



**Asia-Pacific  
Economic Cooperation**

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## **Fundamental Rules in E-Commerce Chapter for SMEs to Expand Their Business**

Submitted by: Japan



**Capacity Building Needs Initiative Seminar on  
Electronic Commerce Chapter of the Regional  
Trade Agreements and Free Trade Agreement  
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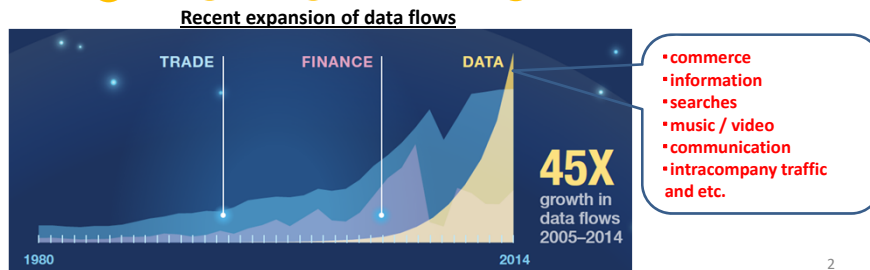
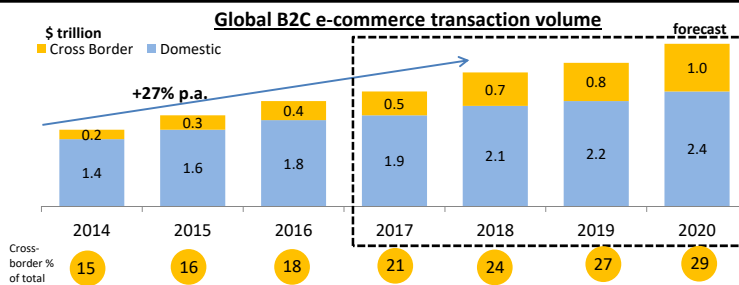
# Fundamental Rules in E-Commerce Chapter for SMEs to Expand Their Business

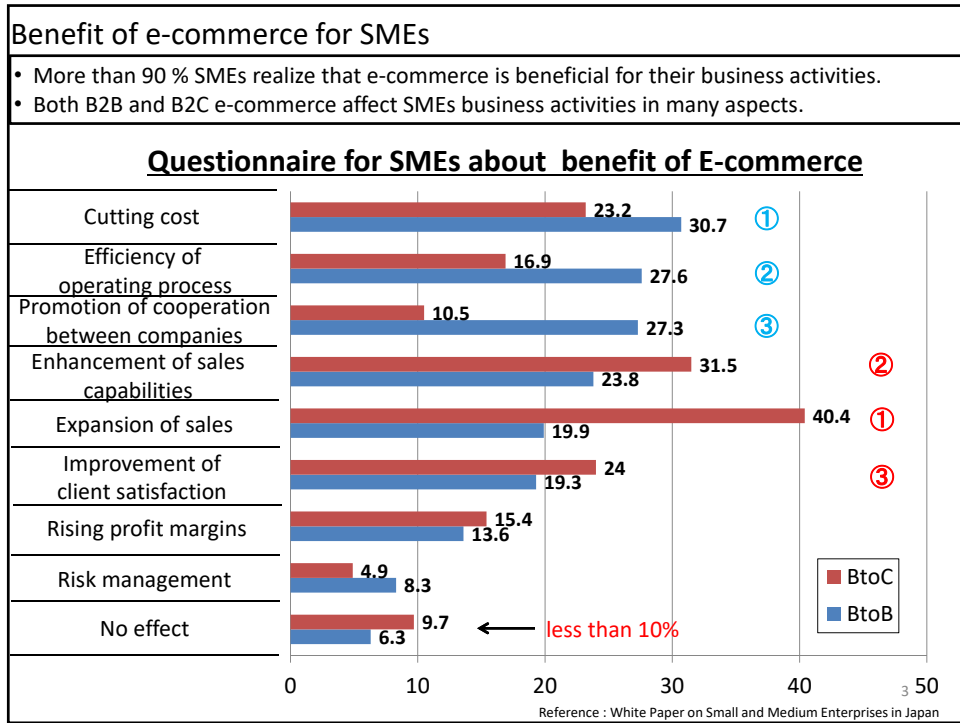
SMEs : Small and Medium Enterprises

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## Data flows and e-Commerce are expanding

- Cross border data flows and e-commerce transactions have been expanding and will continue to expand.





**Problems which SMEs are facing in cross-border e-commerce**

- Some countries have laws and regulations which have adverse effect for e-commerce. Sometimes, such laws and regulations are ambiguous or complicated.
- Some countries do not have laws and regulations which promote e-commerce.

**Barrier against e-commerce**

Laws and Regulation	Comments or Demands from Private Sector, includes SMEs
Regulation of data flow	• Regulation of data flow cause lack of local marketing research.
Data localization	• Installing computing facilities in other countries costs a lot.
Disclosure requirement of source code	• Intellectual property or business secret will be disclosed at the same time.

**Laws and regulations which promote e-commerce**

Laws and Regulation	Comments or Demands from Private Sector, includes SMEs
Customs procedures	• There are complex tax systems in some countries. • Simple and speedy customs procedures are needed.(Lead time of customs procedures are very long.)
Electronic settlement	• There are risks in payment in countries where the rate of owning bank account or credit card is low.

### Scope of e-commerce chapter and fundamental rules

- Not only large companies but also SMEs have variety of business model using Internet, therefore e-commerce chapter in EPA/FTA should expand the scope and cover such business models.
- Cross-cutting and fundamental rules will facilitate SMEs to expand their business abroad because the business environment will be improved by these rules.

**Business Model**

B to C  
(C to B)

B to B

P to P

HQ to  
Subsidiary

Machine  
to  
Machine

**Cross-Cutting Fundamental Rules**

<u>Creating a Conductive Environment for E-Commerce</u>	<u>Promoting Cross Border E-Commerce</u>	<u>Trade Facilitation</u>
<ul style="list-style-type: none"> <li>Online Consumer Protection</li> <li>Online Personal Information Protection</li> <li>Customs Duties</li> <li>Treatment of Digital Products</li> </ul>	<ul style="list-style-type: none"> <li>Location of Computing Facilities</li> <li>Disclosure of Source Code</li> <li>Cross-Border Transfer of Information by Electronic Means</li> <li>Electronic Settlement</li> </ul>	<ul style="list-style-type: none"> <li>Paperless Trading</li> <li>Customs Procedures</li> <li>Electronic Signature</li> </ul>

6 rules are strongly demanded by SMEs


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### 1. Cross border transfer of information

- Cross-Border Transfer of Information is necessary to all business activities, includes B2C, B2B, internal communication and future technologies such as ADAS and IOT.


**Country A**

SMEs in every field




ADAS : Advanced Driver Assistant System  
IOT : Internet of Things

Manufacturer / IOT service company




**Country B**


Consumer




Subsidiary / Business partner




Car owner



Machine operator



Constructing machine with IOT



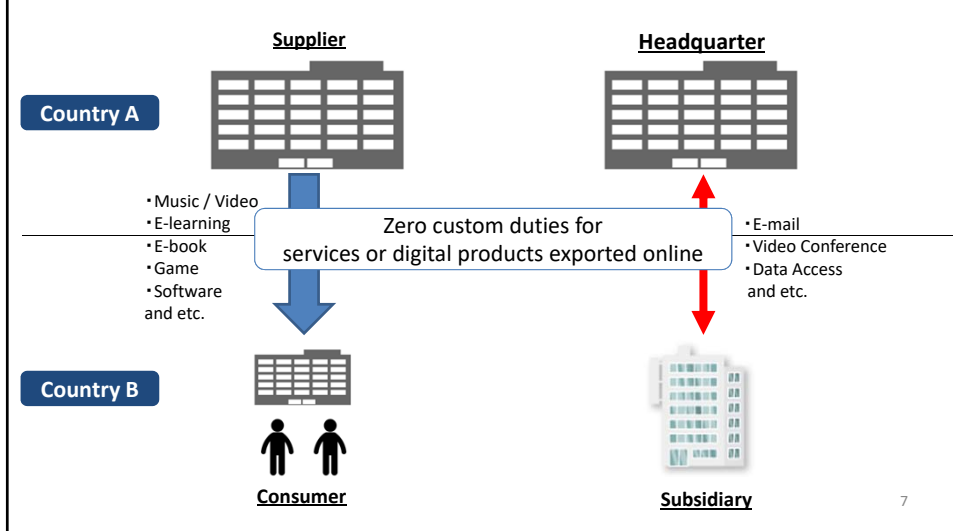
**Information Flow:**

- From Country A SMEs to Country B Consumer: application service, web access, inquiry by e-mail, Online payment
- From Country A SMEs to Country B Subsidiary / Business partner: Immediate and frequent communication (e-mail, Web meeting, server sharing, etc.)
- From Country A Manufacturer to Country B Car owner: Maintenance information
- From Country A Manufacturer to Country B Machine operator: Software upgrade
- From Country A Manufacturer to Country B Constructing machine with IOT: Condition of Machines

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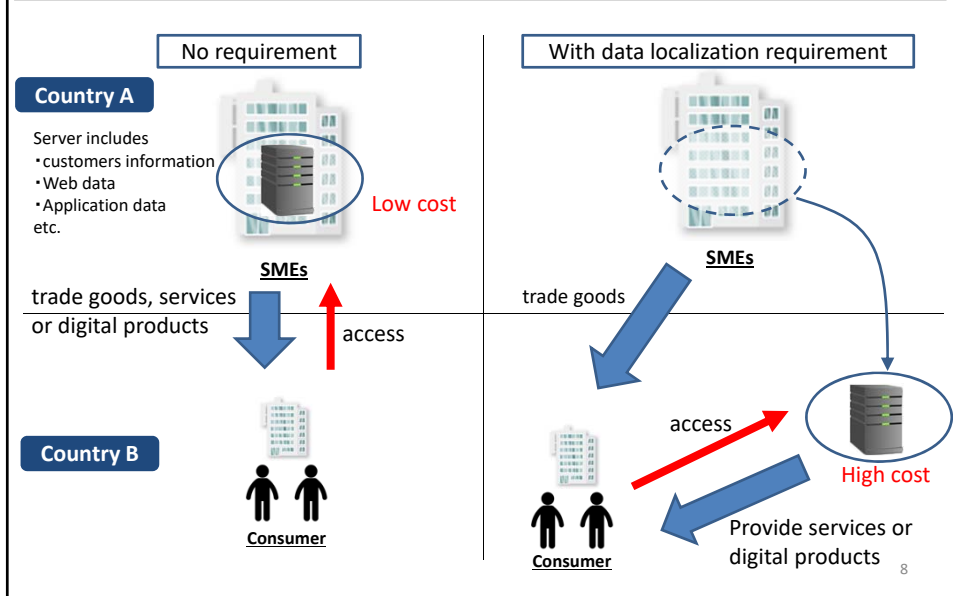
## 2. Not imposing customs duties on electronic transmissions

- Not imposing customs duties reduce business cost.
  - Not imposing customs duties permanently improve legal stability.
  - Not only large company but also SMEs can enjoy the benefit.
- ✓ Based on the WTO ministerial decision, not imposing customs duties has been basically maintained since 1998.



## 3. Prohibition of requirement on data localization

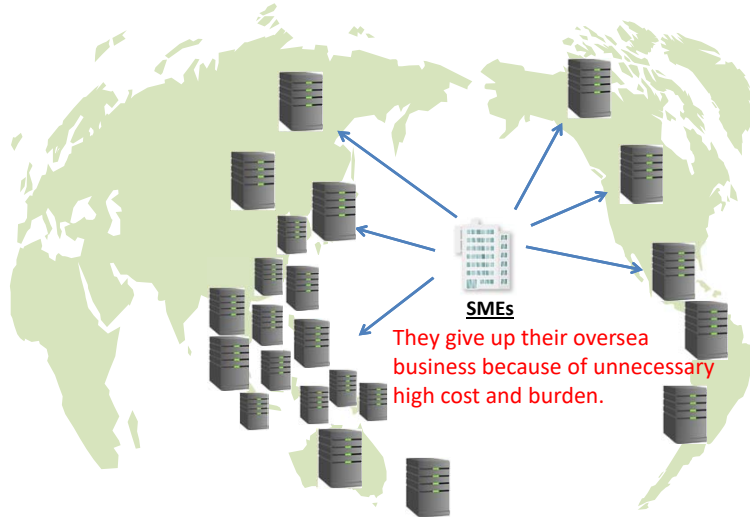
- Data localization requirement makes SMEs or IT ventures spend high cost to introduce and maintain servers in other countries.



### 3. Prohibition of requirement on data localization

• If many countries require data localization to SMEs, they have to put their servers in each countries with extremely high costs. Finally, they will give up expanding their business overseas, and this has severe adverse effects for inclusive growth and regional economic integration.

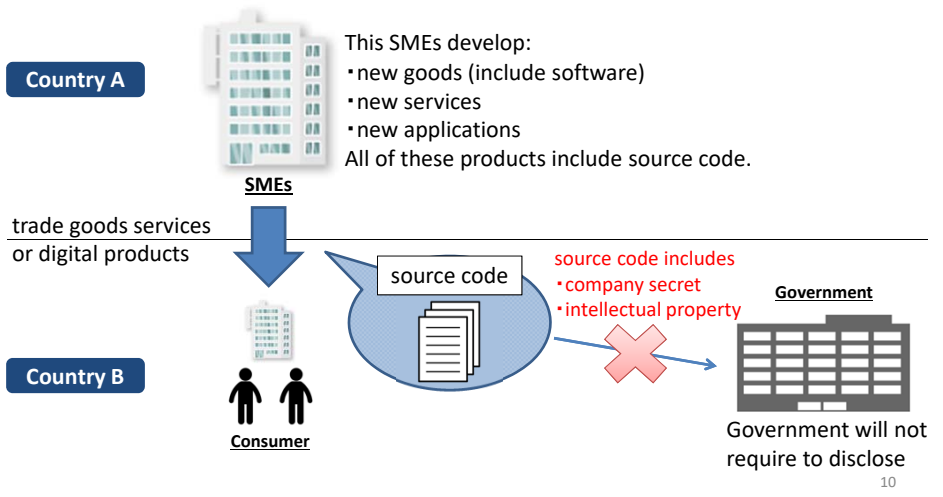
With data localization requirement in all APEC countries



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### 4. Prohibition of requirement on disclosure of source code

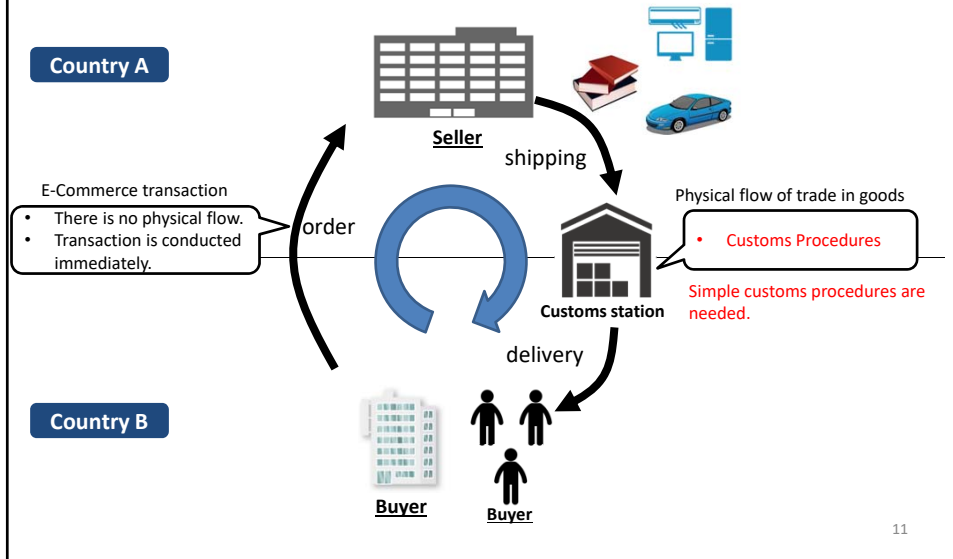
• Source code includes core technologies and an important asset for the company.  
 • If a government requires companies to disclose source code of their products, intellectual property and business secret will be disclosed at the same time.  
 • Therefore, government should provide legal stability to companies by ensuring they will not require companies to disclose, and then companies can expand their oversea business at ease.



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### 5. Customs procedures and trade facilitation

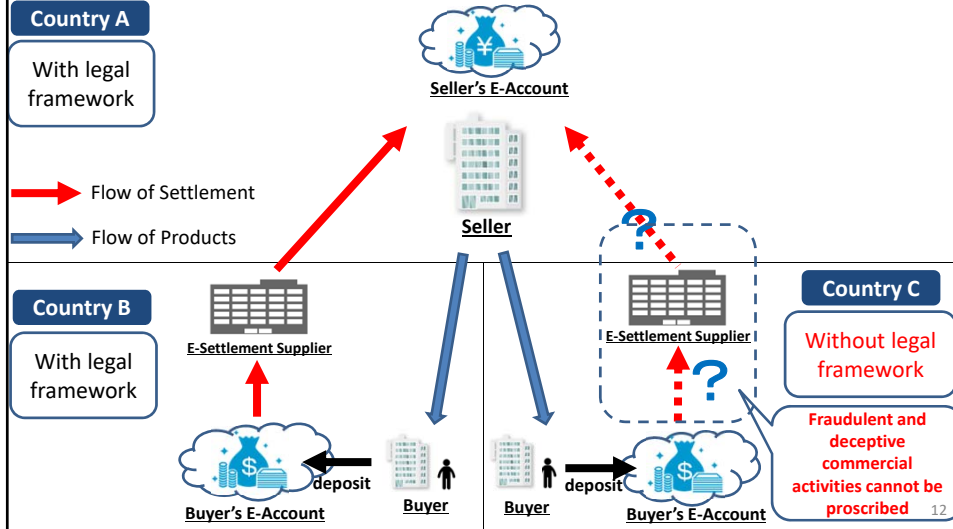
- To facilitate E-Commerce Customs Procedures and Trade Facilitation are important because it is critical to the lead time of e-commerce.



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### 6. Electronic settlement

- Electronic Settlement is essential for e-commerce.
- User confidence of Electronic Settlement is enhanced by legal framework to proscribe fraudulent and deceptive commercial activities.



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### Conclusion

- Cross border data flows and E-Commerce transactions have been expanding and will continue to expand.
- Many SMEs are facing problems of foreign laws and regulations when they expand their business abroad.
- Fundamental rules in e-commerce chapter will promote not only B2B, B2C e-commerce but also every business activities.
- SMEs can promote their business at ease in foreign countries which have introduced such rules.

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Annex

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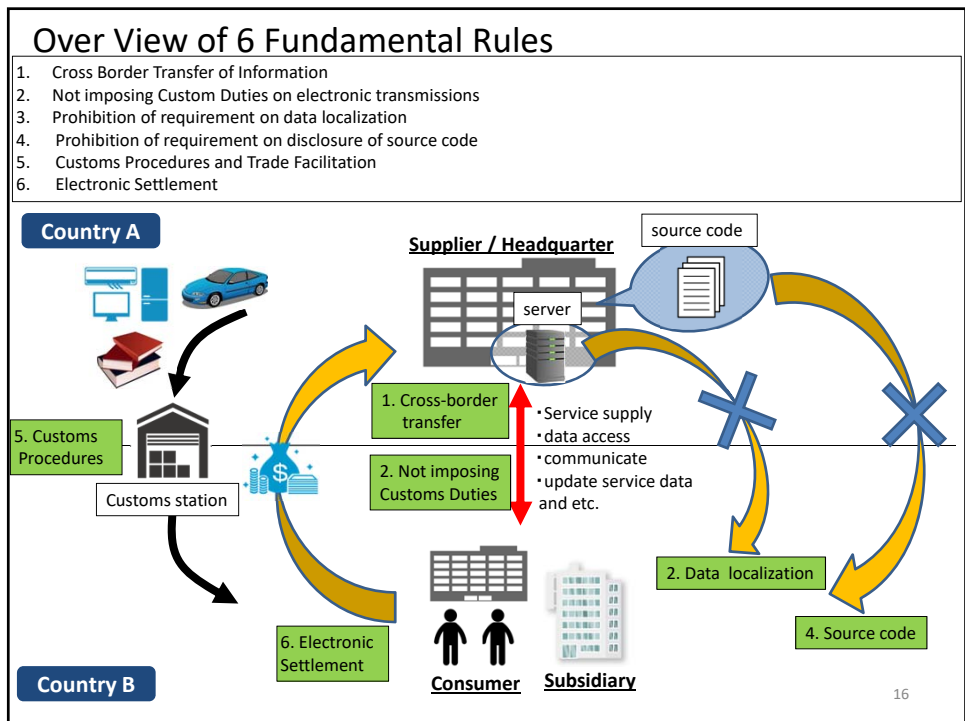


### Fundamental Rules Promoting E-Commerce and Foreign Business Activity

- We are thinking that international fundamental rules below will promote e-commerce and foreign business activity of not only large companies but also SMEs.

- 1. Cross Border Transfer of Information**
  - SMEs can capture foreign demands easily.
  - This rule contributes to increase investment in advanced technologies and promote innovations.
- 2. Not imposing Custom Duties on electronic transmissions**
  - SMEs can export their products transmitted electronically with lower cost.
  - Domestic consumers can buy products cheaper.
- 3. Prohibition of requirement on data localization**
  - SMEs can expand their business overseas with lower cost.
- 4. Prohibition of requirement on disclosure of source code**
  - This rule provides secured investment environment, and contributes to increase investment and promote innovations.
- 5. Customs Procedures and Trade Facilitation**
  - Simplified customs procedures make expeditious clearance of goods.
- 6. Electronic Settlement**
  - Fraudulent and deceptive commercial activities are proscribed by legal framework.

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## Annex

Rules	TPP
Not imposing Custom Duties on electronic transmissions	○
Prohibition of requirement on data localization	○
Cross Border Transfer of Information	○
Prohibition of requirement on disclosure of source code	○
Customs Procedures and Trade Facilitation	○ (another chapter)
Electronic Settlement	×

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## Exception Clause

## 1. Legitimate Public Policy Objective (TPP)

Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure;

- (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
- (b) does not impose restrictions on transfers of information greater than are required to achieve the objective.

## 2. General Exception (Article 14 of GATS and Article 20 of GATT)

Article 14 of GATS (The concept is the same as Article 20 of GATT)

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:

- (a) necessary to protect public morals or to maintain public order;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - (iii) safety;
- (d) inconsistent with Article XVII, provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other Members;
- (e) inconsistent with Article II, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member is bound.

## 3. Security Exception (Article 14bis of GATS and Article 21 of GATT)

Article 14bis of GATS (The concept is the same as Article 21 of GATT)

Nothing in this Agreement shall be construed

- (a) to require any Member to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests:
  - (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
  - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
  - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent any Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

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Scope of "TRIPS" and "Source Code in E-Commerce Chapter"		
	Source Code	
	Disclosed	Undisclosed
Mandatory disclosure requirement by Governments	X	<b>Scope of E-Commerce</b>
Used by competitor in a manner contrary to honest commercial practices		<b>TRIPS Article39</b> if it satisfies following condition (a) unknown or inaccessible (b) commercial value (c) lawfully controlled
	<b>TRIPS Article10</b> (Copyright such as computer programs)	