International Harmonization in the Rules of Cross-border Electronic Commerce

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According to statistics, the electronic commerce sale volume worldwide will reach USD 963 billion soon.

In the US, Goldman Sachs predicts that the increase of online retail sales will be 12.4% in the next three years, and the value will reach USD 235.3 billion.  

In recent years, cross-border electronic commerce has become a new way of international trade.

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Introduction

The development of electronic commerce is unbalanced.

The nations (districts) still have different systems and standards, e.g., there are disputes over the identification and authentication of electronic exchange record.

It is hard to reach a consensus under the overall situation of unbalanced electronic commerce development of each nation (district).

World Trade Organization (WTO) temporarily lays up the international legislation of electronic commerce.
Dilemma in International Law and Policy Analysis

Interest Conflicts in Business Rules of Cross-border Electronic Commerce
Enlightenment of the US Policy’s International Expansion

World Trade Organization (WTO)

United Nations Commission on International Trade Law (UNCITRAL)

Organization for Economic Cooperation and Development (OECD)

Disputes within WTO frame
UNCITRAL’s attempt on constructing single window
OECD promotes the cooperation among main bodies of each party
WTO has made a **definition** for cross-border electronic commerce.

The electronic commerce workgroup set forth in its document that, "Cross-border electronic commerce is a new field of trade, involving product crossing border in electronic way, broadly speaking, it is the production, advertising, marketing and distribution of products through telecommunication network".
WTO has formulated a series of framework documents:

- 1998, *Declaration on Global Electronic Commerce*;
- ......
But the General Council cannot reach a consensus on rule application. The key problem lies in that which rule applies to cross-border electronic commerce.
Disputes within WTO frame

- In practice, commodities traded in electronic commerce are inclined to be divided into digital commodity (digital service and digitally-delivered content product) and non-digital commodity using electronic transmission as medium.
In 2003, the ruling of WTO dispute settlement body on Internet gambling case clarifies that GATS is applicable to digital service in cross-border electronic commerce.

More and more countries have shown their support for such a classification way: GATT still applies to commodities transported in physical form, while GATS shall be applicable to electronic transmission. This classification principle is appropriate to non-digital commodity.

There is also divergence on digitally-delivered content products in digital commodity.
In the process of WTO discussion, WTO members tend to classify it as service and shall be governed by GATS.

Digitally-delivered content products governed by GATS frame is more favorable to developing countries including China.
UNCITRAL officially issued a series of framework documents:

- 2005, *Convention on the Use of Electronic Communications in International Contracts*;
- ......
In recent years, UNCITRAL actively and closely cooperates with World Customs Organization (WCO) and United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), and participates in formulating international legal reference document on establishing and managing single window.

WCO and UNCITRAL established coordinated border management Joint Legal Task Force of international single window (Joint Legal Task Force).

Joint Legal Task Force also devoted to the execution of matters closely related to the establishment of single window system framework, such as electronic dispute resolution, electronic customs process, collection of customs duty. These themes also appear in work texts of many international organizations such as UNESCAP, UNECE and ASEAN.
OECD promotes the cooperation among main bodies of each party

- OECD believes that an international collaboration method is a must.

**OECD concentrates on the following objectives**

- Identify main policy problems, potential solutions and organizations that can develop and implement these plans;
- Ensure consistency and effective harmonization of inter-governmental acts;
- Try to reach an agreement between enterprise and government for guiding principles that would constitute electronic commerce policy framework.
OECD promotes the cooperation among main bodies of each party

- There is no provision on key problems such as collection of customs duty for cross-border electronic commerce trade in the document released by OECD. It lacks operability in practice.
There exist serious interest differences about the electronic commerce rules within WTO framework between the EU and the US, the most prominent one lies in the aspect of rule application about **digitally-delivered content products**.

The US insists to propose that GATT is applicable to digitally-delivered content products in electronic commerce, which is the main difference among the US, EU and WTO.
The reasons for the US’s support to normalize digital information products by GATT lie in that:

1. The critical characteristics possessed by digitally-delivered content products and services are different;
2. Under the item of GATT, the content product in digital trade will be more liberalized;
3. If content products apply to different rules due to different carriers during trade, it will violate technology-neutral rule in WTO agreement.
The EU proposes that delivery of content products belongs to services within jurisdictional scope of GATS based on following reasons:

1. The physical form of content products determines the difference from traditional goods;
2. Tariff concession of GATT does not include any cross-border delivered digital content through network;
3. Within the framework of WTO, both GATT and GATS do not have technology-neutral rule which requires rendering the same treatment for goods and services.
EU: industrial support and protection of cultural diversity

Table: Standpoint Contrast by the US and the EU on Categories of Digitally-delivered Content Products

<table>
<thead>
<tr>
<th>Rule Application of GATT or GATS</th>
<th>Rule Application within GATS</th>
</tr>
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<tbody>
<tr>
<td><strong>US</strong></td>
<td>Digitally-delivered content products shall be normalized by GATT.</td>
</tr>
<tr>
<td><strong>EU</strong></td>
<td>Delivery of digital information products belongs to services within GATS.</td>
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</table>

Source: Compiled by author.
The US starts to positively develop bilateral and regional free trade negotiation outside WTO framework, strives for stipulating international rules of electronic commerce.

Up to 2012, the US has reached free trade agreements with 19 countries (including Korea, Australia, Chile, the five countries of Central America etc.), which not only have bilateral trade agreements, but also regional trade agreements.
The main contents of agreement include: definition of content products, applicability of GATS to electronic transmission service, customs evaluation, electronic authentication, principle of transparency, protection of online consumers, national treatment, most-favored-nation treatment, mutual cooperation, etc.

Regarding tariff collection, the US has adhered to the aim of tax free for electronic commerce trade, and has stipulated rules regarding exemption from obligations of import-export tariff and relevant fees for content products of the opposite party in free trade agreements with countries of Australia (Article 16.3), Korea (Article 15.3.1) and Singapore (Article 14.3.1).
Although the US’s practice of expanding its domestic policy to overseas through self-trade agreement is worth of negotiation, it has become the impetus for further discussion and coordination of cross-border electronic commerce rules through future WTO multilateral negotiation to a certain extent.
Speaking of domestic legislation, each nation shall also seek common points while reserving differences while integrating into the world market, positively output self-interest appeal and policy influence to overseas, strive to become the common values of international society.

Each nation shall further participate in the Joint Legal Task Force of UNCITRAL and WCO, positively cooperate with each party, harmonize large-quantity substantial rules, try to stipulate acceptable international rules and thus establish a legal framework which increases the predictability and determinacy in business activities.
Thank you!

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