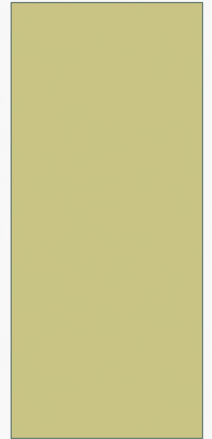




Chinese Views on the
Rule of Law in Cyberspace:
From the Perspective of International Economic Law

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Introduction

OECD: Almost all the economic activities can be conducted in the cyber society.

The human establishes a cyber dimension, which is parallel to the physical real world, significantly promoting free trade, as well as trade facilitation.

Global initiative on data security



II. The e-WTO Proposal and its relevant international framework

1. Multilateral agreements

(1) The Basic Framework of E-WTO in multilateral Trade Agreement

a. What is the e-WTO

The Work Programme on Electronic Commerce states that: Exclusively for the purposes of the work programme, and without prejudice to its outcome, the term 'electronic commerce' is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means

E-commerce- Platform Economy- Digital Trade

Lawrence Lessig: Physical layer ; Application layer ; Information layer



B.THE KEY ISSUES OF E-WTO

The Parties recognize the economic growth and opportunities provided by electronic commerce and the applicability of WTO rules to electronic commerce.

—Article 1502 of FTA between Canada and Colombia

- (a) IT Products: (Information Technology Agreement)
New emerging Products; Converging Products; Multi-functional products
- (b) Internet services products:
GATS (Specific commitment schedule):
Internet (files, archives)services, Audio-visual Products, Not information services
- (c) The electronic means of transferring trade information
Basic Telecommunications; Telecommunications Annex
- (d) Internet as a communications tool
Freedom of trade Information

C. The Principles of e-WTO

(a) Do not constitute a unnecessary digital trade barrier

Trade barriers; digital trade barrier

Necessity test: the objective; contribution; effect; alternative measures

(b) Non-discrimination: MFN/NT

(c) Access to Internet and infrastructure

Digital trade rights



D. Major Concerns on e-WTO

- (a) Cyber Security in e-WTO rules
- (b) Public Morals in e-WTO rules
- (c) Data Protection in e-WTO rules

GATT1994 Article XX: General Exceptions

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 the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;

.....

Article XXI: Security Exceptions

Nothing in this Agreement shall be construed

.....

- (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests

.....

- (iii) taken in time of war or other emergency in international relations; or

.....

2. INTERNATIONAL FRAMEWORK

UNCITRAL E-commerce

a. The Model law on E-commerce (1996)

Three principles: Non-discrimination; Technical Neutrality; Functional equivalence

The principle of non-discrimination ensures that a document would not be denied legal effect, validity or enforceability solely on the grounds that it is in electronic form.

The principle of technological neutrality mandates the adoption of provisions that are neutral with respect to technology used. In light of the rapid technological advances, neutral rules aim at accommodating any future development without further legislative work.

The functional equivalence principle lays out criteria under which electronic communications may be considered equivalent to paper-based communications.

b. Model Law on Electronic Signatures (2001)

The Model Law on Electronic Signatures aims to enable and facilitate the use of electronic signatures by establishing criteria of technical reliability for the equivalence between electronic and hand-written signatures.

C. Others

UNCITRAL Online Dispute Resolution Guideline

3. The Regional FTAs

(1) The Comprehensive and Progressive Agreement for Trans-Pacific Partnership

Chapter 14 E-commerce

a. Zero Custom duties (Article 14.3, 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.)

b. legitimate public order- exceptions (Article 14.11, 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.)

c. Online Consumer Protection (Article 14.7, Each Party shall adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.)

d. Personal Information Protection (Article 14. 8, To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce.)

(2) UNITED STATES-MEXICO-CANADA AGREEMENT

Chapter 19 Digital Trade

- a. Customs Duties (Article 19.3, No Party shall impose customs duties fees, or other charges on or in connection with the importation or exportation of digital products transmitted electronically, between a person of one Party and a person of another Party.)
- b. Non-discriminatory treatment of digital products (Article 19.4 , No Party shall accord less favorable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of another Party, or to digital products of which the author, performer, producer, developer or owner is a person of another Party, than it accords to other like digital products.)
- c. Avoid any unnecessary regulatory burden on electronic transactions
- d. Data protection; Online Consumer Protection
- e. Others

Canada's Cultural exceptions, e.g., the production, distribution, sale or exhibition of audio or video music recordings, Article 32.6

Mexico's Cultural exceptions, Annex 1: Broadcasting, Newspaper publishing, Cinema services; Annex 2: Audiovisual services

III. China's Proposal on the Rule of Law in Cyberspace

1. China government proposes an E-commerce Proposal in WTO
2. Chinese Corporations: The eWTP (electronic World Trade Platform) around the world
3. Chinese Academia: A Cyber Silk Road/One Belt One Road.



1. The China's e-commerce proposal in WTO

On 4 November 2016, China proposed an E-commerce proposal in WTO, the suggestion of China's proposal focuses on the trade liberalization and facilitation of cross-border services, such as the delivery and logistics.

In addition, China advocates to clear classification of the interpretation and applicability of WTO rules on e-commerce, and care more about Small-and-medium enterprises and least-developed countries.

China also advises to extend the free custom duties in electronic transmission.



The key issues of China's proposal are as below,

I. trade facilitation

- a. shorten customs procedures of B2C (business to Consumer) products
- b. governmental information communication
- c. regulatory cooperation
- d. paperless trade
- e. mutual recognise of administrative finding and decisions
- f. the cooperation by Internet corporations

II. transparency

- a. publication of law and regulations
- b. publication of the special procedures of customs for digital trade

III. Building the cyber infrastructure and technological capability

- a. the recognition of Electronic Authentication and digital signature
- b. building the infrastructure

IV. others

Data exchange between WTO members, consumer protection, privacy protection and intellectual property

V. the method

General council; Council for Trade in Services; Council for Trade in Goods; Council for TRIPs; Committee for Trade and Development; Director-General; Secretariats

2. China's FTAs

Until February 2021, China has rectified 20 FTAs, and 10 FTAs are under ongoing negotiations.

e.g., China-Korea FTAs; China-Australia FTAs

e-commerce chapter

General provisions; definitions; custom duties; electronic authentication, digital signature; data protection; paperless trade; e-commerce cooperation.

- (1) Free custom duties: No impose the duties on the digital transaction;
- (2) the legal force of digital documents, with the same treatment of written ones;
- (3) The legal effect of digital signature and electronic authentication

China-Korea FTA: telecommunication and services Chapter

- (1) access to telecommunication and services;
- (2) inter-connected between public telecommunication and services providers;
- (3) the competition policy and the independence of supervising body

RCEP Chapter 12 Electronic Commerce

3. DOMESTIC LAW

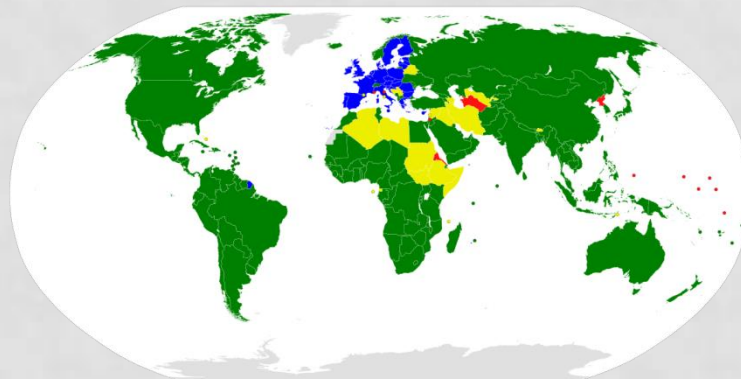
- a. Electronic Signature Law (2004 approved, 2015 revised)
- b. E-Commerce Law (Effective date: 1 Jan., 2019)
comprehensive; multi-stakeholders' participation; Functional equivalence
- c. The legislative plan in next period: Personal Information Protection Law; Data Security Law



IV. Some Experience from China's Proposal

1. Insist on the multilateral forum, digital trade is the issue of global commons

For instance, Article 12.3 of China-Australia FTA : consistent with WTO E-commerce Working Program (Article 5 , do not impose custom duties); Article 12.5, UN e-commerce model law, maintain the domestic legal framework of digital transaction supervision, as well as due concern of other relevant international standard, require the least burden of supervision.



2. The interaction between state practices and international law

China E-commerce law – functional equivalence and technical neutrality

Online dispute settlement

a. Hangzhou Internet Court

(The court will accept filings electronically and try cases via live stream for the following areas of dispute: contract disputes arising from online shopping, product liability disputes arising from online shopping, internet service contract disputes, internet copyright infringement disputes, and disputes arising from financial loans executed online.)

b. Internet mediation and Arbitration

CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION, ONLINE ARBITRATION

China and Russia UN Resolution on Information Security

Global initiative on data security: all the states encourage companies to abide by law and regulations of the state where they operate, and also lay down an equal jurisdiction mode of governance of data

3. The internet Corporations' participation

eWTP (Alibaba)



On September 2016, the eWTP proposal was written in G20 Hangzhou Summit Report.

According to the Aliababa's view, eWTP is dominated by private entities, driven by market, open and transparent platform , as well as with multilateral stakeholders participation. This platform will be an eco-system including the rule layer, business layer and technology layer.

4. A NEW Balance

a. Balance the national security, public moral protection, personal data protection and free trade

b. Balance the business interest and the right to regulate

c. Not just data and information ,but Access to infrastructure
Chinese Netizens – almost 940 million

d. the SMEs and LDCs



V. CONCLUSION

1. Different initiatives and strategies , but the same goal and similar measures, i.e., free trade, free duties, non-discrimination
2. Digital trade is global inherently and shall be negotiated in the multilateral level
3. China and Italy's experience can contribute to the global society





Thanks you !

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