Crucial Terms in Discussions of Trade-Related Aspects of Electronic Commerce

Submitted by: Singapore
Symposium on APEC: Supporting the WTO Negotiations on Trade Related Aspects of E-commerce
Crucial Terms in Discussions of Trade-Related Aspects of E-commerce

• Trade by electronic means
• Electronic transmissions
• Trade Administration Documents
• Legitimate Public Policy Objective
Trade by Electronic Means

- “This chapter/agreement applies to measures adopted or maintained by a Party that affect trade by electronic means”
- Found in scope of E-commerce/Digital Trade chapters of FTAs (e.g. USMCA, CPTPP) and digital trade agreements (US-Japan DTA)
- Covers trade in services provided online
- May not cover trade in traditional goods
Trade by Electronic Means

• “This chapter/agreement applies to measures adopted or maintained by a Party that affect trade by electronic means or that, by electronic means, facilitate trade”

• Expanded scope of Singapore-Australia Digital Economy Agreement to cover trade in goods as well as trade in services
• WTO General Council decision: “Members agree to maintain the current practice of not imposing customs duties on electronic transmissions until the 12th Ministerial Conference”

• CPTPP text: “No Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of one Party and a person of another Party”

• “Electronic transmissions” includes content transmitted electronically
  o E.g. a consumer purchasing an e-book; streaming of music or movies etc.
Electronic Transmissions

- Imposition of customs duties on electronic transmissions may actually be more harmful to the development and growth of SMEs in developing economies.

- Studies have shown that the potential revenue loss from non-imposition of customs duties is outweighed by the welfare gains from consumer welfare and export competitiveness (e.g. OECD, ICC, ECIPE papers).

- Ad valorem assessments on electronic transmissions is practically impossible:
  - E.g. live streaming of a performance – potentially millions of electronic transmissions during the performance, which makes it practically impossible to assign an economic value.
Trade Administration Documents

• “trade administration documents” means forms issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the import or export of goods.
  o Found in Singapore-Australia DEA, CPTPP, USMCA

• commit Members to publish trade administration documents in electronic form and accept electronic versions of trade administration documents as legal equivalent of paper documents
  o Not possible to commit governments to publishing documents that are controlled by private sector (e.g. invoices, bills of lading), but which may be required for customs clearances.

• WTO TFA uses “forms and documents” required for importation to, exportation from, or transit
Legitimate Public Policy Objective

• Exception for disciplines pertaining to cross border data flows and data localization

1. Neither Party shall prohibit or restrict the cross-border transfer of information by electronic means, including personal information, if this activity is for the conduct of business of a covered person.

2. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 1 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.
Legitimate Public Policy Objective

• Designed to give Members future policy space to maintain measures affecting cross border data flows or data localization in pursuit of policy objectives

• There are conditions to this exception to ensure that it is not used in a way to circumvent the main commitment on not imposing restrictions on cross border data flows
Thank you