

Limited Practical Effect of APEC ODR: A Comparative Analysis of Platform ODR and APEC ODR

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Abstract: The actual demand and effect of the ODR (Online Dispute Resolution) mechanism in the field of cross-border e-commerce dispute resolution are relatively limited, and the protection of the ODR mechanism within small and medium-sized cross-border e-commerce platforms is insufficient. The reasons why the ODR mechanism cannot be fully applied to such platform disputes include the complexity of cross-border, diverse types of disputes, cost of time and money, and limited scope of application of the ODR mechanism. In addition, the lack of neutrality and standardized operating rules of the ODR mechanism within the e-commerce platform directly affects the fairness of dispute resolution. Although APEC (Asia-Pacific Economic Cooperation) ODR mechanism has shown significant advantages in improving efficiency and ensuring information security, it fails to effectively balance efficiency and fairness in terms of application scope and practical effect. Based on this, there are insufficient fairness problems in the automatic process mechanism, evidence collection procedure, and process deadline setting in the APEC ODR process. In the future, the APEC ODR and other international dispute resolution mechanisms will continue to be more internationalized and standardized. In addition, we have to be alert to the anti-globalization risks reflected in the APEC ODR, avoid geopolitical interferences as much as possible, and prevent the emergence of trade protectionism.

Keywords: APEC ODR, ODR platform, cross-border e-commerce platform, dispute resolution.

1. Introduction

1.1. Cross-border e-commerce dispute resolution status shows weak protection of small and medium-sized platforms

Compared with domestic e-commerce, the market scope and users of cross-border e-commerce are different, involving laws and regulations in different countries, making its operation more complex. Although the dispute resolution mechanism of domestic small and medium-sized e-commerce platforms is becoming increasingly mature, in the field of cross-border e-commerce, the problem of weak protection of the dispute resolution mechanism to the users has also become prominent due to the lack of unified rules. The internal mediation mechanism of the e-commerce platform will also be affected by the interests of different parties, making it difficult to ensure the fairness and objectivity of the result of the dispute resolution.

Due to the complexity of cross-border transactions, resorting to traditional legal litigation often involves cumbersome legal procedures and high costs in the face of different legal systems. Although negotiation and mediation are flexible and convenient, they lack the authority and credibility needed to achieve effective results.[1]

This paper will be divided into five parts. The first chapter provides an overview of the current situation of cross-border e-commerce dispute resolution and the application of ODR mechanisms. The second chapter will address the challenges associated with cross-border e-commerce dispute resolution, and the limitations of the platform's internal ODR mechanism. The third chapter will provide a brief introduction to the APEC ODR mechanism, and evaluate its effectiveness in practical application. The fourth chapter will analyze the limitations of APEC ODR in terms of fairness and propose specific optimization suggestions. The fifth chapter will discuss future research and development of the cross-border e-commerce dispute resolution mechanism.

1.2. The application of the ODR mechanism has shown limited actual demand and effect

This could be due to a lack of awareness about the benefits of online dispute resolution, a preference for traditional methods of resolving conflicts, or a lack of trust in the effectiveness of ODR platforms. In order to increase the utilization of ODR, it is important to educate the public about its advantages, improve the accessibility and user-friendliness of ODR platforms, and build trust in the fairness and reliability of online dispute resolution processes.

First, the legal status of the ODR mechanism is unclear. Although the Supreme People's Court has encouraged the use of modern information technology in diversified dispute resolution mechanisms, relevant legislation is not yet perfect.

Furthermore, the scope of the ODR mechanism's application is quite limited. For instance, the APEC ODR only pertains to cross-border small business disputes between businesses (B2B), which implies that merchants on cross-border e-commerce platforms are not eligible for the APEC ODR service when facing disputes. However, there are only a few businesses that are not attached to the platform for marketing. In other words, only a few can truly turn to the APEC ODR mechanism, so the ODR mechanism cannot meet the actual needs of most businesses.

In addition, the cost of ODR service is relatively high. Most disputes on cross-border e-commerce platforms involve small amounts of money. In order to save costs and time, many merchants prefer to quickly resolve the dispute through mediation within the platform rather than choose the more expensive and time-consuming ODR mechanism. Therefore, from their perspective, the demand for the ODR mechanism is not that high.

In view of the problems stated above, scholars have carried out many discussions and studies, which can be roughly divided into three categories. The first group calls for the strengthening of ODR legislation and the formulation of uniform dispute resolution rules to improve the enforcement and credibility of processing results. For instance, integrate the ODR mechanism with the litigation system to deter parties from using ODR to prolong litigation and manipulate legal loopholes.[2] Another group recommends enhancing the mechanism to address issues like procedure abuse. It is suggested to strengthen platform supervision by non-legal means. At present, Tmall International is using the scoring system to collect consumer feedback and adjust the platform mechanism accordingly.

However, all of these responses to existing problems have some shortcomings. Firstly, the slow process of the ODR legislation makes it difficult to offer adequate legal protection for the improvement of the mechanism in the short term. Secondly, improving the services of the mechanism cannot effectively solve problems such as the limited applicable objects. Additionally, small and medium-sized e-commerce platforms do not have enough resources to improve their mechanism,

which can also be influenced by the interests of the platform, making it difficult to ensure the fairness of the dispute resolution.

2. Analysis of the current situation of cross-border e-commerce dispute resolution

2.1. The inadequate application of cross-border e-commerce platform disputes to the ODR mechanism

In the face of the increasing number of disputes on cross-border e-commerce platforms, it is imperative to seek efficient and fair solutions. Currently, the Online Dispute Resolution (ODR) mechanism has revealed several limitations in its practical application. Additionally, the dispute resolution mechanism on the e-commerce platforms also exhibits some weaknesses, which hinders its ability to effectively address complex and volatile cross-border disputes.

The dispute is difficult to solve through the e-commerce platform, especially for parties involved in complex contradictions between different sales outlets. For example, the general agent's scope of responsibility and the operations of sales outlets of cross-border e-commerce platforms in the same region tend to overlap, which will lead to conflicts such as market division. Even disputes between different sales outlets of the same cross-border e-commerce platform are difficult to resolve due to regional differences, incompatible platform systems, and information barriers. As a result, individuals may prefer to use a more neutral dispute resolution platform, which allows for conflicts to be settled using a specifically designated rule system based on mutual willingness. This helps to address the shortcomings of the platform's dispute resolution mechanism more effectively.

2.2. Analysis of reasons why Online Dispute Resolution (ODR) mechanisms cannot be fully be applied to cross-border e-commerce platform disputes

In general, the cross-border e-commerce platform disputes are featured with small amounts, transnational complexity, and various types of disputes. The most common types of disputes are product quality, logistic services, and intellectual property rights. While the ODR mechanism is crucial for resolving disputes, it still struggles to fully accommodate the various characteristics and types of disputes that arise in cross-border e-commerce transactions.

In other words, the ODR mechanism may not be as experienced as the e-commerce platform. This is because the latter (referring to experienced individuals or professionals) have dealt with many common disputes for a long time, so they are more familiar with various types of disputes and are able to put forward solutions acceptable to both parties. Therefore, the pursuit of continuous improvement in the ODR mechanism is not enough to reduce the frequent cross-border disputes.

2.3. Review of the current situations of the ODR mechanism on the platform: Major limitations exist

2.3.1. The lack of neutrality

As an operator driven by interests, e-commerce platforms find it difficult to ensure the fairness and neutrality of the mediation results. Generally speaking, in order to improve the visibility of the platform and attract more consumers, the platform often favors the needs of consumers to enhance the user experience. As a result, some parties, especially the sellers, have low recognition and satisfaction with the mediation results, leading to more disputes and complaints.

For example, in recent years, Taobao has updated the "Taobao Platform Dispute Handling Rules." If a seller receives too many bad reviews or violation records, the platform can directly ask the merchants to issue a refund when a dispute occurs. Additionally, Taobao's online dispute resolution

mechanism only allows buyers to initiate the process. Based on the results, most disputes are resolved in favor of the buyers.[3] Therefore, merchants are often at a disadvantage, which directly affects the trust and loyalty to the platform.

2.3.2. The lack of standardized operation rules

The ODR mechanisms on various cross-border e-commerce platforms have different operating rules and resolution procedures, lacking unified standards and norms. This diversity leads to uncertainty and variability in dispute resolution outcomes.

Taobao's online dispute resolution mechanism is a case in point. Different from the traditional ODR model, which emphasizes mediation by a third party with no interest involved, Taobao takes a new approach by sacrificing the interests of sellers to compensate buyers when resolving disputes.

In the event of such limitations, parties involved in cross-border e-commerce disputes may need to turn to third-party ODR institutions that focused more on fairness. So we should consider slowing down the rush to solely focus on improving efficiency. Instead, we can learn from the experience of third-party ODR institutions by focusing more on fairness and enhancing the effectiveness of platform mediation.

3. The practical effect analysis of the APEC ODR mechanism in cross-border e-commerce dispute resolution

3.1. Overview of the APEC ODR mechanism

The Asia-Pacific Economic Cooperation Online Dispute Resolution (ODR) mechanism is an online dispute resolution platform established by APEC to promote the sound development of cross-border e-commerce. The APEC ODR Platform, officially launched in 2019, provides online ODR services for cross-border commercial disputes between micro, small and medium-sized enterprises through non-litigation means.

Instead of creating a new system of dispute resolution rules, the original intention is to integrate and optimize the mechanisms and resources of existing arbitration bodies. For example, there is commonality between the APEC ODR Model Procedural Rules and local normative documents such as the Guangzhou Arbitration Commission's Procedural Guidelines for the One-Stop Diversified Dispute Resolution Platform. Additionally, some arbitrators from the Guangzhou Arbitration Commission also serve as neutral experts for APEC ODR. The APEC ODR has become an international showcase for the arbitration rules and practical experience of the arbitration committee, further promoting the influence and recognition of the arbitration committee on a global scale.

3.1.1. Program overview

The ODR process is divided into three stages: negotiation, mediation and arbitration, which are all carried out on the platform. In the negotiation stage, if the dispute is not resolved within 10 days or the parties request to enter the mediation stage, the platform will appoint a neutral expert from its "expert list" to assist in resolving disputes. If the dispute still cannot be resolved, it will proceed to the arbitration process. The three stages are all subject to a decision within 10 days of the expiration of the time limit. The award is final and binding and shall be immediately executed by the parties.

3.1.2. Referential experience

First, the multiple dispute resolution methods. The APEC ODR mechanism integrates various resolution methods, providing parties with flexible options. People can choose to follow the subsequent processes automatically or skip some procedures, thus saving time and money.

Among them, the combination of arbitration and mediation is the "Eastern experience" pioneered by CIETAC. The mediation allows both parties to negotiate, while arbitration ensures that disputes are resolved and legally binding, urging both parties to implement the resolution. The combination of mediation and arbitration can better meet the needs of the parties and adapt to various types of disputes.

In addition, the establishment of the APEC ODR takes into account the importance of business practices and reputation. Its authority largely comes from the general recognition and acceptance of the principles of fairness and good faith by participants in global commercial activities.[4]

Second, the technology endowment. Through advanced technologies such as big data and artificial intelligence, the APEC ODR platform can automate some processes such as preliminary evidence inspection, thereby significantly improving efficiency. In order to further promote the high-quality development of the ODR mechanism, Guangzhou Arbitration Commission has launched the arbitration intelligent robot "Yun Xiaozhong" in 2022, providing 24-hour legal consulting services. In the future, System L.ODE System will be applied to the ODR platform with the AI arbitration secretary.

3.2. The practical effect of APEC ODR

The poor balance between efficiency and fairness can lead to challenges in ensuring that disputes are resolved in a timely manner while also upholding principles of justice and equity.

As an innovative initiative jointly promoted by APEC member countries, the APEC ODR has effectively reduced the time and economic cost. It not only provides a professional legal environment to conduct business, but also promotes international cooperation in dispute resolution. However, it now still faces challenges that cannot be ignored in the practice of balancing efficiency and equity.

3.2.1. Scope of application

In accordance with the Model Procedure Rules for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes (hereinafter referred to as the APEC Model Procedural Rules), the dispute resolution is "excluding consumer transactions, i.e., contracts concluded for personal, family or household purposes." This regulation greatly limits the possibility for merchants and consumers on the e-commerce platforms to resolve disputes through professional channels. In other words, only a minority can truly turn to the APEC ODR mechanism, which clearly does not meet the actual needs of most parties.

3.2.2. Realistic effect

Although the APEC ODR mechanism aims to reduce the cost and time, the transnational complexity makes it difficult to resolve disputes at the negotiation stage. Furthermore, involving different legal applications and relevant standards makes the settlement even harder to reach. The parties need to be fully prepared in advance, which further prolongs the time needed to resolve disputes.

In addition, the platform adopts a blanket fee approach to ensure low dispute resolution costs. For businesses with larger amounts involved, the service charges of the APEC ODR are relatively modest, while for smaller businesses, the charges themselves can be a significant expense. The expense details are listed in the following table.

Table 1: ODR Program Expense Details.

Amount in dispute (RMB)	Fee (RMB)
Less than 100,000 yuan	5% of the disputed amount, with a minimum of not less than 4,000 yuan
100,001 yuan to 200,000 yuan	RMB 5,000 + 4% of the amount in dispute above RMB 100,000
200,001 yuan to 500,000 yuan	9,000+ 3% of the amount in dispute above RMB 200,000
500,001 yuan to 1,000,000 yuan	18,000+ 2% of the amount in dispute above RMB 500,000
1,000,001 yuan to 5,000,000 yuan	28,000+ 0.6% of the amount in dispute above RMB 1 million

3.2.3. Lack of trust

First of all, ODR is a non-government led private autonomous dispute resolution mechanism. Its legitimacy is solely based on the consensus of the parties involved. Without the trust of the parties, ODR cannot effectively function.[5]

Secondly, the virtuality of the APEC ODR platform means that a large amount of personal information and data will be involved in the process. Due to the lack of direct communication and the concern about personal privacy, the parties have low trust in the APEC ODR services. Instead, they prefer to seek resolution on e-commerce platforms that are more familiar to them, where they often shop.

In summary, the practical impact of the APEC ODR mechanism is currently limited by various factors. Essentially, the inefficiency of APEC ODR stems from its failure to achieve a harmonious balance between efficiency and fairness. This is because it prioritizes fairness and justice over efficiency. In fact, justice is the premise and basis of efficiency and the efficiency based on fairness and justice can be accepted by the judiciary and society.[6]

In contrast, e-commerce platforms are compelled by the competitive environment to prioritize efficiency in their internal ODR mechanisms to attract users and reduce costs. However, the platform's excessive pursuit of efficiency makes it difficult to balance the interests of all parties, which will ultimately affect the sustainable development of the entire industry. Therefore, we call for the improvement of the APEC ODR mechanism from the perspective of fairness. It is hoped that we can help correct the public's cognitive bias on the dispute resolution of e-commerce platforms, thus providing a solid foundation for the prosperity of the market.

4. The optimization strategy of APEC ODR mechanism from the perspective of fairness

The strategies should ensure that all parties have equal access to the resolution process. Additionally, the mechanism should prioritize the interests of all stakeholders involved and strive to reach mutually beneficial outcomes that uphold principles of justice and equity. This section primarily focuses on three key areas: implementing an automatic procedure mechanism, improving evidence collection processes, and setting clear process deadlines. By incorporating these principles into the implementation of the APEC ODR mechanism, fairness can be effectively promoted and maintained.

4.1. Automatic procedure mechanism

In the negotiation stage, either party can apply for mediation at any time, and then the ODR procedure automatically enters the next stage. The same is true of the mediation phase. If the respondent fails to

send a reply to the notice of commencement of the proceedings within the prescribed time limit, one or both parties may request to enter the mediation stage directly.

In fact, these two stages highlight the adversarial system, giving both parties greater choice and autonomy.[7] When both parties have more factual information through negotiation and mediation, they are more likely to make fair decisions. Therefore, if one party chooses to enter the next stage of the process without consulting the other party, it will ignore the autonomy of the other party, and affect the effect of dispute resolution from the following two aspects.

4.1.1. Weakening the parties' participation

In the process of dispute resolution, the will of the parties is crucial. However, lack of experience and interaction can lead to parties becoming dissociated in the process, weakening their participation.[8] In addition, a unilateral decision or a mandatory conversion of procedures may cause distrust and hostility between the two parties, exacerbate tensions and affect cooperation, which is not conducive to the peaceful and effective settlement of disputes. [9]

4.1.2. Reducing the possibility of resolving disputes at the negotiation or mediation stage

In cross-border commercial disputes, both parties may have different demands on the dispute, so they need to enhance understanding through communication in order to better resolve the dispute. Although it is difficult to resolve disputes in the negotiation stage without the intervention of a neutral expert, the two parties can engage in full communication and negotiation. If one party unilaterally decides to proceed to next stage without the other party's consent, it eliminates the possibility of friendly negotiation, and impedes the smooth process.

4.1.3. Suggestions for improvement

Introduce a joint decision-making mechanism. When deciding whether to proceed to the next stage, ensure that the decision is based on the consensus of the parties. When one party applies for the next stage, the other party is automatically notified, and only after both parties confirm can the procedure automatically enter the next stage. Both parties are familiar with the subsequent process, reducing the risk of insufficient preparation and ensuring fairness in the final result.

Improve the notification service. When the process change notice is sent to the parties, they should be clearly informed of the relevant rights and obligations, as well as the consequences of skipping the current stage. At the same time, appropriate time should be provided for parties to prepare and respond.

4.2. Evidence collection procedure

4.2.1. The arbitral tribunal may face difficulty in collecting evidence on its own, which could potentially lead to privacy invasion

The Guidelines on Evidence from the China International Economic and Trade Arbitration Commission specify that the arbitral tribunal may gather evidence related to the facts at the request of one party, when deemed necessary. In traditional arbitration proceedings, the arbitral tribunal can collect evidence through on-site investigation, questioning of witnesses, and obtaining relevant documents to ensure a comprehensive understanding of the facts in dispute.

Since all processes of APEC ODR take place online, it significantly hinders traditional methods of evidence collection. The arbitral tribunal faces challenges in gathering evidence through the Internet, potentially resulting in the omission of crucial information or violation of the privacy. As a result, the arbitration outcome may not accurately reflect the truth, or even arouse aversion of the parties, thus further undermining the fairness of the arbitration.

4.2.2. Suggestions for improvement

Evidence is the basis of determining the facts of a case, as the quality and sufficiency of evidence are directly related to the facts and arguments that may be involved in the debate. When the arbitral tribunal faces technical and legal difficulties in collecting evidence online, it shall pay special attention to seeking the permission of the parties. Furthermore, the parties, being the most familiar with the case, should be encouraged to enhance their ability to collect evidence to prevent factors such as improper and insufficient evidence submission.

According to Article 45 of the Arbitration Rules of Guangzhou Arbitration Commission, if the arbitral tribunal itself or entrusts the arbitration secretary to investigate and take evidence on site, two or more persons must be present and a written record must be made. The parties may be notified to be present for on-site investigation and collection of evidence. If the parties fail to appear after notification, it will not affect the investigation and collection of evidence. Therefore, the arbitral tribunal of the APEC ODR shall notify the parties in advance to clearly inform the investigation means and possible content involved, and ensure that the parties can participate in online means to protect their rights.

In addition, a dual authorization mechanism can be established. When privacy or other sensitive information are involved, the platform has no right to unilaterally inquire or access the personal privacy data. After obtaining the user's authorization, the platform can then display the user's information on the platform. [10] In this way, the arbitral tribunal can better overcome the obstacles of online evidence collection and provide support for the subsequent debate between the two parties, contributing to a well-informed decision.

4.3. Process deadline setting

4.3.1. The tight time limit

According to the APEC Model Procedural Rules, at the end of the arbitration and mediation stage, the neutral expert shall notify the parties of the date of submission of the materials. This date shall not exceed 10 days after the expiry of the mediation phase. According to the provisions of the CIETAC, if a party has difficulties in submitting evidence within the time limit, it can state its reasons before the time limit and apply for a time extend. If a party is granted an adjournment of evidence, the arbitral tribunal shall also consider an appropriate extension of the time limit for the other party.

It can be seen that the prescribed time limit in the APEC ODR mechanism is relatively tight as it requires parties to complete a series of operations in a short period of time. The time limit directly affects the time for the parties to enter the debate process and the degree of information disclosure. This is because the parties may not be fully prepared, especially for the party with limited access to information and resources. In addition, the time pressure may force parties to submit evidence without adequate investigation and verification, which may reduce the authenticity and accuracy of evidence.

4.3.2. Suggestions for improvement

Improve the extension application mechanism. Currently, APEC ODR only allows for a 10-day extension in the negotiation stage. According to Article 6 of the Provisions of the Supreme People's Court on Several Issues concerning the Civil Mediation Work of the People's Courts, if agreement cannot be reached within 7 days after the parties agree to mediate, mediation may continue with the consent of the parties. The APEC ODR can also clarify relevant conditions and procedures, allowing parties to apply for extensions after mutual consent. In this way, they can better adapt to the procedures and requirements of the new stage, ensuring that the whole process fully reflects fairness.

In conclusion, while the APEC ODR mechanism can offer valuable insights into dispute resolution, its current fairness is lacking, thereby diminishing its overall effectiveness. There is still ample opportunity for enhancement within the existing mechanism.

5. Conclusion

Through the comparative analysis of the internal ODR mechanism of the cross-border e-commerce platform and the APEC ODR mechanism, it can be concluded that although the former has advantages in efficiently resolving small disputes, its practical effect is still relatively limited. In contrast, APEC ODR platform has achieved remarkable accomplishments in improving efficiency. However, the lack of fairness in some processes affects the practical effect of dispute resolution.

Through this study, it is expected that more scholars can conduct in-depth interpretations and analyses of the dispute resolution mechanism of cross-border e-commerce from the perspective of fairness, and explore strategies to optimize the current situation. Additionally, it advocates for a comparative study with other international ODR mechanisms, drawing on their successful experiences and advanced concepts to provide insights for optimizing China's ODR mechanism and ensuring the prosperity of global trade.

In addition, as a product of globalization, APEC ODR profoundly reflects the impact of globalization on rule construction and resource sharing. The mechanism facilitates the efficient resolution of commercial disputes while deepening the process of economic integration. However, it does not cover all APEC countries, reflecting the imbalance of resources within APEC, the low willingness of all parties to participate, and the risk of exacerbating regional imbalances and anti-globalization. Therefore, it is also necessary to be alert to the anti-globalization risks reflected in similar international dispute settlement mechanisms and take corresponding measures to cope with them.

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