



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

**Peer - Reviewed & Refereed Journal**

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **"CHALLENGES IN ENFORCEMENT OF THE SALE OF GOODS ACT, 1930 IN THE CONTEXT OF MODERN COMMERCE: A CRITICAL ANALYSIS"**

AUTHORED BY - GARIMA GOEL

## **ABSTRACT**

The Sale of Goods Act, 1930, remains a cornerstone of India's commercial law framework, governing the sale and purchase of goods. However, the rapid evolution of commerce, driven by globalization, digitalization, and technological advancements, has exposed significant gaps in the Act's provisions. Scholars have widely examined these challenges, offering diverse perspectives on the limitations of the Act and proposing pathways for reform. This literature review synthesizes key contributions to the discourse, addressing critical enforcement challenges in the context of modern commerce.

The Sale of Goods Act, 1930 (SOGA) has its roots in the English Sale of Goods Act, 1893, which was one of the earliest codified statutes governing commercial transactions involving the sale of goods. Before this legislation, trade and commerce in England were regulated by common law principles, which often led to inconsistencies and legal uncertainties in contractual dealings. The English Sale of Goods Act, 1893, drafted by Sir Mackenzie Chalmers, was a major legal milestone as it consolidated and codified the common law principles relating to sale contracts, buyer and seller rights, conditions and warranties, transfer of property, and remedies for breach of contract. This Act provided a comprehensive and structured legal framework that facilitated smoother trade and resolved disputes more efficiently. The regulation of the sale of goods is a fundamental aspect of commercial law, ensuring transparency, fairness, and legal certainty in business transactions. Different jurisdictions have developed distinct legal frameworks to govern the sale of goods, reflecting their unique economic, social, and legal contexts. However, globalization and the rise of international trade necessitate a degree of harmonization and convergence in legal principles to facilitate seamless commercial transactions across borders.

**KEY WORDS:** *MODERN COMMERCE, E- COMMERCE, ENFORCEMENT, DIGITAL TRANSACTION, ENFORCEMENT.*



## INTRODUCTION

The Sale of Goods Act, 1930, serves as a cornerstone of commercial law in many jurisdictions, providing a comprehensive framework governing the sale and purchase of goods. Enacted during a period when commerce was predominantly characterized by traditional business practices, the Act was designed to facilitate smooth transactions, ensure fairness, and protect the rights of both buyers and sellers. However, the rapid evolution of modern commerce, driven by technological advancements, globalization, and changing consumer behaviours, has introduced complexities that challenge the effective enforcement of the Sale of Goods Act, 1930. Modern commerce is marked by digital transactions, e-commerce platforms, cross-border trade, and innovative business models such as drop shipping and subscription services. These developments have not only expanded the scope of commercial activities but have also blurred the lines of jurisdiction, complicating the application of traditional legal frameworks. The Sale of Goods Act, 1930, while robust in its original context, faces significant challenges in addressing issues such as digital goods, online fraud, and the enforcement of contractual obligations in a virtual environment.

One of the primary challenges is the ambiguity surrounding the classification and regulation of digital goods under the Act. The original provisions were crafted with tangible goods in mind, leaving a legal grey area for goods that are intangible or delivered electronically. This has led to inconsistent interpretations and applications in courts, creating uncertainty for businesses and consumers alike. Additionally, the rise of e-commerce has introduced complexities in the enforcement of contracts, particularly concerning jurisdictional issues, as transactions often span multiple legal territories. Globalization has further complicated the enforcement landscape, as businesses increasingly engage in international trade, necessitating the harmonization of laws across different jurisdictions. The Sale of Goods Act, 1930, may not seamlessly integrate with international commercial laws and regulations, resulting in conflicts of laws and challenges in cross-border dispute resolution.<sup>1</sup> Moreover, the Act's provisions on implied terms, warranties, and remedies may not adequately address the nuances of modern commercial transactions, such as those involving complex supply chains and multinational corporations.<sup>2</sup>

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<sup>1</sup> Epstein, R. A. (1987). The proper scope of the commerce power. *Virginia Law Review*, 1387-1455.

<sup>2</sup> Ibid.



Technological advancements have also introduced sophisticated methods of fraud and deceptive practices that exploit the limitations of the existing legal framework. The anonymity and speed of online transactions make it easier for fraudulent actors to evade detection and enforcement, undermining the effectiveness of the Sale of Goods Act in protecting consumers and ensuring fair trade practices. Furthermore, the enforcement mechanisms prescribed by the Act may be outdated, lacking the necessary provisions to leverage digital evidence and modern investigative techniques.

The judicial interpretation of the Sale of Goods Act, 1930, plays a crucial role in addressing these challenges.<sup>3</sup> Landmark cases have shaped the understanding and application of the Act, yet there remains a need for consistent judicial approaches that align with the realities of contemporary commerce. The dynamic nature of modern business practices requires a legal framework that is flexible and responsive, capable of evolving through legislative amendments and judicial innovations to meet emerging challenges. Preventive measures and proactive enforcement strategies are essential in bridging the gap between the traditional provisions of the Sale of Goods Act and the demands of modern commerce. This includes updating statutory provisions to encompass digital transactions, enhancing regulatory oversight in e-commerce, and fostering international cooperation to streamline cross-border enforcement. Additionally, leveraging technology in enforcement processes, such as through digital tracking systems and online dispute resolution platforms, can enhance the efficiency and effectiveness of the legal framework.<sup>4</sup>

This dissertation aims to critically analyse the challenges in enforcing the Sale of Goods Act, 1930 within the context of modern commerce. It seeks to evaluate the adequacy of the Act in addressing contemporary commercial practices, identify gaps and limitations in its enforcement mechanisms, and propose recommendations for legislative and judicial reforms. By examining relevant laws, provisions, and case laws, the study endeavours to contribute to the discourse on modernizing commercial law to better align with the evolving landscape of global commerce.

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<sup>3</sup> Hartnell, H. E. (1993). Rousing the Sleeping Dog: The Validity Exception to the Convention on Contracts for the International Sale of Goods. *Yale J. Int'l L.*, 18, 1.

<sup>4</sup> Ibid.

## LITERATURE REVIEW

The Sale of Goods Act, 1930, remains a cornerstone of India's commercial law framework, governing the sale and purchase of goods. However, the rapid evolution of commerce, driven by globalization, digitalization, and technological advancements, has exposed significant gaps in the Act's provisions. Scholars have widely examined these challenges, offering diverse perspectives on the limitations of the Act and proposing pathways for reform. This literature review synthesizes key contributions to the discourse, addressing critical enforcement challenges in the context of modern commerce.

### FOUNDATIONAL PERSPECTIVES ON THE SALE OF GOODS ACT

T.R. Desai's seminal work, *The Indian Contract Act, Sale of Goods Act, and Partnership Act*, serves as a foundational reference for understanding the principles underpinning the Sale of Goods Act, 1930. Desai meticulously details the Act's provisions, including definitions of goods, conditions, warranties, and remedies for breach. While recognizing the Act's historical significance, Desai notes its limitations in accommodating intangible goods and digital transactions. His emphasis on the necessity of fairness and transparency in commercial dealings provides a benchmark for evaluating the Act's contemporary relevance.

Building on Desai's analysis, Alastair Hudson's *The Sale of Goods* offers an exhaustive critique of the Act's applicability to modern transactions. Hudson argues that the Act's reliance on physical goods as its primary focus creates ambiguities when applied to digital goods, software, and e-commerce platforms. This perspective underscores the need to modernize the Act's definitions and provisions to address the complexities of today's commercial environment.

### CHALLENGES POSED BY DIGITAL COMMERCE

The advent of digital commerce has introduced new dimensions to commercial transactions, exposing the inadequacies of the Sale of Goods Act. Johnson's (2020) article, *E-Commerce and the Sale of Goods Act, 1930: A Modern Dilemma*, highlights how the Act struggles to address online transactions. He identifies jurisdictional complexities as a significant hurdle, particularly in cross-border disputes involving multinational e-commerce platforms. Johnson's analysis emphasizes that the absence of e-commerce-specific provisions in the Act leads to procedural inefficiencies and legal uncertainty.

Similarly, Carver (2018), in *Consumer Protection in the Sale of Goods: A Comparative Study*, examines the intersection of consumer protection and digital commerce. Carver critiques the Act's inability to regulate digital warranties, electronic contracts, and data privacy, which are integral to e-commerce. He advocates for legislative amendments that explicitly address these issues, aligning the Act with international standards to safeguard consumer interests.

## **GLOBALIZATION AND CROSS-BORDER TRADE**

Globalization has significantly altered the dynamics of trade, necessitating harmonization of national laws with international standards. Smith and Turner (2019), in their study *Globalization and Commercial Law: Harmonizing the Sale of Goods Act in a Transnational Economy*, argue that the global nature of commerce demands a unified approach to legal enforcement. They highlight how the United Nations Convention on Contracts for the International Sale of Goods (CISG) provides a model for addressing cross-border trade complexities. By adopting elements of the CISG, such as standardized terms for international sales, the Sale of Goods Act could enhance its relevance in the global trade ecosystem.

## **TECHNOLOGICAL ADVANCEMENTS AND FRAUD**

The integration of technology in commerce has facilitated sophisticated fraud schemes that exploit gaps in existing legal frameworks. Kranacher, Riley, and Wells (2017), in *Forensic Accounting and Fraud Examination*, discuss how the Sale of Goods Act lacks provisions to address digital fraud and electronic contract manipulation. They propose leveraging technologies like blockchain and data analytics to improve transparency and traceability in commercial transactions. This technological integration could serve as a preventive mechanism against fraud while enhancing the Act's enforcement capabilities.

## **JUDICIAL INTERPRETATION AND FLEXIBILITY**

Judicial interpretation has played a pivotal role in adapting the Sale of Goods Act to modern contexts. Hudson (2015) examines how courts have extended the Act's provisions to address disputes involving digital goods and online contracts. However, he cautions that this reliance on judicial flexibility can lead to inconsistent rulings, creating legal uncertainty for businesses and consumers.



## **CORPORATE GOVERNANCE AND INTERNAL COMPLIANCE**

Effective corporate governance is critical to addressing enforcement challenges under the Sale of Goods Act. Monks and Minow (2019), in *Corporate Governance*, emphasize the importance of accountability and transparency in commercial transactions. They argue that robust internal compliance mechanisms can mitigate legal ambiguities and reduce reliance on external enforcement. By fostering ethical leadership and strong governance practices, businesses can proactively address potential breaches of the Act.

## **EMERGING TRENDS IN INDIAN CORPORATE AND COMMERCIAL LAWS**

The collection *Emerging Trends in Corporate and Commercial Laws of India* (2019) explores the evolving landscape of Indian commercial laws, highlighting the challenges posed by digital commerce and globalization. The essays discuss recent reforms, such as the Companies (Amendment) Act, 2017, and the Insolvency and Bankruptcy Code (IBC), 2016, which aim to enhance transparency and investor protection. However, the contributors note that the Sale of Goods Act remains largely untouched by these reforms, underscoring the need for targeted legislative updates to address the unique challenges of modern commerce.

## **CORPORATE SOCIAL RESPONSIBILITY AND CONSUMER PROTECTION**

Tamvada (2020), in *Corporate Social Responsibility and Accountability: A New Theoretical Foundation for Regulating CSR*, examines how CSR principles can complement the enforcement of the Sale of Goods Act. He argues that businesses must integrate social and environmental goals into their operations, thereby addressing gaps in consumer protection and ethical practices. Tamvada's framework emphasizes transparency and accountability as essential components of modern commercial law.

Ramasastri (2018), in *Corporate Social Responsibility Versus Business and Human Rights*, explores the intersection of CSR and human rights, emphasizing the need for stronger accountability mechanisms. She advocates for integrating CSR principles into the Sale of Goods Act to ensure businesses uphold ethical standards and protect consumer interests.

## COMPARATIVE ANALYSES AND GLOBAL BEST PRACTICES

Comparative analyses provide valuable insights into potential reforms for the Sale of Goods Act. Gower and Davies, in *Principles of Modern Company Law*, highlight how jurisdictions like the United States, with its Uniform Commercial Code (UCC), have successfully modernized their commercial laws to address digital transactions and cross-border trade. Adopting similar measures, such as recognizing electronic contracts and standardizing enforcement mechanisms, could significantly enhance the Act's applicability in India.

## RESEARCH METHODOLOGY

This study employs a doctrinal research methodology, focusing on the systematic analysis of legal doctrines, statutes, regulations, and case laws relevant to the Sale of Goods Act, 1930. The doctrinal approach involves:

- **Literature Review:** Comprehensive review of existing literature, including academic journals, legal commentaries, and textbooks, to understand the theoretical and practical aspects of the Sale of Goods Act in the context of modern commerce.
- **Statutory Analysis:** Examination of the Sale of Goods Act, 1930, alongside other relevant national and international statutes to evaluate their provisions, applicability, and enforcement mechanisms.
- **Case Law Review:** Analysis of landmark judicial decisions that have interpreted and applied the Sale of Goods Act, 1930, to understand how courts address enforcement challenges in modern commercial contexts.
- **Comparative Analysis:** Comparison of the Sale of Goods Act, 1930, with similar statutes in other jurisdictions to identify best practices and potential areas for reform.
- **Critical Evaluation:** Assessment of the effectiveness of current legal measures in enforcing the Sale of Goods Act, identifying strengths and weaknesses within the existing system.

## FINDINGS

By engaging with the critical analysis of the challenges in enforcing the Sale of Goods Act, 1930, in the context of modern commerce, students will achieve the following learning outcomes:

1. Understanding Legal Frameworks

- Gain a thorough understanding of the foundational principles and provisions of the Sale of Goods Act, 1930, and their historical relevance in regulating commercial transactions.
- 2. Analyzing Modern Challenges
  - Develop the ability to critically analyse the challenges posed by modern commerce, including digital goods, e-commerce, and globalization, in the enforcement of traditional legal frameworks.
- 3. Evaluating Regulatory Mechanisms
  - Learn to evaluate the effectiveness of existing enforcement mechanisms and identify their limitations in addressing issues like jurisdictional conflicts, consumer protection, and technological advancements.
- 4. Comparative Legal Insight
  - Acquire insight into how other jurisdictions, such as the United States (UCC) and international frameworks (CISG), have adapted their commercial laws to modern challenges, offering a basis for comparative legal analysis.
- 5. Problem-Solving and Reform Proposals
  - Develop the skills to propose practical legislative reforms and best practices to modernize outdated legal frameworks, ensuring their relevance and effectiveness in contemporary commerce.
- 6. Critical Thinking and Legal Interpretation
  - Enhance critical thinking skills through the study of judicial interpretations, inconsistencies, and the role of courts in adapting traditional laws to fit modern contexts.
- 7. Interdisciplinary Awareness
  - Understand the intersection of law, technology, and business, and explore how emerging technologies (e.g., blockchain, AI) can support enforcement and compliance mechanisms.
- 8. Ethics and Corporate Accountability
  - Learn the importance of ethical conduct and corporate accountability in complying with commercial laws and fostering trust in business transactions.
- 9. Practical Application in Legal and Business Contexts
  - Acquire practical knowledge that can be applied in legal professions, policymaking, and corporate environments to address enforcement challenges effectively.



#### 10. Research and Academic Development

- Develop research skills by engaging with statutory laws, scholarly works, case studies, and international best practices, fostering academic growth and professional competence.

### **PROPOSED REFORMS AND CONCLUSION**

In light of the rapid transformation of commerce, particularly with the growth of e-commerce and digital trade, the Sale of Goods Act, 1930 (SOGA) requires substantial amendments to ensure its relevance in the modern business environment. One of the primary areas that need reform is the inclusion of provisions that explicitly address online transactions. The Act was originally designed for traditional, face-to-face transactions involving physical goods, and it does not adequately account for electronic contracts, digital payments, and online delivery mechanisms. Amending the Act to include clear definitions for e-commerce transactions and specifying how key provisions such as transfer of ownership, delivery of goods, and acceptance of goods apply in an online setting will help reduce legal uncertainties.

- Amendments to the Sale of Goods Act to address e-commerce concerns

Another significant reform needed is the recognition of digital goods and software-based products under the SOGA. Currently, the Act primarily deals with tangible goods, creating ambiguity regarding the sale and purchase of intangible products such as software, digital media, e-books, and online services bundled with goods. A modernized version of the law should clearly define how warranties, returns, and contractual obligations apply to digital products, ensuring consumer rights are protected in online marketplaces.

Additionally, there is a need for stronger provisions to combat online fraud and unfair trade practices. With the rise of cyber fraud, fake listings, misleading advertisements, and counterfeit products, the SOGA should integrate consumer protection mechanisms specifically tailored for e-commerce transactions. This includes mandatory disclosure requirements for online sellers, stricter regulations on false advertising, and clearer guidelines on refund and return policies. Furthermore, legal provisions must address liability issues concerning third-party e-commerce platforms that act as intermediaries between buyers and sellers. Ensuring that marketplace operators are accountable for fraudulent transactions on their platforms will significantly strengthen enforcement.

The Act should also incorporate modern dispute resolution mechanisms to handle e-commerce-related conflicts efficiently. The traditional litigation process is slow, expensive, and impractical for resolving digital commerce disputes. Therefore, amendments should encourage the adoption of Online Dispute Resolution (ODR) systems, allowing consumers and businesses to settle disputes digitally without lengthy legal proceedings. ODR mechanisms, such as AI-driven mediation, digital arbitration, and blockchain-based contract enforcement, could provide swift and cost-effective solutions to online trade disputes.

Furthermore, given the global nature of e-commerce, amendments to the SOGA should focus on harmonizing Indian trade laws with international standards. The inclusion of principles from the United Nations Convention on Contracts for the International Sale of Goods (CISG) and best practices from developed economies like the UK, USA, and EU will help create a legal framework that is compatible with cross-border transactions. This will not only improve enforcement mechanisms but also boost investor confidence and ease of doing business in India.

In conclusion, the Sale of Goods Act, 1930, must be revised to address the challenges of e-commerce and digital trade. By incorporating explicit provisions for online transactions, recognizing digital goods, strengthening consumer protection, integrating technology-driven dispute resolution, and aligning with international trade laws, India can ensure that its commercial laws remain robust, adaptable, and capable of protecting the rights of both consumers and businesses in the digital economy.

- Integration of modern technology in dispute resolution

The integration of modern technology in dispute resolution has significantly transformed how legal conflicts, particularly in digital commerce and online transactions, are handled. Traditional dispute resolution mechanisms, such as litigation and arbitration, are often time-consuming, expensive, and inefficient in addressing the fast-paced nature of digital transactions. With the increasing volume of cross-border e-commerce disputes, contractual disagreements in digital services, and online fraud cases, there is a growing need for technology-driven solutions that can provide faster, more accessible, and cost-effective resolutions. Online Dispute Resolution (ODR) platforms, powered by artificial intelligence (AI), blockchain, and automated negotiation systems, are becoming an essential tool for resolving disputes between consumers and businesses without the need for lengthy legal

proceedings. By integrating technology, dispute resolution can become more efficient, transparent, and scalable, reducing the burden on courts while ensuring fair outcomes for all parties involved.

One of the most promising advancements in this field is the use of artificial intelligence (AI) and machine learning (ML) algorithms to facilitate dispute resolution. AI-powered chatbots and decision-making systems can analyse case histories, legal precedents, and contractual agreements to suggest fair and impartial settlements. These tools help in automating mediation processes, assisting parties in reaching mutually beneficial resolutions, and even predicting potential legal outcomes based on historical data. Additionally, AI can be used to filter and categorize disputes, ensuring that simple cases are resolved through automated mediation while complex cases are escalated to human arbitrators or legal experts. This not only speeds up the dispute resolution process but also reduces costs and minimizes human biases, making justice more accessible, especially in high-volume disputes arising from digital transactions.

Another crucial technological innovation in dispute resolution is blockchain-based smart contracts. Smart contracts are self-executing digital agreements where contractual terms are encoded into blockchain networks, ensuring security, transparency, and automatic enforcement. In the event of a dispute, blockchain technology allows for tamper-proof records of transactions, timestamps, and digital agreements, making it easier to verify claims and enforce legal obligations. This is particularly useful in cross-border digital trade, cryptocurrency transactions, and online service agreements, where disputes often arise due to lack of clear jurisdictional authority. Smart contracts eliminate the need for intermediaries, ensuring that contractual obligations are fulfilled automatically and reducing the chances of fraudulent or deceptive practices in online transactions.

Furthermore, virtual courts and online arbitration platforms are revolutionizing legal proceedings by providing remote access to dispute resolution services. Many jurisdictions have started implementing digital courtrooms, video conferencing hearings, and electronic submission of evidence, enabling parties to resolve disputes without geographical constraints. This is especially beneficial for small businesses, freelancers, and consumers engaged in cross-border trade, who would otherwise struggle with costly and time-consuming legal procedures. The integration of technology into dispute resolution not only enhances efficiency but also democratizes access to justice, ensuring that individuals and businesses, regardless of location,



can seek fair and timely resolutions to their disputes. As digital transactions continue to grow, further adoption of technology-driven dispute resolution mechanisms will be critical in creating a faster, more transparent, and equitable legal system that aligns with the evolving nature of global commerce.

- Stronger regulatory mechanisms for online transactions

With the rapid expansion of e-commerce and digital trade, the need for stronger regulatory mechanisms to govern online transactions has become increasingly evident. The Sale of Goods Act, 1930 (SOGA), in its current form, primarily addresses traditional, physical transactions, making it insufficient to regulate the complexities of internet-based commerce. As online marketplaces grow, so do challenges such as fraudulent sellers, misleading advertisements, counterfeit products, unfair trade practices, and data security concerns. To ensure a fair and secure digital trading environment, robust regulations must be introduced to hold both online sellers and e-commerce platforms accountable for their commercial activities.

One key area of regulatory improvement is the imposition of stricter compliance requirements on e-commerce platforms. Many digital marketplaces function as intermediaries, allowing third-party sellers to conduct transactions without direct accountability. This creates a gap in legal responsibility, where fraudulent sellers can exploit loopholes, leaving consumers unprotected. A well-defined regulatory framework should mandate e-commerce platforms to verify seller identities, ensure transparency in product descriptions, and take responsibility for defective or non-delivered goods. Furthermore, platforms should be legally required to establish strong consumer grievance redressal mechanisms, including automated refund processes, easy return policies, and responsive customer support.

Another crucial reform is the establishment of clear liability provisions for online transactions. The SOGA needs to specify who is accountable in case of disputes related to defective goods, misrepresentation, or non-fulfilment of contractual terms in digital sales. The introduction of mandatory e-contract standards, ensuring that terms and conditions are clearly outlined and legally binding, will help reduce conflicts and improve enforcement. Additionally, specific provisions should govern digital goods, software-based transactions, and subscription services, areas that remain legally ambiguous under the current Act.

Regulatory mechanisms should also focus on data protection and cybersecurity in e-commerce

transactions. Since digital payments, online orders, and personal data exchanges are fundamental to modern trade, there is a growing risk of identity theft, financial fraud, and misuse of consumer information. Strengthening regulations on data security compliance for e-commerce businesses, enforcing strict penalties for data breaches, and integrating blockchain-based transaction verification systems can significantly improve the safety of online commerce. Furthermore, a centralized regulatory authority for e-commerce transactions can ensure effective monitoring and compliance enforcement. This body could oversee issues such as unfair trade practices, pricing manipulations, algorithmic discrimination in online sales, and consumer grievances, ensuring that businesses operate within ethical and legal boundaries. The authority should also facilitate cross-border trade regulations, as many e-commerce disputes arise from international transactions where jurisdictional conflicts make legal enforcement difficult.

In conclusion, stronger regulatory mechanisms for online transactions are essential to modernizing India's commercial laws. By imposing stricter compliance requirements on e-commerce platforms, defining legal liabilities for digital sales, enhancing cybersecurity protections, and establishing a centralized e-commerce regulatory authority, the Sale of Goods Act, 1930, can be adapted to effectively govern the rapidly evolving digital trade landscape. These reforms will not only protect consumer rights but also foster a more transparent, accountable, and efficient online marketplace.

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