dezan Shira & Associates

The incredible scale and growth of China's e-commerce market is not news to businesspeople familiar with the country. Driven by 772 million internet users, China spent over US$1.13 trillion on e-commerce purchases in 2017, accounting for about 40 percent of the global e-commerce market.

Among the fastest growing subsectors of China's e-commerce market is cross border e-commerce – the purchase of overseas products via e-commerce platforms. China's CBEC sales hit the US$100 billion mark in 2017, and are expected to reach US$144 billion by 2021. CBEC is an attractive channel for foreign businesses to sell to China, as it allows them to access the world's largest e-commerce market without the costs and commitment of establishing a formal presence there. However, overseas sellers often underestimate the difficulties posed by cross border e-commerce, which include a fluid regulatory environment, logistical headaches, and a lack of brand visibility, among others. Misunderstandings over how CBEC in China works frequently end in costly disappointments and retreats from the market despite its vast size and growth prospects.

In this issue of China Briefing magazine, we offer foreign investors a practical guide to selling to China through CBEC. We begin by introducing the market landscape, before diving in to the sector's legal and regulatory framework. We then compare the advantages and disadvantages of different CBEC business models. Finally, we consider how to protect intellectual property in China when selling online.

We hope this magazine helps your business access the Middle Kingdom's vast and dynamic internet retail market. For any questions about CBEC in China, please do not hesitate to contact us.

With kind regards,

Alberto Vettoretti

ASIA BRIEFING
www.asiabriefing.com

Asia Briefing Ltd. Unit 507, 5/F, Chinachem Golden Plaza, 77 Mody Road, Tsim Sha Tsui East Kowloon, Hong Kong.

Reference
China Briefing and related titles are produced by Asia Briefing Ltd., a wholly owned subsidiary of Dezan Shira Group.

For queries regarding the content of this magazine, please contact: editor@asiabriefing.com

Credits
Publisher / Alberto Vettoretti
Managing Editor / Adam Pitman
Editors / Alexander Chipman Koty, Qian Zhou, Zolzaya Erdenebileg
Design / Imelda Libertad

This Issue's Topic

Cross Border e-Commerce in China

Table of Contents

This Month's Cover Art
Liu Mao Shan (劉懋善)
香港印象之三
48.5x58.5 cm
Wan Fung Art Gallery
wanfung@126.com.cn
+86 0760 8333 861
www.wanfung.com.cn

Annual Subscription

China Briefing Magazine is published six times a year.

To subscribe, please visit **www.asiabriefing.com/store**. And please explore the clickable resources below.

Strategic Advisory and Commentary
info@dezshira.com

Legal, Tax, Accounting News
www.china-briefing.com/news

Professional Services
www.dezshira.com/services

Magazines, Guides, Reports
www.asiabriefing.com/store

Asiapedia
www.dezshira.com/library

Podcast and Webinar
www.dezshira.com/library search?type=podcast

Follow us

Connect with us for the latest news, events and insights across Asia.

Like *China Briefing* on Facebook

Follow *China Briefing* on Twitter

Connect with *Dezan Shira & Associates* on Linkedin

View *Dezan Shira & Associates* on Youtube

Scan the QR code to follow us on WeChat and gain access to the latest investor news and resources

China's Cross Border e-Commerce Market

By Dezan Shira & Associates
Editor: Alexander Chipman Koty

China's cross border e-commerce (CBEC) market continues to thrive, and is poised to maintain its strong growth in 2018. China's CBEC transactions grew by 19 percent in 2017 to reach US$1.18 trillion, among which retail sales hit the US$100 million mark. In 2018, analysts expect the sector to grow by another 17.4 percent to reach US$1.26 trillion.

Several factors have converged to drive the explosive growth of CBEC in China. The proliferation of smartphones and growth in internet penetration coincided with rapidly rising disposable incomes and demand for high quality foreign products.

This demand is compounded by high taxes on many foreign products and countless fakes, which makes purchasing foreign goods in China unattractive for many consumers. In many cases, Chinese shoppers resort to CBEC because the product in question simply is not available domestically.

CBEC is not only popular among Chinese consumers, but also foreign sellers. Because CBEC allows foreign businesses to sell in China without a physical presence – which necessitates incorporation and licensing – overseas businesses can access millions of Chinese consumers at a relatively low cost. CBEC therefore allows businesses to test the Chinese market while potentially making significant profits at the same time.

Further, foreign businesses can benefit from preferential policies that promote the sector. In 2015, China made Hangzhou – home to Chinese e-commerce titan Alibaba – the country's first CBEC Comprehensive Pilot Zone, before expanding the initiative to 12 more cities the following year. The zones also provide expedited customs clearances, preferential tax rates, and clustering of e-commerce logistics services, among other benefits.

The expansion of CBEC zones provides easier access to growing consumer markets within China. Traditionally, CBEC shoppers have been concentrated along China's wealthy coastal regions, namely Beijing, Fujian, Guangdong, Shanghai, and Shandong. However, the highest growth regions are found in China's central and western regions, which can be accessed through the pilot zones located in the inland cities of Chengdu, Chongqing, and Zhengzhou.

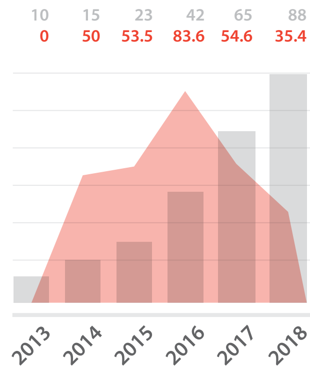
Females and young shoppers aged between 23 and 35 are two of the biggest demographic groups leading the CBEC charge; these groups largely purchase products from foreign companies that are considered more reliable or higher quality than their domestic counterparts. This includes cosmetics and personal care products, baby and maternity products, food and healthcare products, as well as high-end clothes and apparel and appliances.

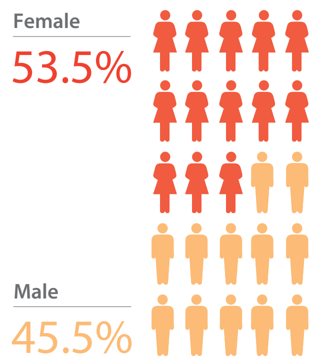
China's Cross Border e-Commerce (CBEC) at a Glance

CBEC Pilot Cities and Pilot Zones

- **2012** *Zhengzhou, Shanghai, Chongqing, Hangzhou* and *Ningbo* became the first five CBEC import service pilot cities.
- **2013, Sep** *Guangzhou* became the 6th CBEC import service pilot cities.
- **2014, Jul** *Shenzhen* became the 7th CBEC import service pilot cities
- **2015, Mar** The State Council agreed to establish the first comprehensive CBEC pilot zone in *Hangzhou*.
- **2015, Oct** *Tianjin* became the 8th CBEC import service pilot cities.
- **2016, Jan** *Fuzhou* and *Pingtan* became the 9th and 10th CBEC import service pilot cities.
- **2016, Jan** The State Council agreed to establish comprehensive CBEC pilot zones in another 12 cities, which include *Tianjin, Shanghai, Chongqing, Hefei, Zhengzhou, Guangzhou, Chengdu, Dalian, Ningbo, Qingdao, Shenzhen and Suzhou.*

CBEC Shopper Analysis

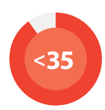




Education

90% Have **collage degree** and above

Age

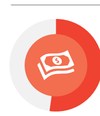


75% CBEC shoppers are **under the age of 35**

Frequency

55% Purchase at least **once per month**

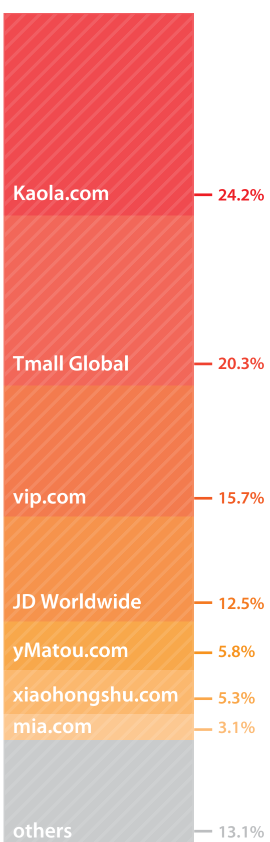
Income



52.5% Monthly income is **above RMB 10,000**

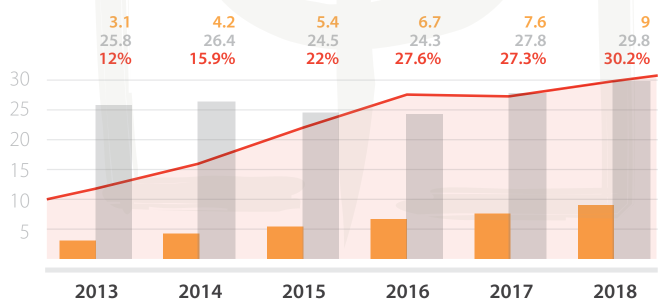
Source: iiMediaResearch, WalktheChat, CECRC

Market Share of Main CBEC Players



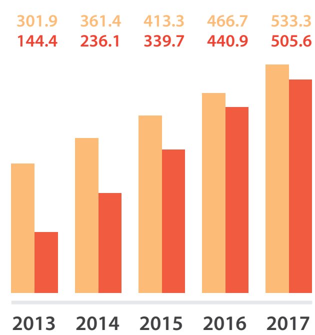
Source: iiMediaResearch, WalktheChat

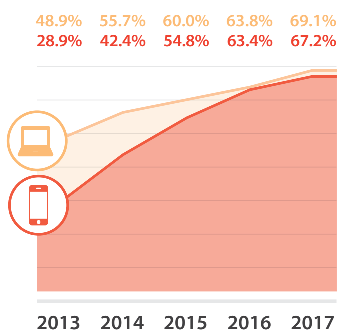
The Growth of China's CBEC Transactions



Source: CECRC (China E-commerce Research Centre), National Bureau of Statistics

Number of Online and Mobile Shoppers





Source: CNNIC (China Internet Network Information Centre)

Cross Border e-Commerce in China: Regulatory Updates and Trends

By Dezan Shira & Associates
Editor: Qian Zhou

With cross border e-Commerce (CBEC) taking an increasing bigger share of the total import and export market, it is of no surprise that the government has taken CBEC regulations more seriously. As consumer complaints and industry speculation over unfair competition increase, regulatory authorities have taken notice. Foreign companies seeking to pursue business opportunities in China's booming CBEC market, especially those do not have a business entity in China, need to closely examine the fast changing CBEC rules and regulations.

CBEC tax reforms

Prior to April 8, 2016, CBEC purchases in "reasonable quantity for personal use" would be treated as personal parcels subject to parcel tax at rate of 10 percent, 20 percent, 30 percent, and 50 percent, depending on the type of goods. And the parcel tax was exempted if the payable tax amount was lower than RMB 50 (US$7.91).

Nevertheless, on April 8, 2016, this preferential tax policy of treating CBEC packages as personal parcels was overturned, with the so called "April 8 New Policy"—Notice on Taxation Policies for CBEC Retail Imports (Cai Guan Shui [2016] No.18)—coming into force. According to the April 8 New Policy, consumers purchasing goods through CBEC, the electronic information of which can be accessed by the customs, need to pay import taxes including tariffs, value added tax (VAT), and consumption tax (if applicable), though single transactions under RMB 2,000 (around US$317) and yearly transactions under RMB 20,000 (US$3,170) enjoy a temporary zero percent tariff rate and reduced import VAT and CT rates charged at 70 percent of the taxable amount under the general trade. Tax exemptions are no longer available.

If customs cannot access electronic information or CBEC retail goods - such as for products purchased on overseas online shops and delivered directly to China - the goods are subject to parcel tax. However, the parcel tax rates were changed to three levels – 15 percent, 30 percent, and 60 percent – with effect from April 8, 2016. According to the official explanation, the adjusted parcel tax rates would be more or less equal to the corresponding import taxes rates under the general trade model, though the exemption is still available for payable tax amount under RMB 50.

A detailed comparison of the old CBEC tax rules with the new can be found in the table on P.07.

Generally speaking, the overall tax burden is higher for consumers after the switch to the new CBEC tax schemes, especially for transactions that were tax exempted previously where payable tax amount was below RMB 50. However, this may be not true for transactions of certain types of goods.

For example, a bottle of wine bought through CBEC platforms at RMB 300 (US$47.50) would be subject to parcel tax at rate of 50 percent, or RMB 150 (US$23.80), before April 8, 2016. No exemption was available since the tax amount was over RMB 50 (US$ 7.90). Nevertheless, after April 8, 2016, the same bottle of wine should be subject to imported taxes of RMB 56.7 (US$9) (tariff at zero for the moment, VAT = RMB 300 × 17% × 70% = RMB 35.7, and CT = RMB 300 × 10% × 70% = RMB21), which means the tax burden in this case is actually lower under the new CBEC tax scheme.

The trend towards a fairer CBEC tax system is inevitable, as authorities wish to balance the competitive advantage of CBEC over traditional general import business. With the abolition of the price advantages, investors that want to engage in this sector should focus more on the quality of their goods and services, the management of their supply chains, and customer satisfaction.

CBEC positive lists and the delayed implementation

Right after the new CBEC tax policy came out, the MOF issued the first "List of CBEC Retail Imports" (the "positive list"), restricting the scope of goods that can and be sold over CBEC. Accordingly, only goods with the HS code shown on the list can be imported and sold through CBEC platforms – all other goods must be imported under the general trade model. The following custom clearance and quarantine requirements were also added:

- Registration or record-filing certificates are required for infant formula, first imported cosmetics, medical devices, and special food transacted through CBEC; and
- An AQSIQ clearance form is required for goods imported through the CBEC bonded warehouse model when entering into the bonded warehouse from outside; goods imported through direct shipping model would be exempted from this requirements.

On April 15, 2016, the MOF issued the second positive list. While custom clearance and quarantine requirements are still the same as stipulated in the first list, the second positive list added some popular products that were left out by the first positive list and clarified certain items.

If fully implemented, the scope of goods that can be imported through CBEC would be significantly reduced. Further, the newly added custom and quarantine requirements would substantially increase operation costs and become a major barrier for those who want to enter the CBEC market.

A Comparison of the Old and New CBEC Tax Schemes

		Old CBEC tax rules	New CBEC tax rules	
Applicable scope		All CBEC retail imports	CBEC retail imports, the electronic information of which can be accessed by the customs	CBEC retail imports, the electronic information of which be accessed by the customs
Applicable taxes and rates		Old parcel tax at 10%, 20%, 30% and 500%, depending on the type of goods	Tariff: zero rate for the moment; VAT and CT charged at 70% of the normal rates	New parcel tax at 15%, 30% and 60%, depending on the type of goods
Transaction limits	Single	RMB 1,000 (RMB 800 for products delivered from HK, Macau, and Taiwan)	RMB 2,000	RMB 1,000 (RMB 800 for products delivered from HK, Macau, and Taiwan)
	Annual	No limits	RMB 20, 000	No limits
Applicable taxes for transactions over limits		General import taxes (Tariff, VAT, and CT). Parcel tax still apply for single inseparable items over limit	General import taxes (Tariff, VAT, and CT)	General import taxes (Tariff, VAT, and CT). Parcel tax still apply for single inseparable items over limit
Exemptions		Where tax payable is below RMB 50	No exemptions	Where tax payable is below RMB 50

Facing pushback, the government has delayed the implementation of the custom clearance and quarantine requirements in the positive lists again and again over the last two years:

- On May 24, 2016, China officially decided to delay of the custom clearance and quarantine requirements in the positive lists until May 11, 2017 in the 10 CBEC pilot cities;
- On November 17, 2016, China again delayed of the implementation until the end of 2017 in the 10 CBEC pilot cities;
- On September 20, 2017, China delayed the implementation once more until the end of 2018 in the 10 CBEC pilot cities; and
- On December 7, 2017, China decided to expand the delayed implementation scope to cover another five cities – Hefei, Chengdu, Dalian, Qingdao, and Suzhou – starting from January 1, 2018.

CBEC import models: new trends

There are two models for foreign companies engaging in CBEC business: the direct shipping model—under which goods are stored at overseas warehouse and delivered by international courier service to customers directly after they make the order online, and the bonded warehouse model—where goods are temporarily stored at the bonded warehouse established in the CBEC pilot cities under the Customs supervision before they are delivered to domestic customers.

Previously, the bonded warehouse model used to be more popular due to the more convenient real-time custom clearance, faster logistics, as well as availability of after-sale services. However, with the new CBEC tax policies and positive lists coming out, the popularity of the bonded warehouse started to diminish.

On the one hand, the bonded warehouse model is not available for exemptions under the current import taxes scheme, which will inevitably affect the CBEC purchase at relatively low prices. On the other hand, goods purchased through the bonded warehouse model would be required to obtain the AQSIQ clearance form if the positive list is finally implemented, while goods bought through direct shipping model could be exempted from this requirement. In 2017, many foreign companies moved out of the bonded warehouse and started to focus more on the direct shipping model.

Timeline of the Major CBEC Policies

2012
China started to CBEC import service pilot cities, the initial number is five.

July 2014
GAC released GAC Announcement [2014] No.56 and No.57, affirming the legitimacy of CBEC and clarifying that bonded import CBEC products should be subject to parcel tax.

March 2015
China started to establish comprehensive CBEC pilot zone.

January 2016
Until this time, China launched 10 CBEC pilot cities and 12 CBEC pilot zones.

March 24, 2016
MOF, GAC, and State SAT issued "April 8 New Policy", which ended the preferential treatment of CBEC packages as personal parcels. Besides, parcel tax rates were changed from four levels (10%, 20%, 30% and 50%) to three levels (15%, 30%, and 60%).

April 6-15, 2016
MOF issued two "List of CBEC Retail Imports" (the "positive lists"), restricting the scope of goods that can be sold over the channel.

May 24, 2016
First delay: The custom clearance and quarantine requirements in the positive lists was delayed until May 11, 2017 in the 10 CBEC pilot cities.

November 17, 2016
Second delay: the custom clearance and quarantine requirements in the positive lists was delayed until the end of 2017 in the 10 CBEC pilot cities.

December 2016
The National People's Congress released the first draft of the Ecommerce Law, which officially supports CBEC. However, certain draft measures are taken as stricter control over the market.

December 7, 2017
The delayed implementation of the custom clearance and quarantine requirements in the positive lists was expanded to another five cities—Hefei, Chengdu, Dalian, Qingdao, and Suzhou, starting from January 1, 2018.

Post 2018
China endeavors to lead the development of the Standard Framework for CBEC, which is expected to be approved in June 2018 in the World Customs Conference.

Business Models for China's Cross Border e-Commerce Market

By Dezan Shira & Associates
Editor: Zolzaya Erdenebileg

Foreign businesses that want to access the Chinese cross border e-commerce (CBEC) market first need to choose their model. Due to the varied nature of CBEC models and platforms, this can be a challenging endeavor, particularly for those unfamiliar with the Chinese market.

The final decision depends on a strategic analysis of each model, and a breakdown of the main advantages and disadvantages facing the company. In this article, we summarize the models, their differences, and their fit for different business models across their development.

Major CBEC Models

In this section, we outline the four models that foreign business may choose in order to do CBEC in China. These models are the methods in which investors can sell in China, either directly to consumers (B2C) or indirectly to consumers through a marketplace intermediary (B2B2C). Consumer to consumer selling (C2C) is excluded as C2C model is primarily carried out by a purchasing agent or "daigou" (代购), and not a formal business.

Company standalone website (outside China)

Many companies are attracted by the idea of having their own standalone website hosted outside of China. At first glance, this option appears to be the most convenient as it does not require a legal Chinese entity and is cost effective. However, these websites often have low web traffic and interest from potential consumers. This is due to three main reasons.

First, if the website is hosted outside of China, Chinese consumers may not even be able to find or access the site. Secondly, there is already intense competition for Chinese consumer traffic waging between the giants of e-commerce in the country. Finally, these standalone websites often fail to provide customer supports that Chinese consumers demand, such as refunds, exchanges, Chinese payment methods (UnionPay, WeChat Pay, AliPay), after sales support, reliable delivery, and more.

Selling through CBEC online mall store (B2C)

Online malls are marketplaces that act as a centralized platform for different "stores". Each brand can have its own store and operate it themselves. Consumers can purchase items from stores using the online mall's checkout system.

This model has grown in user popularity as it is convenient and reliable for the consumer. The consumer can access a number of different stores, allowing them to "shop around". Additionally, the single checkout system uses a familiar payment method (AliPay or WeChat Pay). Finally, the online malls allow consumers to talk directly with the shops, and offers easy and fast sales support.

Selling through CBEC online malls direct purchasing model (B2C2C)

In the B2B2C model, foreign businesses indirectly reach Chinese consumers because there is an intermediary marketplace where products are sold. There are three main intermediary marketplaces: hypermarkets, vertical specialty, and flash sales.

Hypermarket

In a hypermarket, there is only one shopfront. The hypermarket itself purchases goods directly from the overseas company, and adds it to their product stock. The product is then sold on the platform with a retail price.

Additionally, the goods are stored and delivered through the hypermarket's own warehouse and distribution centers, reducing the logistics burden for the foreign brand. The foreign brand need only deal with the procurement manager with whom they can negotiate prices. Often, the hypermarket focuses on particular categories of products, such as wine, handbags, or milk powder.

Vertical specialty

Like hypermarkets, vertical specialty platforms also buy goods directly from the overseas supplier. However, these platforms focus on niche product categories, consumer demographics, or regions. Vertical specialty platforms are growing quickly as their niche focuses target potential customers better and leads to higher sales conversions.

Flash sale

As the name suggests, flash sale platforms offer limited quantities of products at discounted prices for a short period. Often, the goods are new to market, or surplus products. Flash sale platforms offer foreign brands the ability to market their goods in the Chinese market, or even to test out the popularity of various products.

WeChat Store

WeChat and WeChat Stores are an emerging CBEC method, but unlike the aforementioned models, it is primarily a social media app with related services. Despite this, its growing popularity and CBEC implications make it an attractive option for many foreign brands.

WeChat, originally a messaging app released by Tencent, has become a superapp – one that virtually everyone uses in China. Its functions have grown to include WeChat Pay, which allows users to pay their bills, order food and taxis, book appointments, buy tickets and more. WeChat Pay is now one of the leading payment methods in China, with almost 900 million active users.

Once a company has a verified account, it can open an in-store app through which it can sell directly to Chinese customers. The customers can then use WeChat Pay to buy the products.

As Chinese customers often get product recommendations through social media, the WeChat Store is a potentially powerful model.

Additionally, through the chat capability, brands can interact directly with the consumer. Finally, the brands can also access consumer data, which allows them to improve their services, products, and image.

In order to open an official WeChat account, companies are required to provide a local business license and an ICP license. Foreign firms can get around this requirement by either engaging a local party or a third-party agent, or engaging a local third-party WeChat e-commerce platform like WalktheChat.

Platforms comparison

As the variety of existing CBEC models suggests, CBEC platforms are proliferating in China, and growing beyond the mainstays of Tmall Global and JD Worldwide. To be noted, with competition getting tougher and tougher, major platforms tend to use mixed models rather than one. For example, Tmall Global is traditionally focusing on online mall (B2C) model, but with direct purchasing model gaining great success, it launched its own direct purchasing channel as well. Kaola.com, originally focusing on direct purchasing (B2B2C) model, also expanded its business to allow third party stores entering its platform.

In table provided on P.12, we compare top four platforms based on their major business models.

Comparison of the Major CBEC Models

Advantages	Disadvantages	Examples
Company standalone website (outside China)		
• Cheap • Convenient setup for businesses	• Low web traffic • Low chances of success	• quinessence.com
Selling through CBEC online mall store (B2C)		
• High user traffic • Convenient sales support for consumers	• High competition with other stores • High investment requirements (varies by platform), including security deposits, annual platform fees, commission fees, and payment service fees	• Tmall Global • JD Worldwide • Suning Global
Selling through CBEC online malls direct purchasing model (B2C2C)		
• Lower risk and requirements as the marketplace takes the burden of storage and distribution • Marketplace is already familiar with consumer demands	• Product categories are limited • No branding control • Can only sell at wholesale price	• Hypermarket: Kaola, JD Worldwide, Tmall Global • Vertical specialty: Beibei (贝贝), Mia (蜜芽) • Flash sale: VIP.com
WeChat Store		
• Interact directly with customers • Access and analyze consumer data • Customize official store look and content to fit brand image • Access to WeChat's social media capabilities and reach	• Need local business license and ICP license • Highly competitive (as of Q4 2017, there are over 10 million official accounts) • No organic traffic, have to market aggressively	• Longchamp WeChat Store • Victoria's Secret WeChat Store • Old Navy WeChat Store

Entry strategy advisory

The options described above are just a small sampling of platform that foreign brands can choose from. The best-fit platform for a company should be based on a number of different considerations, but the main decision-making points include:

Product

Depending on the product, it may be advantageous to consider an array of specialty websites, like Beibei (for babies and children) or Yiguo (fresh foods), or others.

Funding

Some platforms, like Tmall Global and JD Worldwide, offer high growth prospects, but also require high startup and maintenance fees. Other platforms have lower fees, but slower growth prospects.

Market development plan

The platform will have a major impact on the brand and product's image and branding in the market. Therefore, the platform (and model) has to be integrated into the market development plan.

Regulations and operations

Some platforms require a business to have more Mainland China capabilities. For example, Tmall Global and JD Worldwide require companies to have product return centers and Chinese customer service capabilities.

Of course, companies do not need to be married to one platform; they can pursue a multi-channel strategy. In this case, the investors should consider how the different platforms fit into their overall e-commerce plans, and overall market entry strategy.

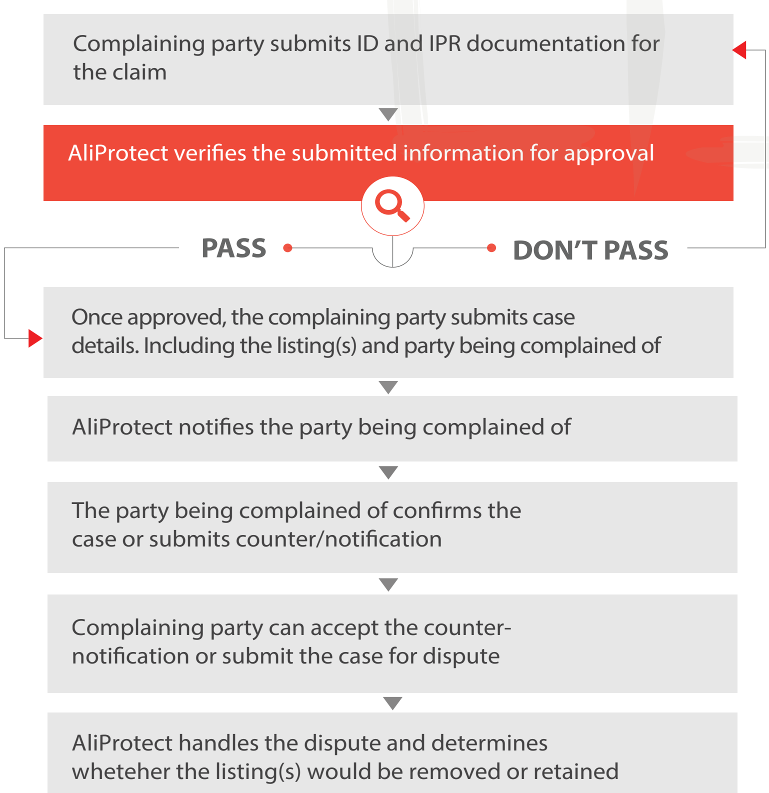
	Tmall Global	JD Worldwide	Kaola.com	VIP.com
Model	Online mall (B2C)	Online mall (B2C)	Hypermarket (B2B2C)	Flash sale (B2B2C)
Entry requirements	• Overseas entity • Overseas retail and trade license • Brand owner or authorized distributor • Chinese customer service provided • Product returns handled in mainland China. • Invitation only since 2015: • Foreign company with global brand recognition • Turnover of at least RMB 100 million (US$15.79 million)	• Overseas entity • Overseas retail and trade license • Brand owner or authorized distributor or franchiser • Chinese customer service provided • Product return center in Mainland China • Priority for brand recognized companies	• Overseas entity • Brand owner or authorized distributor • In good reputation and operational situation	• Overseas entity (for CBEC) • Priority for brand recognized companies
Entry procedures	• By receiving entry invitation, the entry process is: Prepare required documents and make plans-sign contracts with TPs(must)-store application-store development-store launch • Process takes 4-8 weeks from application	• Contact the relevant JD business development manager specified online • Prepare necessary documents and resources • Recommended, but not required to use a reliable TP • Process takes about 2-4 weeks	• Submit an application form online by clicking the button on the official webpage • Wait for contact • If accepted by Kaola.com, the offer will be sent together with instructions to finish the registration process	• Provide required information and documents by sending email to VIP.com • Waiting for response, which usually take less than five working days • Negotiate and sign official contract • Products online
Costs	• Security deposit of RMB 150,000 (around US$25,000, unless otherwise specified) • Annual technology and service fee RMB 30,000 (US$4,757) to RMB 60,000 (US$9,513, depending on the specific type) • Real-Time Deduction of Technical Service Fee of 0.5%-5% • Alipay service fee for each cross border transaction	• Security deposit of US$15,000 (refundable) • Service fee per store per year US$1,000 • Commission fee 2% -8% based on sales	• Security deposit of US$15,000 • Membership fee of US$1,000/year • Commission fee of 2-10%	• Negotiate price for goods with platform or operate with consignment • No deposit • No membership fee • No registration fee or commission
Pros	• High market share and consumer traffic • Good reputation • Marketing opportunities • Control over branding, pricing, marketing, customer service and logistics	• High market share and consumer traffic • Good reputation • Marketing opportunities • Control over branding, pricing, marketing, customer service and logistics	• Logistics support • Economy to luxury product positioning • Can be seller or wholesaler	• No extra fees • Targeted customer base (75% female between ages of 18-45) • Logistics support • Can be seller or wholesaler
Cons	• High start-up and maintenance costs • High competition for sales	• High start-up and maintenance costs • High competition for sales	• Product categories limited to digital, baby and children, health and beauty, food and nutrition, clothes and accessories, and household • Can sell at wholesale rate	• Product categories limited to health and beauty, mother and baby, clothing and shoes, home and furniture, and food and beverages. • Can sell at wholesale rate • Flash sale operations can lead to sudden stock shortages

Managing Intellectual Property in e-Commerce Markets

By Dezan Shira & Associates
Editor: Alexander Chipman Koty

Foreign brands are riding a string of victories in Chinese courts against counterfeiters and intellectual property (IP) infringement. New Balance, Lego, and Under Armor are among the high-profile international brands that have recently won decisions in Chinese courts after suffering years of IP theft and disappointing legal proceedings.

AliProtect Claim Process



However, while China's IP protection environment is undoubtedly improving, businesses selling to China through CBEC should still take stringent measures to protect their brands. Although it is important for all brands to do so, it is especially important for those who do not have a formal presence in China, as they face logistical challenges owing to their physical distance and are often less familiar with the Chinese legal system. Indeed, counterfeit products are still rampant on China's e-commerce platforms. In its most recent report, the Office of the United States Trade Representatives listed Chinese e-commerce giant Alibaba's Taobao as a "Notorious Market" – a classification reserved for the world's biggest IP, trademark, and copyright offenders.

IP infringement on China's e-commerce platforms not only eats into potential sales, but can also fatally damage a brand's prospects. Chinese consumers are highly brand-conscious, yet foreign brands cannot solely rely on their overseas reputations. A botched entrance may turn consumers wholly off a brand, especially for consumable products like food and beverage and cosmetics – the most popular products for CBEC – where consumers are highly attuned to safety and reliability.

Businesses selling products in China via CBEC should take steps to protect their IP through legal government channels as well as through the e-commerce platforms they are using and other platforms where imitation goods may be sold.

VALERIA MANUNZA
Assistant Manager
Dezan Shira & Associates

> *"The draft e-commerce law is expected to increase the level of IP protection in the e-commerce field. Platform operators are required to take necessary and immediate measures such as deleting the link or terminating the transaction as soon as they are informed of the occurring violation. Failing to do so may trigger a fine of up to RMB 500,000."*

Registering intellectual property

Some foreign companies are still under the assumption that because they have registered their trademark in the country of origin, it will be protected in China. However, the Chinese system does not recognize trademarks registered in other jurisdictions and will grant protection only to those who file first in China, regardless of the use or intent to use.

As China has a 'first to file' system, the outcome of any trademark dispute primarily hinges on who registered it first in China. Brand owners should be cognizant of the potential for 'trademark squatters' – opportunistic companies and individuals that trademark well-known foreign brands in China in anticipation of their entry, either to use the brands for themselves or to sell them back for a large sum of money. Companies such as Apple, Tesla, and Google have all faced challenges relating to trademark squatting in China. However, overseas brand owners can register their IP in China even if they do not have a legal presence there. In fact, if brand owners have plans to sell to China in the future, they should register their IP there as soon as possible, even if they are years away from making moves in the market. Registering a trademark in China can take up to 18 months in some cases, and the trademark can only be protected once the application has been completed.

Foreign businesses should also note that language differences can complicate trademark registration in China. Many foreign businesses use phonetic transliterations of their brand names, while others opt for localized names that capture the essence of the brand or describe the product. Trademark squatters often anticipate this, such as Qiaodan Sports – the Chinese company that registered a trademark for the Chinese transliteration of basketball legend Michael Jordan's name.

However, localizing a brand name also affords the owner more flexibility. Many foreign brands adopt considerably different names when selling to China not because the transliteration has already been claimed, but for legitimate business purposes. For example, Microsoft is known as Weiruan in China. CBEC sellers largely have the same issues to consider and steps to follow when registering and protecting IP in China as companies that formally set up in the country. While CBEC is frequently considered a shortcut to accessing the Chinese market, foreign businesses should be committed and vigilant when protecting their IP in the country.

Protecting IP on e-commerce platforms

In addition to the legal protections gained by registering IP in China, brand owners can work with operators of e-commerce platforms to protect their IP. In practice, most businesses will probably find themselves spending more time identifying and stamping out illegitimate sellers on popular e-commerce platforms rather than pursuing legal battles in Chinese courts.

Illegitimate brand use can come in innumerable forms. Platforms such as Taobao are known for being rife with fake products or cheap mimics. However, other reportable behavior can include unauthorized vendors selling a legitimate product, the sale of legitimate products meant for other markets or jurisdictions, or the use of a brand name or image to sell a completely different product.

Major e-commerce platforms including Tmall, Taobao, JD, and Kaola all have procedures to report IP infringement on their platforms. The rules that govern IP complaints differ by platform, leading to varying effectiveness. For instance, some platforms only accept complaints written in Chinese, or where the IP has been registered in China. Complaints may also require large amounts of paperwork and supporting documentation, as well as submission fees.

Thanks in part to Taobao's notorious reputation for counterfeits, Alibaba has designed a comprehensive system to handle IP complaints on its platforms. Claims can be submitted through its AliProtect system, and the company also has the Alibaba Anti-Counterfeiting Alliance to monitor infringements and share information. While many observers question the effectiveness of these systems, the AliProtect claim process can be used as an example of filing an IP-related complain on a Chinese e-commerce platform.

Does your company need ***on-the-ground*** China expertise?

Consult our business intelligence team about research and investment advisory for your market entry and expansion needs.

Zolzaya Erdenebileg
China Lead
Business Intelligence
Tel: +86 21 6358 8686 ext. 6915
Email: zolzaya.erdenebileg@dezshira.com

Introduction

Dezan Shira & Associates is a multi-disciplinary professional services firm operating throughout the Asia-pacific region providing tax, legal, audit, accounting and advisory services. Beginning life in Hong Kong and Shenzhen in 1992, we have grown over the past quarter century to have over 20 offices and several hundred staff across the region and work closely with our alliance partners in Australia, EU, and US.

Our Business Intelligence Services

Operational in China, ASEAN, and India, Dezan Shira & Associates' Business Intelligence team offers customized reports and solutions for firms entering into or expanding within emerging Asia. We provide location analysis and site identification, salary benchmarking and other labor considerations, market research, market selection & entry strategy advisory, B2B matching, threat and opportunity assessments, as well as regulatory analysis and monitoring.

- Location Analysis & Site Identification
- Salary Analysis & Benchmarking
- Tariffs & Supply Chain Study
- Market Selection & Entry Strategy Advisory
- B2B Matching
- Threat and Opportunity Assessments

Our Services

- **Business Intelligence**
- Business Advisory
- Due Diligence
- Accounting
- HR and Payroll
- Tax
- Audit
- Information Systems

CONTACT US