



**Asia-Pacific  
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## **Crucial Terms in Discussions of Trade-Related Aspects of Electronic Commerce**

Submitted by: Renmin University of China



**Symposium on APEC Supporting the WTO  
Negotiations on Trade Related Aspects of  
E-Commerce  
24-25 March 2021**

# Crucial terms in discussions of trade-related aspects of electronic commerce

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**Symposium on APEC Supporting the WTO Negotiations  
on Trade Related Aspects of E-commerce**

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# Outline of the presentation

- What does the WTO plurilateral negotiation on e-commerce/digital trade mean
- Broad v. Narrow concept of E-Commerce or Digital Trade
- The various understandings from international organizations and the WTO
- China's participation and role in the negotiation

## I. The Significance of the WTO Negotiation on E-Commerce

- The negotiation attempts to set up a new rulebook for digital trade, ideally prior to the 12<sup>th</sup> WTO Ministerial Conference.
- 86 Members are currently negotiating based on a consolidated text produced in December 2020.
- A potential game-changer for the WTO under fire in recent years?
- The WTO's relevance and importance to shape the future of international trade and demonstrates an underlying resilience in the system and its Members.
- The impact on Covid-19 and the increasing importance of the topic.

## II. How to understand the term of E-Commerce or Digital Trade?

- The scope and definitions of digital trade vary across economies and organizations.
- Narrow v. broad concept?
  - Narrow: **trade in digitized products**, the US International Trade Commission (USITC)'s definition: the delivery of products and services over either fixed-line or wireless digital networks, while excluding commerce in most physical products
  - Broad: **the use of digital technologies (ICTs) to conduct business**, including the direct exchange of digital goods, and digitally enabled exchanges of services or labor. However, it also includes a huge range of cross-border data flows that would not normally be considered as “trade”, such as personal communications.

### III. The understandings from the international organizations

- **UNCTAD** : purchases and sales conducted over computer networks. This definition involves physical goods as well as intangible (digital) products and services that can be delivered digitally. (2015)
- The **UN ESCAP**: digital trade means the use of digital technologies to facilitate businesses without limiting it to just online sales or purchases. (2016)
- **G20**: digital trade encompasses digitally enabled transactions in trade in goods and services which can be either digitally or physically delivered involving consumers, firms and governments. (2017)

- **WTO:** the term “electronic commerce” has generally been employed rather than “digital trade” in the past. But in the context of plurilateral negotiation, these two terms are accepted and used interchangeably.
- The term “electronic commerce” is understood to mean the production, distribution, marketing, sale or delivery of **goods and services** by **electronic means**. (2016)
- Consolidated text in December 2020: no change. INF/ECOM/62/Rev. 1, Definitions of “E-Commerce/Digital Trade”.
- Broad instead of narrow definition
- **Goods and services:** the non-discrimination treatment of digital products
- **Electronic means:** data flow and prohibition of data localization

## IV. China's Role in the WTO Negotiation on E-Commerce: A Wrecker or A Contributor?

- The importance of China's participation in the negotiation
- China is not in a position to act as a wrecker due to the significance of this negotiation itself and China's role to revive the WTO system.
- China will try to accommodate the ambitious goals set by the U.S., even on the super sensitive issues, such as:
  - the removal of restrictions on data flows
  - elimination of mandatory requirements for storing data in local servers,
  - web services and cloud-computing, etc.



# Legitimate Public Policy Objectives: Regulatory Concerns from China

[Alt 1: CA CIV JP]

For the purposes of this Agreement, Article XX of GATT 1994 and its interpretative note and Article XIV of the General Agreement on Trade in Services in Annex 1B to the WTO Agreement shall apply [to the extent applicable. To this end, the provisions above shall be incorporated into and made an integral part of this Agreement], mutatis mutandis.

[[Parties/Members] further agree that, in view of the challenges brought by the global nature of the internet, this Agreement shall not prevent Members from adopting or maintaining any measures for the purposes of guaranteeing cybersecurity, safeguarding cyberspace sovereignty, protecting the lawful rights and interests of its citizens, juridical persons and other organizations and achieving other legitimate public policy objectives, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade, and are no more than necessary to achieve the objectives.]]

[Alt 2:

BR

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 and cross-border transfer of information by electronic means, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any [Party/Member] of measures:

- (a) necessary to protect public morals or to maintain public order;
- (b) necessary to ensure the equitable or effective imposition or collection of direct taxes in respect of trade through electronic means;
- (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;
  - (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; and
  - (iii) safety.]



Thanks for your time and attention!



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