

The Dilemma and Breakthrough Path of the Application of International Trade Law in the Cross-Border Trade of Digital Products

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Abstract: The scale and iteration of digital products are currently growing quickly, and the expansion of digital trade has emerged as a key factor in the growth of international trade. However, due to the virtual nature of digital products, rapid dissemination and fast update speed, international trade law will lead to the application of digital products in cross-border trade practice. The problem of applying international trade law to the cross-border commerce of digital goods can-not be successfully resolved because of the disparities in legal systems across nations and the shortcomings of the system's conflict adjustment mechanism. The problem of applying international trade law to the cross-border commerce of digital goods cannot be successfully resolved because of the disparities in legal systems across nations and the shortcomings of the system's conflict adjustment mechanism.

1 INTRODUCTION

Global digital commerce exports are expected to increase from \$4.99 trillion in 2020 to \$7.13 trillion in 2023, according to the Global Digital Commerce Development Report 2024 (UNCTAD, 2024). It grew by 42.9% in four years, with an average annual growth rate of 10.7%, significantly outpacing the growth of global exports of goods (5.6%) and services (5.57%). Digital trade has become a new engine driving global trade growth. In this context, the international trade law system is faced with a series of application difficulties, such as the conflict of law enforcement jurisdiction caused by the different laws of different countries. Failure to provide effective legal guidance and protection in the face of new problems will lead to a decline in the operability and enforcement of national trade law in practice, which will weaken its authority and credibility, and reduce the will-ingress of countries to abide by and apply international trade law, confusing national trade order rules. Trade frictions and trade barriers between countries are constantly escalating, hindering the liberalization of international trade and undermining the multilateral trading system. The cost of domestic enterprises has increased, affecting the development

of the industry. Inhibiting global economic growth and triggering a financial crisis. Increase the cost of living for consumers, and their consumption choices are greatly reduced. It is an unavoidable reality to solve the dilemma of the international trade law system under this change. In this regard, this paper will focus on the cross-border trade law enforcement jurisdiction conflict on digital products. This paper summarizes the application status of law enforcement jurisdiction for cross-border trade of digital products and the reasons behind the conflicts and explores the conflict adjustment mechanism of the existing international trade law system and its application dilemma. On this basis, the paper explains the multiple needs that the international trade law system needs to meet in the current state and summarizes the optimization path of national trade law in the cross-border digital products.

2 LITERATURE REVIEW

Traditionally, in the discussion of international trade law, people often think that it should be the emissary of maintaining international economic order, balancing national interests and free trade. The

discussion on the dilemma of its application can be roughly traced back to the mid-20th century when the United Nations Convention on Contracts for the International Sale of Goods (CISG) came into force, scholars have begun to explore in depth the dilemmas of the application of international trade law, such as Article 1 of the Convention, which provides that it applies to contracts for the sale of goods between parties whose places of business are in different States, regardless of the international and contractual nature of the parties (United Nations, 1980). Since its establishment, the World Trade Organization (WTO) has actively improved its adjudication and supervision mechanisms. Both promote the unification of international trade rules, reduce international trade disputes and provide a mechanism for settlement, and promote global economic development. However, CISG is not detailed enough for the relevant provisions, and the scope of application is very limited. The WTO is inefficient, the implementation of rules is difficult, and there is a lag in rules in the digital field.

Nowadays, with the rapid development of economic globalization, relevant discussions are also increasing. Some scholars have pointed out that the reason for the conflict of enforcement jurisdiction in the cross-border trade of digital products is the complexity across different jurisdiction methods, different regulatory standards and conflicting legal frameworks (Aaron, 2024). In the face of the problem that the existing conflict adjustment mechanism of the international trade law system is difficult to adapt to the existing changes, some scholars have proposed ways to meet dual needs through fragmented structures (Zheng, 2023). Some scholars have explored the role of digital trade and international trade law from the perspectives of jurisdiction, data privacy, intellectual property and trade facilitation in the digital age (Prasad, 2023). Some scholars believe that in most trade issues, it is more difficult for countries with large differences in national strength to resolve conflicts than countries with similar national strength (Conybeare, 1988).

Previous scholars' research on the conflict of law enforcement jurisdiction in cross-border trade of digital products often remained at the current situation where the national trade law system cannot adapt in the digital age and the problems of the participating countries themselves, however, this paper will focus on the conflict mediation mechanism of the international trade law system, hoping to draw the breakthrough path of the international trade law system in the predicament of cross-border trade of digital products from it.

This paper uses literature research methods, comparative research methods and case analysis methods. By collecting, organizing and analyzing various domestic and foreign literature materials as well as relevant cases for analysis and comparison, the historical development, structural composition, nature characteristics, functional background, value significance, advantages and disadvantages of the international trade law system are understood from multiple dimensions. Then, the current application status of the international trade law system in cross-border trade of digital products is summarized and the optimization path is obtained.

3 THE CURRENT APPLICATION STATUS AND REASONS OF CROSS-BORDER TRADE LAW ON DIGITAL PRODUCTS

3.1 The Current Situation of Jurisdictional Conflicts in Cross-Border Trade Enforcement of Digital Products Page

At present, conflicts of jurisdiction over cross-border trade enforcement of digital products occur frequently, covering a wide range of fields. For instance, in the digital content industry, such as the cross-border dissemination of digital products like film and television and music, there are infringement issues, and disputes over the jurisdiction of copyright enforcement among different countries also frequently arise (Reindl, 1997). Countries have diverse issues regarding the application of jurisdiction and lack unified standards. Some countries take the location of the server of digital products as the basis for jurisdiction, while some countries in the European Union tend to take place where digital products are consumed or where users are located as the basis for jurisdiction.

In 2007, when the Belgian police were investigating a case of online fraud, they requested Yahoo of the United States to provide the registration information of the involved email. Yahoo refused on the grounds of the Electronic Communications Privacy Act of the United States. Belgium, however, insisted on the request based on its own Criminal Procedure Law. Eventually, the Supreme Court of Belgium ruled that Yahoo was required to provide the information. Between 2013 and 2018, the US Drug Enforcement Administration requested Microsoft to

provide user email data stored on servers in Ireland. Microsoft refused. The US Court of Appeals for the Second Circuit initially supported Microsoft, but after the US Congress passed the Cloud Act in 2018, the US Supreme Court overturned the original ruling (De Hert& Thumfart, 2018).

When comparing the jurisdiction conflict of Yahoo Belgium and the Microsoft Ireland server case, both focus on the issue of enforcement jurisdiction in cross-border trade of digital products and the differences in the application of relevant laws between the two conflicting countries. Fundamentally, it stems from the contradiction in the application of the territorial principle and the personal principle. The difference lies in the fact that the former requires companies from other countries in different locations to provide digital products, while the latter requires domestic companies in different locations to provide digital products. The contradictions involved have different scopes of influence. Furthermore, the impact of Yahoo Belgium's jurisdictional conflict is mainly concentrated in the European region, which has caused a worldwide sensation with the introduction of the Cloud Act.

In short, the current situation of jurisdictional conflicts in cross-border trade of digital products is mainly reflected in the disputes caused by the inconsistent application of laws between China and other countries in cross-border data trade among multinational companies. Moreover, depending on the influence of the measures taken by each country in the case, the impact of this conflict on the global trade order shows a positive correlation trend.

3.2 The Reasons for the Conflict in the Application of Jurisdiction in Cross-Border Trade Enforcement of Digital Products

Objectively speaking, the reasons for the conflict in the application of jurisdiction for cross-border trade law enforcement of digital products stem from the characteristics of digital products, mainly reflected in their virtuality, rapid dissemination, and fast update speed, etc. Digital products have no specific form. Their dissemination is not disturbed by time and space factors. Moreover, due to fierce market competition, the main objects such as mobile phones and computers are constantly updated to attract consumers. As secondary objects, digital products need to be continuously iterated and updated whether to adapt to the updates of the main objects or to the development of The Times. Due to the above

characteristics of digital products, their cross-border trade costs are much lower than those of the corresponding physical products and the trade mode is also more convenient. However, at the same time, it will also cause regulatory problems.

Subjectively speaking, the differences in legal systems among countries are also the key reason for the re-introduction of the application of law enforcement jurisdiction in cross-border trade of digital products. The European Union strictly protects the rights of personal data through the General Data Protection Regulation (GDPR), which has established strict regulations on the collection, storage, transmission and application of personal data, and emphasizes the rights of data subjects. It also requires data controllers and recipients to have the ability to protect data security. Compared with the European Union, American law is more decentralized and emphasizes industry self-discipline. There is no unified law among the states, and related behaviors such as data processing are regulated through industry associations (De Búrca& Scott, 2006). In cross-border trade of digital products, although the United States and the European Union have reached agreements such as the Transatlantic Data Privacy Framework to coordinate data between the two sides, disputes still exist.

4 THE REGULATORY MECHANISM AND OPTIMIZATION PATH OF DIGITAL PRODUCT TRADE LAW

4.1 The Conflict Mediation Mechanism of the International Trade Law System and Its Application Dilemmas

4.1.1 The Current Situation of the Conflict Mediation Mechanism in the International Trade Law System

The international trade law system has the nature of internationality, comprehensiveness and dynamics, and needs to meet multiple demands such as coordinating conflicts of national interests, following the development and changes of The Times, ensuring the fair advancement of trade, and adhering to sustainable development.

Since World War II, the rule of law in international trade has been in an unprecedented state of crisis. International protectionism is the primary cause of the current crisis in the rule of law in international trade. It is still necessary to use the rule of law to overcome the current problem. The essence of the current international trade crisis is caused by the imperfection and insufficiency of the development of the rule of law in international trade (Liu, 2020). WTO DSM procedure, ICJ's decisions, international arbitration, and other processes are currently the principal conflict mediation tools in the international trade law system. But the WTO dispute resolution process has been in a state of paralysis since 2017. Conflict mediation procedures like international arbitration and ICJ have been unable to effectively mediate disputes within the framework of international trade law because of its own difficulties. The current international trade problem can only be resolved in this evolving environment by applying the principles and techniques of the rule of law.

4.1.2 The Predicament of the Application of Conflict Mediation Mechanisms in the International Trade Law System

The WTO DSM mechanism has the following application predicaments. First, the interference from political factors, the political relations between international protectionism and the members of the WTO. The existence of protectionism will lead to the decline of the authority of WTO DSM mechanism and hinder its reform process. At the same time, it will also prompt other countries to adopt trade protection measures such as anti-dumping, anti-subsidy and raising trade barriers to ensure the normal development of their own economies. However, there is a good chance that this action will lead to international trade disputes and add to the WTO dispute resolution mechanism's workload. Second, some laws are not covered and applicable since the WTO's standards are not flexible enough to keep up with the growth of digital trade. New trade areas like e-commerce and digital trade are constantly developing. WTO DSM mechanism is unable to make reasonable rulings and guarantees when disputes arise in these fields, which affects their development. Meanwhile, they mainly focus on the application of legal rules and are unable to handle disputes caused by multiple factors. For instance, in the case of genetically modified meat products in the United States and the European Union, apart from involving food safety technologies, historical and

cultural factors as well as political factors are also involved. The WTO DSM mechanism is difficult to handle comprehensively merely by relying on the application of legal rules, which deteriorates the relationship between the two sides (Jackson et al., 2000).

Two application dilemmas pertaining to ICJ's adjudication system are as follows. The first is that the jurisdiction of ICJ usually requires the consent of the parties to the dispute. Some countries are reluctant to involve ICJ in the coordination of disputes due to factors such as limited sovereignty and uncertainty about the outcome of the ruling, resulting in the inability of ICJ to mediate some important conflicts in international trade law. Secondly, the litigation procedures of ICJ's adjudication system are very complex. In addition to the basic litigation procedures, the entire litigation process will also involve the interpretation and application of many legal issues as well as the handling of unexpected situations. Any problem in any link will affect the final trial of the case, making the litigation procedures of ICJ very complicated.

The main problem existing in the international arbitration system is that there are many arbitration institutions internationally at present, but their systems are not unified. Choosing different arbitration institutions will lead to different arbitration results, greatly increasing the difficulty for the parties to make a choice, hindering communication and cooperation in the industry, and affecting the order of international trade negotiations.

4.2 The Optimization Path of Law Enforcement Jurisdiction for Cross-Border Trade of Digital Products

The first step in resolving WTO DSM mechanism's application dilemma should be to lessen political influence on it, steadfastly oppose protectionism, and grant developing and underdeveloped nations preferential treatment to restore a comparatively equitable state of global trade. This study argues that digital tools like artificial intelligence can be used to improve the efficiency of updates in response to the problem that regulations cannot closely adapt to the times. To lessen the likelihood of mistakes in artificial intelligence regulations, the relevant departments must regularly evaluate the rules. Promoting international legislation and strengthening national authority over ICJ should be the first steps in resolving the application dilemma of the court's adjudication mechanism. This will allow nations to

willingly submit disputes to the court for a resolution. Secondly, it is necessary to optimize the litigation procedures. ICIJ's previous adjudication process was quite onerous. To improve litigation efficiency, I suggest using artificial intelligence to automatically evaluate and process pertinent documents. The international community has been working to encourage coordination and unification of international arbitration to lessen the detrimental effects that the inconsistent rules of different international arbitration tribunals have on the global trade order. The effectiveness and equity of arbitration have increased because of the creation of additional laws, such as the United Nations Commission on International Trade Law's Model Law on International Commercial Arbitration, and the encouragement of collaboration and communication between arbitration organizations. This article, however, maintains that to further advance the function of international trade arbitration rules in the settlement of international trade disputes, a specialized agency for oversight can be developed.

5 CONCLUSION

This research report starts with the current situation of jurisdictional conflicts in cross-border trade enforcement of digital products, analyzes its causes, and introduces the conflict mediation mechanisms of the international trade law system and their application predicaments. By proposing corresponding optimization plans for the application predicaments of the three mediation mechanisms in the international trade law system-WTO DSM mechanism, ICIJ's decisions, and international arbitration.

Among them, to deal with the application predicament of WTO DSM mechanism, the first step should be to reduce the interference of political factors, give preferential treatment to developing countries and backward countries and conduct regular reviews and updates. Artificial intelligence can be utilized to improve the update efficiency. To address the application predicament of the adjudication mechanism of ICIJ, efforts should be made to actively promote international legislation. Enhance recognition of that by various countries, enable their resources to accept the rulings of ICIJ, and optimize litigation procedures. Utilize artificial intelligence to quickly retrieve legal provisions, automatically analyze and process relevant documents, and accelerate the pace of litigation. However, this study also has certain limitations. Due to the limitations of

data acquisition and the limited number of cases, the depth and breadth of this research report need to be further deepened. Especially, this research report does not fully explain the complex relationship of the international trade law system in digital cross-border trade. It is hoped that further in-depth research on this issue can be conducted in the future.

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