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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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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

Electronic Transmissions

- 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**
 - 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.
 - 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**
 - 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

