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**Some Issues about E-commerce in the WTO framework with  
Implications for China's Laws**

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## **DECLARATION**

I undertake that all materials presented for examination is my own work and has not been written for me, in whole or in part, by any other person (s). I also undertake that any quotation or paraphrase from the published or unpublished work of another person has been duly acknowledged in the work, which I present for examination.



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## ABSTRACT

Electronic Commerce has attracted many people's concerns since last decades. With the development of electronic information technology, interconnected technology of the network and modern communication technology, E-commerce makes more and more traders be involved in trading to communicate with each other by electronic way so as to realize the digitalization of international trade. However, the development of technology is usually faster than its corresponding legislation development. Within the WTO, existing regulations for physical international trade cannot directly applied for the electronic international trade. The rapid development of E-commerce will provide an incentive to the WTO to refine the existing agreements in order to effectively regulate E-commerce in terms of international trade.

This thesis will mainly discuss three major issues about E-commerce with the WTO framework, namely, the classification issues, market issues, intellectual property issues. As I will explain later, developing countries often have different interests and attitudes from developed countries in regulating E-commerce. Then I investigate whether or how Chinese laws response to these issues. Furthermore, I explore the possible suggestions for further E-commerce legislations in China.



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## GLOSSARY OF ACRONYMS AND ABBREVIATION LIST

APEC: Asia Pacific Economic Cooperation

ASEAN: Association of Southeast Asian Nations

B2B: Business-to-Business Electronic Commerce

B2C: Business-to-Consumer Electronic Commerce

B2G: Business- to-Government Electronic Commerce

C2B: Consumer-to-Business Electronic Commerce

C2C: Consumer-to-Consumer Electronic Commerce

C2G: Consumer-to-Government Electronic Commerce

G2B: Government-to-Business Electronic Commerce

G2C: Government-to-Consumer Electronic Commerce

CNNIC: China Internet Network Information Center

GATT: General Agreement on Tariffs and Trade

GATS: General Agreement on Trade in Services

E-commerce: Electronic Commerce

ERP: Enterprise Resources Planning

EU: European Union

FTA: Free Trade Agreement

IP address: Internet Protocol address

IPRs: Intellectual Property Rights

ISP: Internet Services Provider

IT: Information Technology

ITA: Information Technology Agreement

ITC: International Trade Centre



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ITU: International Telecommunication Union

MFN: Most-Favored Nation

MIS: Management Information Systems

NT : National Treatment

OECD: Organisation for Economic Co-operation and Development

TRIPs: Agreement on Trade-Related Aspects of Intellectual Property Rights

UN: United Nations

UNCTAD: United Nations Conference on Trade and Development

UNESCAP: United Nations Economic and Social Commission for Asia and the Pacific

UR: Uruguay Round

VPN: Virtual Private Network

WCT: World Copyright Treaty

WIPO: World Intellectual Property Organization

WTI: World Trade Institute

WTO: World Trade Organization



## CHAPTER ONE --- INTRODUCTION

Have you ordered a book from the United States by online shopping when you were in the Switzerland? Have you tried to use the videoconference to attend a seminar or a forum? Have you experienced a psychological or legal consultation through the Internet? The above transactions are some typical examples of E-commerce. This chapter will give a basic introduction about E-commerce firstly. Then I will explain why I choose this topic (the motivation and purpose of research), the adopted methodologies and the structure of the thesis.

### 1. What is E-commerce?

#### A. Definition

Electronic Commerce (E-commerce) is a process of selling and purchasing of products through an electronic service, particularly through the Internet. In the World Trade Organization, Programme on Electronic Commerce, *it is understood to mean the production, distribution, marketing, sale or delivery of goods, and services by electronic means. A commercial transaction can be divided into three main stages: the advertising and searching stage, the ordering and payment stage and the delivery stage. Any or all these may be carried out electronically and may therefore be covered by the concept of 'electronic commerce'.*<sup>1</sup>

Broadly defined, E-commerce is any business transaction whose price or essential terms were negotiated over an online system such as an Internet, Extranet, Electronic Data Interchange network, or electronic mail system. It includes, all information or services that a company may offer to its customers over the Net, from pre-purchase information to after-sale service and

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<sup>1</sup> Defined by the WTO, available from: [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/bey4\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/bey4_e.htm), [Accessed 6 July 2004]



support.<sup>2</sup> However, it does not include transactions negotiated via facsimile machine or switched telephone network, or payments made online for transactions whose terms were negotiated offline.<sup>3</sup>

Asia Pacific Economic Cooperation (APEC) adopts a relatively wide definition of E-commerce, which includes all business activity conducted by using a combination of electronic communications and information processing technology.<sup>4</sup> United Nations Economic and Social Commission for Asia and Pacific (UNESCAP) also has defined it as *'the process of using electronic methods and procedures to conduct all forms of business activities'*.<sup>5</sup> No matter what the definition is for E-commerce, the objectives of E-commerce are the same: to improve effectiveness, efficiency, timeliness, quality, and accuracy of interactions between businesses and their trading partners or customers.<sup>6</sup>

## **B. Advantages of E-commerce**

The emergence of the Internet as a medium of transaction and delivery has reduced the costs for buyers and sellers. Rapid progress in the availability of telecommunications links and computer technology has contributed to a surge of trade transactions based on the Internet. With the further development of the Information Technology (IT) industries, the more advanced E-commerce will greatly affect the people's life and working style. People could work anywhere with the network connection and enjoy a more efficient life. Many business transactions could be done online in order to facilitate work, save resources and make the life easier. Nowadays, you could search/buy very easily an exact book you need among millions of categories of books on the online bookstores from worldwide. You could be educated by a famous university in other

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<sup>2</sup> See Dufour, A, Que Sai-je, quoted in International Trade Forum, 1/99, ITC, Geneva

<sup>3</sup> Available from: <http://help.econ.census.gov/econhelp/glossary/#E> [Accessed 6 July 2004]

<sup>4</sup> Available from: <http://www.apec.org/apec.html> [Accessed 7 July 2004]

<sup>5</sup> Available from: <http://www.un.or.th/UNCT/UNESCAP/unescap.html> [Accessed 7 July 2004]

<sup>6</sup> Available from: <http://www.apec.org/apec.html> [Accessed 7 July 2004]



countries remotely online without physically attending classes. You could also consult some legal or psychological experts about your personal issues online. The improvements are also influencing the style of international trade in goods and services.

In addition, E-commerce is being increasingly used by commercial firms and organizations to advertise and market goods and services all over the world. Manufacturers and retailers in far-off countries can easily supply information on product capabilities and benefits, content or components, prices, production schedules, delivery terms, and payment conditions.<sup>7</sup> No matter whether they are manufacturers or individuals, the E-commerce can help them to order what they want from the most competitive sellers.

Generally speaking, as a new business manner, E-commerce could bring several benefits to us as follows:

- Lower transaction/operation/overhead costs;
- Increase working efficiency;
- Expand new market;
- Provide a competitive advantage for the business;
- Reduce inventory holdings;
- Increase speed to market/transaction;
- Streamline supply chain management.

### **C. Process of E-commerce Operation**

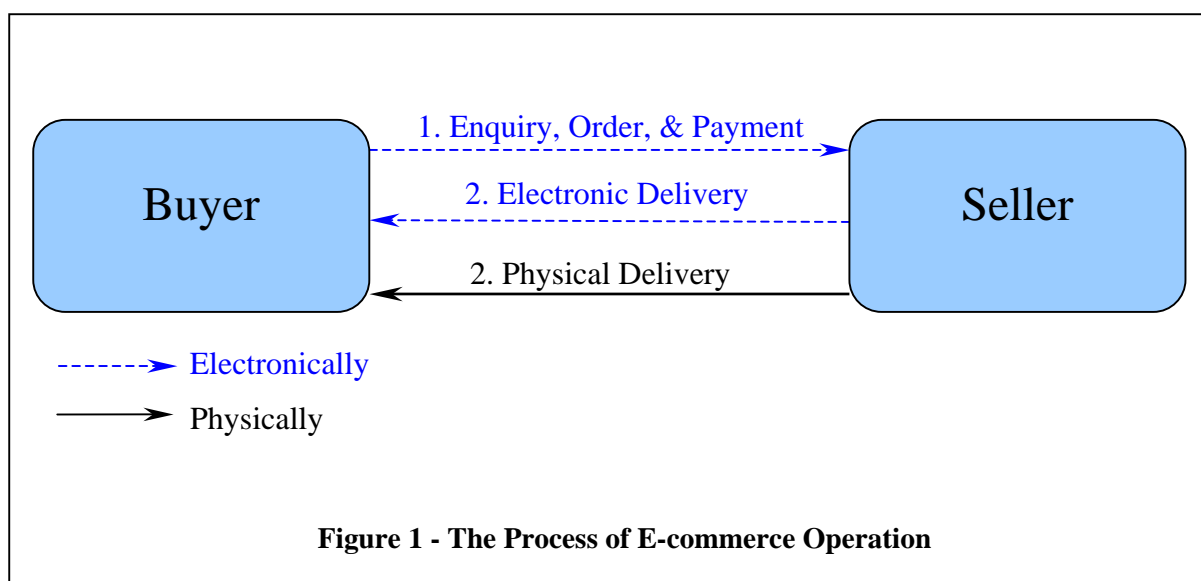
For the E-commerce classification later, it is very important to know the whole process of E-commerce. Normally, there are three major stages for all types of E-commerce, which are:

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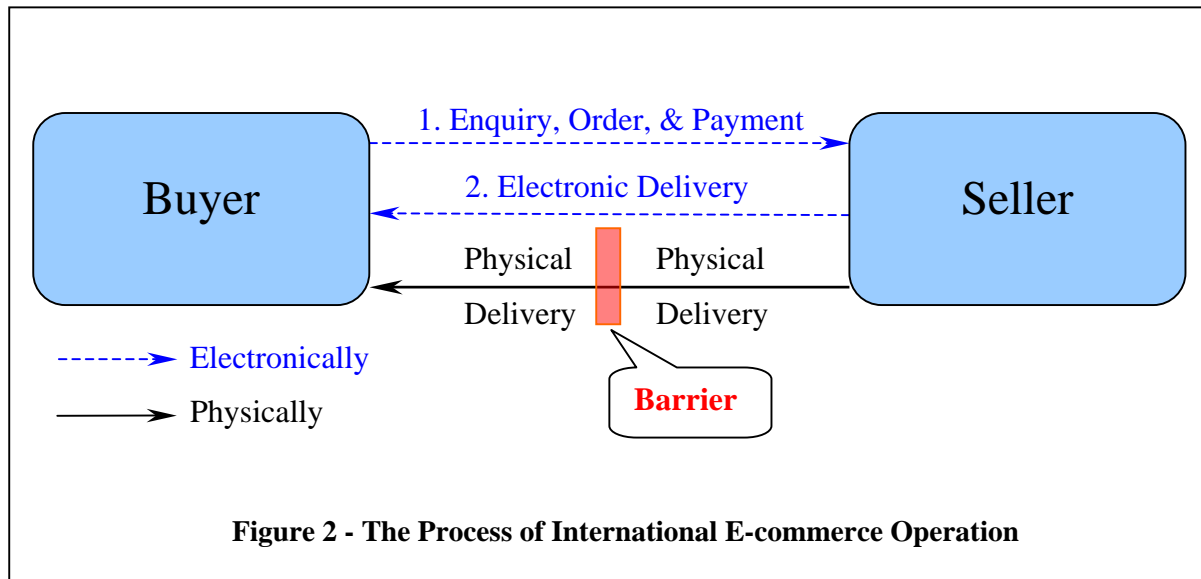
<sup>7</sup> See p.4, Secrets of Electronic Commerce, ITC, 2001

- The searching stage where producers and consumers, or buyers and sellers, first interact over the Internet;
- The ordering and payment stage once a transaction has been agreed upon;
- The delivery stage where the good or services is sent to clients.

Based on the current technology, transaction of goods or services could be done electronically at the first and the second stages. No matter what kinds goods or services, buyers can search, inquire, consult, and pay online anyway. However, for the third stage, many services could be also transmitted online, but most of the normal products, like agricultural products, industrial products could not be transmitted online. Only products that can be converted into digital form can be supplied through the Internet. In order to provide a better understanding of the E-commerce process, the basic E-commerce operation can be depicted in the following figures. The buyer could easily inquire and place an order online, and then pay for the seller. After that, the seller could deliver out the requested goods or services to the buyer physically or electronically as shown in the Figure 1.



For the international transactions, those downloadable goods or services could not have any barrier. They could be transferred online from one country to another country. It is difficult to measure such transactions by setting up a barrier. However, there is a barrier for physically delivered goods or services showed in the Figure 2. These physically transported goods or services cannot be waived from the existing barriers.



## 2. Why I Choose this Topic?

### A. Increasing Importance of E commerce

Results from the survey, "Electronic Commerce and Technology 2002" were released April 2, 2003 in Statistics Canada's "The Daily", which is shown as follows:<sup>8</sup>

- Online Internet sales increased by 27%, reaching \$13.7 billion in 2002
- 93% of firms with 20 or more employees use the Internet at their workplace
- Leading e-Commerce Sectors are Wholesale, Manufacturing, Transport, Retail industries.

Last year, those sectors accounted for 58% of total e-Commerce sales.

<sup>8</sup> Available from [http://strategis.ic.gc.ca/epic/internet/inecom-come.nsf/en/h\\_qy00010e.html](http://strategis.ic.gc.ca/epic/internet/inecom-come.nsf/en/h_qy00010e.html) [Accessed 10 September 2004]



- The belief that goods and services do not lend themselves to the Internet and the reluctance to change business model continue to be the main barriers
- For the second straight year, the value of E-commerce sales was highest in wholesale trade, followed by manufacturing, transportation and warehousing, and retail trade. Combined, these industries accounted for 70% of all Internet sales in 2002.
- Transportation and warehousing achieved \$1.9 billion in online sales in 2002, up from \$0.9 billion in 2001. Despite this increase, Internet sales represented 2.4% of their operating revenue.
- Retailers attracted \$1.7 billion in online sales in 2002, up 16%. Internet sales represented only 0.5% of their operating revenue, down from 0.6% in 2001.
- The projected figure for on-line trade in 2006 is \$12.8 trillion.
- The total forecasted B2B Online trade figure for 2006 is \$12, 275.5 (\$US Billions). North America's share is expected to be \$7, 249.2 (\$US Billions).
- The total forecasted B2C Online trade figure for 2006 is \$561.8 (\$US Billions). North America's share is expected to be \$219.8 (\$US Billions).

According to the E-commerce Development Report by the UNCTAD, forecasts of the value of global E-commerce in 2003 range between \$1,408 billion and \$3,878 billion, with growth projections that in the most optimistic scenario put the global volume of E-commerce at \$12,837 billion by 2006.<sup>9</sup> Over 95 per cent of these transactions were attributed to E-commerce in developed countries. In some estimates, Africa and Latin America combined accounted for less than 1 per cent of global E-commerce in 2002. The share of business-to-business (B2B) transactions in the total of world E-commerce was commonly calculated around 95 per cent, and

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<sup>9</sup> The higher estimates correspond to a study by Forrester Research, while the source for the more modest one is eMarketer. See UNCTAD E-commerce Development Report (2003) for more detailed estimates and the full references for these sources.



the relative importance of B2B and B2C transactions was not expected to change in the medium term.<sup>10</sup>

These statistics can obviously prove the importance of E-commerce in the modern society. Due to the characteristics of E-commerce and its benefits to modern business, the importance of E-commerce will be reinforced furthermore. In terms of international trade, the WTO could give a strong support for E-commerce if E-commerce could be integrated WTO regulations. With the understanding of E-commerce, the development of E-commerce within the WTO framework will be studied in the following chapters.

### **B. Unsolved Issues about E-commerce in the WTO Framework**

Since 1998, E-commerce has been placed on the multilateral trade agenda of the WTO; all four councils<sup>11</sup> of the WTO have been researching and discussing the impact of E-commerce on the existing multilateral trade agreements. In the Geneva Ministerial Declaration on global E-commerce, the WTO also declared that Members would continue their current practice of not imposing customs duties on electronic transmissions.<sup>12</sup> In addition, the Doha Ministerial Declaration, issued on 14 November 2001, states that “electronic commerce creates new challenges and opportunities for trade for Members at all stages of development, and we recognize the importance of creating and maintaining an environment which is favourable to the future development of electronic commerce”.<sup>13</sup> They also recognize the importance of creating and maintaining an environment, which is favourable to the future development of electronic commerce.

So far, many issues about E-commerce have not been resolved under the WTO framework. These issues mainly include the classification of E-commerce, market access for some services

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<sup>10</sup> See p. 17, E-commerce Development Report by the UNCTAD, 2003

<sup>11</sup> Council for Trade in Services, Council for Trade in Goods, Council for TRIPS, and Council for Trade and Development

<sup>12</sup> See WTO Declaration, 1998a, WT/MIN (98)/DEC/2

<sup>13</sup> See Para.34, WTO Ministerial Declaration, 2001, (WT/MIN(01)/DEC/1)



in the form of E-commerce, intellectual property protection linked to E-commerce, taxation of E-commerce. The classification of e-commerce concerns the application of the WTO laws. In details, before we decide the applicable WTO laws to E-commerce, we must decide whether it is classified as goods or services. If the E-commerce is kind of trade services, then the GATT applies. Otherwise the GATS should apply. On contrast, the GATT imposes more stringent obligations on member states to liberate their trades than GATS does. Therefore, the classification of E-commerce will be directly linked to different regulatory burdens on this business form.

Particularly, the commitments of WTO member states in market access of E-commerce will depend on the above classification. This issue becomes more complicated when the unique characteristic of e-commerce increases difficulty in regulatory enforcement. For example, even if one member state decides to limit market access of foreign legal service suppliers, it will have difficulty in stopping the supply of such legal services due to no physical border of E-commerce.

E-commerce also raises problems about intellectual property protection that have not been fully covered by the WTO's Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS). A unique problem related to E-commerce is whether to protect "domain name" right. Again these intellectual property rights (IPRs) issues linked to E-commerce are becoming more complicated due to higher costs in enforcing them in the sector of E-commerce.

There are big disputes among the WTO member states about allocation of taxation jurisdictions on E-commerce due to its characteristic of no physical border. Given the limited scope of this thesis, I will merely discuss the above three issues here.

### **C. Research Methodology**



The two major methods used in this research are literature review and case study. For the literature review, I will study what previous researchers have done in this field, and use their relevant results for my further work. For example, “*A call for a WTO E-commerce initiative*” written by Heinz Hauser and Sacha Wunsch (2001) suggests that the additional trade potential of electronic commerce is presently only partly realized and that the full benefit of electronic commerce can only materialize through an E-commerce initiative of the World Trade Organization (WTO). “*Trade Policies for Electronic Commerce*” by Aaditya Mattoo and Ludger Schuknecht (2000), focuses on the WTO members’ decision not to impose customs duties on electronically delivered products and analyze the current trade policies for E-commerce within the WTO framework. A paper about “*Issues on the relationship between E-commerce and intellectual Property Rights in the WTO: Implications for Developing Countries*” written by David Vivas Eugui (2001) emphasizes on E-commerce issues related to Intellectual Property Rights in the WTO.

Case study is very important for this thesis. Different countries usually have different interests and attitudes in regulating E-commerce due to their different level of development in this aspect. Generally speaking, developing countries have less infrastructure and regulatory capacities than developed countries. I choose to investigate Chinese law in this field as a case study. The reasons for this choice are follows: firstly, I am familiar with Chinese legal system and the relevant trade environment; secondly, as the biggest developing country, Chinese experience in this field might provide some valuable lessons for other developing countries.

#### **D. Structure of this Thesis**

This thesis will be divided into five chapters as follows:

##### ***Chapter one – Introduction***

This part has been introduced above.



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## ***Chapter Two – Classification of E-commerce***

Within the WTO framework, there are two different agreements, namely GATT and GATS, respectively governing trades in goods and trades in services. These two agreements impose different requirements on member states on trade liberalization. The classification of E-commerce will decide its applicable law and regulatory treatments in one member state. This part will discuss the present debate about this classification and then provide some arguments in this aspect.

## ***Chapter Three – Market Access Issues related to E-commerce***

The GATT and GATS obligate member states to open their markets at different levels. Therefore, the above classification of E-commerce will affect its possible extent in market access. This part will analyze the different regulatory restraints about market access under the above two agreements. At the same time, the discrimination issues of E-commerce are also discussed briefly when the international standards and the domestic standards regulating E-commerce are different.

## ***Chapter Four – Intellectual Property Issues related to E-commerce***

E-commerce also raises questions concerning Intellectual Property Rights (IPRs). The issues about “domain names” have already attracted public attention. On the Internet, several addresses containing the trademark names of established companies have been registered as domain names so as to cause disputes over their usage, as well as allegations of what is referred to as “cyber-squatting.” In this chapter, I will focus on this domain name issue and analyze its challenges to the TRIPS so as to find a better way to deal with these disputes.

## ***Chapter Five – Analysis on E-commerce Laws in China***

This chapter will firstly consider the current status of E-commerce development in China and some possible impacts on this aspect due to China's accession to the WTO. Then I introduce



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present Chinese legal framework governing E-commerce, especially Chinese law's response in the above three issues. Finally, some suggestions about future legal development of E-commerce regulation in China are proposed.

### *Conclusion*

I reach some brief conclusion in this part.



## CHAPTER TWO --- CLASSIFICATION OF E-COMMERCE

### 1. Major Differences between the GATT and the GATS

At present, the discussion about whether E-commerce should be considered as trade in goods or in services, or a combination of the two is still continuing. Due to the special characteristics of E-commerce, it is hard to classify E-commerce into goods or services. Before classifying E-commerce, the major difference between the GATT and the GATS should be clarified firstly. The clarification about the differences between the GATT and the GATS will facilitate the understanding for importance of E-commerce classification.

The GATT and the GATS are two different WTO agreements to regulate the international trade in goods and services respectively. Between the GATT and the GATS, there are at least four significant differences.

**Firstly**, in the regime of the GATT, quantitative restrictions are eliminated generally based on Article XI of the GATT.

*“No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any constricting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.”<sup>14</sup>*

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<sup>14</sup> See Article XI: 1, General Agreement on Tariffs and Trade 1947



Certainly, there are also delineated exceptions in Article XI: 2 of the GATT for the elimination of quantitative restrictions.

*“The provisions of paragraph 1 of this Article shall not extend to the following:*

- (a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;*
- (b) Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;*
- (c) Import restrictions on any agricultural or fisheries product, imported in any form, necessary to enforcement of governmental measures...”<sup>15</sup>*

However, the GATS generally permits the use of quantitative restrictions in cases where governments wish to maintain limitations on market access, though the GATS requires members not to put restrictions on the market access. The general obligations and disciplines do not prevent a member from listing specific regulations, which they wish to impose or retain, i.e. specific commitments.

Therefore, the GATT embodies a general prohibition on quantitative restrictions with delineated exceptions where the GATS allows the use of quantitative restrictions with progressive elimination<sup>16</sup> when governments wish to maintain limitations on market access.

**Secondly**, the GATT contains a general obligation in respect of national treatment, which requires that imports must be treated no less favourably than domestically produced goods once they have passed the customs. According to Article III of the GATT, internal taxation and

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<sup>15</sup> Article XI: 2, General Agreement of Tariffs and Trade 1947

<sup>16</sup> See Slide 17, L.Lee Tuthill, PowerPoint file, 1999



regulation for imports should be treated at the same level where the domestically produced goods are treated. In other words, National Treatment is obligatory for the GATT.

*“The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirement affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.”<sup>17</sup>*

However, different specific commitments at sectoral level in different countries do not require the obligation in respect of national treatment in terms of trade in services based on the GATS. In other words, national treatment is not obligatory in the GATS according to Article XVII.

*“1. In the sectors inscribed in its Schedule, and subject to any conditions and qualification set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and services suppliers.”<sup>18</sup>*

*2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.”<sup>19</sup>*

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<sup>17</sup> See Article III: 1, General Agreement on Tariffs and Trade 1947

<sup>18</sup> Specific commitments assumed under this Article shall not be construed to require any Member to compensate for any inherent competitive disadvantages, which result from the foreign character of the relevant services or service suppliers. See Article XVII: 1, General Agreement on Trade in Services.

<sup>19</sup> See Article XVII, General Agreement on Trade in Services.



Therefore, the GATS does not require national treatment according to the implementation of specific commitments. However, national treatment is a general obligation in the GATT regime.

**Thirdly**, according to the GATT, if a member has not bound its tariffs to zero, the GATT will envisage other member countries to impose customs duties on imports.<sup>20</sup> The proper tariff retaliation is permitted for members to impose custom duties on imports according to the GATT. The WTO, as the only international organization dealing with the global rules of trade between nations, has the authority to permit a victim to retaliate the violator to compensate victim's cost in order to settle the disputes.

In the GATS, there is little to say about customs duties or national taxation in general.<sup>21</sup> The regime about tax and duties must be consistent with a Member's national treatment commitments in its schedule of specific commitments. Essentially speaking, the specific commitment is one of the major differences between the GATT and the GATS.

**Fourthly**, as the basis of trade in goods agreement, the GATT only focuses on cross-border trade in goods.<sup>22</sup> Sometimes, it could be about consumption abroad as well. However, for the GATS, it focuses on four mode of delivery of trade in services, which are:

- Mode 1: Cross border - the service itself crosses the border
- Mode 2: Consumption abroad - the consumer travels across the border
- Mode 3: Commercial presence - establishment of an office or entity
- Mode 4: Movement of natural persons - the supplier travels across the border

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<sup>20</sup> See Slide 5, Mia Mikic and Tina S. Kao, PowerPoint File, 2000

<sup>21</sup> See p. 18, Yousaf Haroon Mujahid, 2003

<sup>22</sup> See p. 6, ESN position paper on electronic commerce and the GATS, 1999



In summary, by defining E-commerce as trade in goods, the WTO applies the rules under the General Agreement on Tariffs and Trade, which automatically lowers all tariffs and barriers to trade to zero. If E-commerce is defined as trade in services, then the rules of the General Agreement on Trade in Services apply, and countries only have to lower tariffs when they elect to liberalize their E-commerce sector.<sup>23</sup>

## **2. General Classification of E-commerce**

In order to classify E-commerce, it is better to bear in mind again about these three major stages for all types of E-commerce, which are<sup>24</sup>

- The searching stage where producers and consumers, or buyers and sellers, first interact over the Internet, including advertising and information seeking;
- The purchase stage once a transaction has been agreed upon, including purchase and payment;
- The delivery stage where the goods/services is sent to clients;

Obviously, classification issues only happened during the third stage, since the first two stages could be processed electronically. Therefore, if a consumer has finished the first two steps and a seller delivered the goods physically, then it is easy to identify that the transaction could be obviously regulated under the GATT regime. If the seller is a service provider, the services he or she provides could be regulated under the GATS among those four modes mentioned above. This process is not different from the process that people place an order by fax or by telephone, and then deliver the goods or services by the normal transportation. With the existing WTO

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<sup>23</sup> See Charles Owen Verrill, Jr. and Timothy C. Brightbill, (1999). E-Commerce and the WTO Seattle Ministerial, Available from <http://www.wrf.com/publications/publication.asp?id=1684410172000> [Accessed 10 September 2004]

<sup>24</sup> See p.2, Ludger Schuknecht, 1999



agreements, this kind of E-commerce can be easily identified and classified. There is no ambiguity at present regarding the status of the goods or services and paid for on Internet but delivered physically in the conventional manner.

However, the ambiguity arises only when the goods or services are delivered on Internet. If the final stage will be processed electronically, the issue will become more complicated. Theoretically speaking, the downloadable music, book, or other information transmitted by the Internet could be regarded as goods. The electronically transmitted services, such as online education, online legal consultancy, online medical consultancy, could be regarded as services. Nevertheless, based on the existing technology, it is impossible and unreasonable to classify them between goods and services during the process of transmissions, because the form for transmitting electronically goods or services is data stream.

Some people have argued that any deliveries made by Internet would seem to resemble services.<sup>25</sup> Those digitalized products can have counterparts in merchandised trade, such as books, music CDs, software and videos, which would be regarded as services. However, when they are traded in physical counterparts, the GATT discipline can be applied for them. There is an inconsistency generated by this argument.

There are some people arguing that all transmissions can be characterized as goods under the GATT regime.<sup>26</sup> Because of the MFN and National Treatment, custom duties on the transmissions of special products will be banned. However, for those products that are not under the free trade principle, it is impossible and unreasonable to measure the goods routed by Internet based on the existing technology. In the view of fact that the member countries made their commitments in the UR and post-UR negotiations in services under the implicit assumption

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<sup>25</sup> See p. 3, Arvind Panagariya, 2000

<sup>26</sup> See p.34, A. Didar Singh, 1999



that most of the Internet transactions were services, they are unlikely to consider this option seriously.<sup>27</sup>

Besides the above two options, some people suggested to develop an entirely new discipline to deal with E-commerce. However, E-commerce is just a new means for transferring goods or services electronically so as to improve the efficiency of the transmission. All electronic transmissions have counterparts in either goods trade or services trade. Therefore, its benefits are less than clear, and thus it is not necessary to develop a new regime for E-commerce. The goods or services transferred online are already subject to the GATS and the GATT. The contest is only the differentiation issue.

For the consistency, the general classification of E-commerce is preferably depending on its physical counterpart. However, more and more people lean in favour of treating all Internet trade as service trade because of its intangible characteristics.<sup>28</sup> In many cases, the transmissions may not have physical counterparts in trade at all. Therefore, people are thinking about adopting the across-the-board definition.<sup>29</sup>

### **3. Preferences of Classification of E-commerce**

Since there are four major differences between the GATT and the GATS and it is hard to differentiate data stream for services or goods, the general classification of E-commerce would result in an arguable point. According to these differences, the classification of E-commerce become very important in this sense, because difference classifications could make E-commerce related trade be regulated in the different regime. Under the GATT regime, the custom duties of

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<sup>27</sup> See p.3, Arivind Panagariya, 2000,

<sup>28</sup> *i.d.*

<sup>29</sup> *i.d.*



E-commerce will be banned eventually. Obviously, developed countries such as the U.S. or the E.U. with strong E-commerce sectors, are eager to liberalize E-commerce trade as soon as possible and thus prefer to negotiate E-commerce rules under the regime of the GATT.<sup>30</sup> In this case, developed countries could keep their advantages of E-commerce sector and do more E-commerce trade in developing countries.

However, developing countries, including China and India, prefer to regulate E-commerce under the GATS regime, since they would like to begin with industries that have a comparative advantage during the time of booming of the E-commerce sectors.<sup>31</sup> Other developing countries without strong E-commerce sectors are in favour of classifying E-commerce as trade in services as well because of the gradual trade liberalization. The quick liberalization of E-commerce sector would give an unfair advantage to the E-commerce industries in developed countries. They need more time to liberalize E-commerce gradually.

#### **4. Classification of E-commerce in the GATS Regime**

Because more and more people prefer to classify E-commerce in the regime of the GATS<sup>32</sup>, it is necessary to draw the concern in terms of the sub-classification of E-commerce in the GATS. Services can be classified into four modes as mentioned above: cross-border supply (mode 1), consumption abroad (mode 2), commercial presence (mode 3), and the movement of natural persons (mode 4). The services of E-commerce could be placed among any modes of services in the GATS as examples given below.

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<sup>30</sup> Center for International Development at Harvard University, Available from <http://www.cid.harvard.edu/cidtrade/issues/ecommerce.html> [Accessed on 7 September 2004]

<sup>31</sup> *i.d.*

<sup>32</sup> See p.3, Arivind Panagariya, 2000



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**Cross-border supply:**

Example: A consultant company provides electronic consultation through Internet from the country A to its clients located in the country B.

**Consumption abroad:**

Example: A consumer electronically purchases the psychological consultation services from another country different from his resident country.

**Commercial presence:**

Example: A foreign insurance company sets up a branch in the country and offers electronic insurance services to the local residents.

**The movement of natural person:**

Example: A computer programmer moves to another country and offers his services electronically to the local residents.

Even though all possibilities exist there, E-commerce can be easily identified in Commercial presence and the movement of natural person. The most relevant modes of delivery for electronic commerce are cross-border supply and consumption abroad.<sup>33</sup> Nevertheless, E-commerce is difficult to be differentiated from cross-border supply and consumption abroad. The major distinction between mode 1 and mode 2 is whether the service is delivered within the territory of the Member from the territory of another Member or whether is delivered to the territory of the Member. The negotiation on this issue will be carried out in the future progress of the WTO negotiations.

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<sup>33</sup> See p.6, ESN position paper on electronic commerce and the GATS, 1999



## **5. Preference of the Classification of E-commerce in the GATS Regime**

The specific commitments in the GATS regime are negotiated according to different modes of services. The liberalization level of different modes of services in the commitments could be different. Therefore, it does matter whether E-commerce is classified as mode 1 or mode 2. For example, if a country undertook more obligations of liberalization under mode 2 than under mode 1, then the country can get less liberalization commitments if E-commerce services are classified as mode 1. As strong E-commerce services exporters, developed countries prefer to classify E-commerce as the mode under which there are more obligations of liberalization.<sup>34</sup>

Moreover, classification of E-commerce in regime of the GATS determines the country jurisdiction issues as well. In the mode of cross-border supply, transactions are taking place in the buyer's country. In the mode of consumption abroad, transactions are taking place in seller's country. If countries want to protect their buyer's interest, they prefer to classify E-commerce under the mode 1.<sup>35</sup> In contrast, if countries want to protect their seller's interest, they are likely to classify E-commerce services under the mode 2. Concerning the market access issue, country prefers to group E-commerce into the mode 2 in order to avoid those issues related to the market access. From the point of view for protecting consumers, countries are likely to opt for mode 1. However, no matter which classification we will have in the future negotiations, it should be flexible enough to accommodate technological change and contribute to trade liberalization.

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<sup>34</sup> See p. 7, Arvind Panagariya, 2000

<sup>35</sup> *i.d.*



## CHAPTER THREE --- MARKET ACCESS ISSUES RELATED TO E-COMMERCE

### 1. Market Access to E-commerce as Trade in Goods

Market access for goods in the WTO means the conditions, tariff and non-tariff measures, agreed by members for the entry of specific goods into their markets.<sup>36</sup>

If the third stage of E-commerce is delivered physically, E-commerce transactions are not different from those traditional transactions, such as those telephone and facsimile transaction. E-commerce is possible to electronically transmit a huge amount of various information more efficiently and precisely. When the physical products are sent from one country to another country, it is claimed as goods, even for some electronically transmissible products, such as music and software. In other words, music and software imported in electronic form is exempted from duties but subject to duties when imported in physical form.<sup>37</sup> Based on the existing agreements, when the physical counterparts of downloadable goods cross the border, they may incur a tariff. The market access for these products is the same as normal goods.

Market access is subject to different goods. Tariff commitments for goods are set out in each member's schedules of concessions on goods. Non-tariff measures are dealt with under specific WTO agreements. Most Quantitative Restrictions and other non-tariff measures have been converted since the Uruguay Round. However, the open international market access is essential to take fully advantages from electronic commerce. It is better to have no import duties to the use of electronic means no matter what kind of delivery method are used. Logistically speaking, if

<sup>36</sup> Available from [http://www.wto.org/english/tratop\\_e/markacc\\_e/markacc\\_e.htm](http://www.wto.org/english/tratop_e/markacc_e/markacc_e.htm) [Accessed 23 September 2004]

<sup>37</sup> A certain amount of countries have agreed to impose duties only on the carrier medium, such as disks for storing software and music, and not on the content.



the duties are added to those physically transported products that can be electronically transferred, it is very flexible for people to transfer them by electronic means to avoid those duties. In this sense, it is meaningless to add the duties for those physical counterparts.

However, existing agreements are technology neutral.<sup>38</sup> The most fundamental principles of international trade law in terms of the WTO agreements are Most Favored Nation (MFN) and National Treatment. These two principles are stated in a manner that is technologically neutral. In other words, the principles apply regardless of how a good and a service is marketed, promoted, purchased, or delivered. Therefore, no matter what kind of delivery method the goods are used, they should be treated equally. Nevertheless, in real life, it is really hard to measure the goods transferred online in order to treat them equivalent with the goods physically delivered. How to measure a book transferred electronically? Based on the existing technology, it is impossible to measure the data stream during the transmission.

In February 1998, the United States presented a market access proposal to the General Council with regard to electronic commerce calling for agreement among WTO members to maintain the current practices not to impose duties on electronic transmissions.<sup>39</sup> Afterwards, the General Council of WTO agreed on a work programme on Electronic Commerce to continue members' current practice of not imposing customs duties on electronic transmissions. The work programme leads the electronic commerce to a zero duty regime. Since the current technology is not possible to monitor electronic transmission, duty free should be the best regime for E-commerce currently and also apt for the trend of trade liberalization. According to the basic principles of the WTO and the technological neutrality, there is an agreement reached in December 1997 between the EU and the United States to consolidate the duty free *status quo* for E-commerce related trade. Both parties agree that:

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<sup>38</sup> See p.5, International Trade Negotiations and ICT Products and Service, September 9-13, 2003

<sup>39</sup> Available from <http://www.wto.org> [accessed on 15 September 2004]



- (i) *“Goods are ordered electronically and delivered physically, there will be no additional import duties in relation to the use of electronic means; and*
- (ii) *In all other cases relating to electronic commerce, the absence of duties on import should remain.”<sup>40</sup>*

It is not easy for the governments of member states to monitor and measure the content of electronic transmission, especially for developing countries. However, if there is no custom duty for all of E-commerce related trade in developing countries, the infant industries in the developing countries would be heavily destroyed. Furthermore, custom duties are very important source of revenue for cash needy governments in poor countries. Absolute duty free will be a “nightmare” for developing countries and least-developed countries. Facing the trade liberalization of E-commerce, developing countries and least developed countries must be very wary of making a commitment with developed countries to accept a zero duty regime before they take account of all various options to maximize their benefits and minimize their costs.

In addition, taking account of the relevance of the Information Technology Agreement<sup>41</sup> (ITA), the ITA could be an contribution to providing a conducive environment for E-commerce by providing less expensive access to electronic commerce related products, thus boosting participation in E-commerce among its participants.<sup>42</sup> Participation in the ITA by a larger number of Members would enhance market access for these products, among which there are many E-commerce related products. The discussion about the detail linkage the ITA and products are necessary elements in the conduct of electronic commerce will be continued.

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<sup>40</sup> This joint statement was followed by the United States formal proposal at the WTO General Council session of 19 February 1998 encouraging WTO Members to agree to codify the practice that electronic transmissions be free from customs duties. This proposal was echoed by Australia, the European Union and Canada in April 1998. The related information is available from <http://www.wto.org> [Accessed 12 September 2004]

<sup>41</sup> The Ministerial Declaration on Trade in Information Technology Products (ITA) was concluded by 29 participants at the Singapore Ministerial Conference in December 1996. The ITA provided for participants to completely eliminate duties on IT products covered by the Agreement by 1 January 2000. Developing country participants have been granted extended periods for some products. The ITA is solely a tariff cutting mechanism. More information available from: [http://www.wto.org/english/tratop\\_e/inftec\\_e/inftec\\_e.htm](http://www.wto.org/english/tratop_e/inftec_e/inftec_e.htm), [Accessed 11 September 2004]

<sup>42</sup> Work programme on electronic commerce information to the General Council, 26 July 1999, (G/C/W/158)



In the E-commerce era, it is near impossible to measure the content of electronic transmission in order to place quantitative restriction on E-commerce as well. Quantitative restriction should not be applied to the electronic transmissions due to the technological inability and high cost. In this case, people would prefer to export or import by electronic means so as to avoid the quantitative restrictions. In this case, developing countries' damage in terms of technological free trade will be extended. As mentioned above, developing countries should be more careful and prudent to the development of web-based technology and actively participate the negotiations about regulation of the electronic transmission.

In the GATT, Article XI is about General Elimination of Quantitative Restrictions which states that: *“No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.”*<sup>43</sup> It is difficult to set prohibitions or restrictions through quotas, import or export licenses or other measures for electronic transmission. In fact, the difficulties of measurement for quantitative restrictions could facilitate general elimination of quantitative restrictions of E-commerce trade.

In summary, the General Council of WTO agreed on a work programme on Electronic Commerce to continue members' current practice of not imposing customs duties on electronic transmissions. The ITA also provides a conducive instruction to the zero duty regimes for E-commerce. With the tendency of the elimination of quantitative restrictions, a quantitative restriction of electronic quantitative restrictions is unnecessary and unreasonable. The

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<sup>43</sup> See Article XI: 1, General Agreement of Tariffs and Trade 1947



elimination of expensive market access is a tendency of international trade liberalization, especially in E-commerce field.

## **2. Market Access to E-commerce as Trade in Services**

If E-commerce transactions are treated as trade in services, the market access issues are different from the case when E-commerce transactions are treated as trade in goods. The specific commitment schedule is very important for trade in services. In the GATS, Article XVI states that “1. *With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule*”.<sup>44</sup> Therefore, the services provided through electronic manner by foreigners should be treated no less favourable than the domestic providers.

Due to the characteristics of E-commerce, it is difficult for national services regulators, especially with regard to services industries such as financial/legal consultations and medical/psychological service, to regulate electronic services trade effectively. It would be near impossible to find out quacks and fraud services firm from above fields online. How to recognize the qualified skill of services providers who are providing professional service online is a big issue to be addressed as well. It is also hard to monitor and examine online services providers because those providers are outside of the national jurisdiction. Nevertheless, countries could impose trade restrictions on online services providers. The national regulators could allow providers to sell services only if providers have an office inside the territory of the nation. Or they could forbid the mutual recognition and allow those provider who past the qualification exams on the buyers’ country. However, such manner could restrict more trade in services, even

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<sup>44</sup> See Article XVI :1, General Agreement on Trade in Services



for those traditional trade in services based on the MFN and National treatment, which is an obstacle for the further liberalization of trade in services.

Unlike the GATT, the GATS does not require member countries to remove existing barrier to trade in service. A member state is not obligated to liberalize all part of its service market unless it makes specific commitments with other members. In order to protect some infant domestic services industries, some countries could not liberalize some service supply from other foreign countries by limiting the licensing for professional persons and commercial presence in buyer's territory. However, by using the electronic means, it is difficult to restrict the modes of supply from other countries because the data stream with the service contents could go to anywhere freely on the Internet. The use of the VPN<sup>45</sup> (virtual private network) could make the monitor and examination more difficult since the data could be only intercepted by those authorized users. The more powerful encryption method of data transmission on the Internet could make online border measurement near impossible.

As the infrastructure of the telecommunications sector, the market access for this sector is critical for E-commerce services. The market access of the telecommunication sector is not totally free, which is based on the specific commitment of different countries. The 1996 Telecommunication Reference paper<sup>46</sup> was intended to liberalize regulation of basic telecommunications services, leading to increased competition. Unfortunately, the Reference paper is plurilateral and non-binding. Moreover, the reference paper does not apply to Internet access and network services, which are value-added services. It would not be appropriated to extend the reference paper's universal service requirement to services involved in the provision of E-commerce. Certainly, the Reference paper at least provides a substantial stimulus to

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<sup>45</sup> The VPN is a *network* that is constructed by using public wires to connect nodes. For example, there are a number of systems that enable you to create networks using the Internet as the medium for transporting data. These systems use encryption and other security mechanisms to ensure that only authorized users can access the network and that the data cannot be intercepted.

<sup>46</sup> Available from [http://www.wto.org/english/tratop\\_e/serv\\_e/telecom\\_e/telecom\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_e.htm) [Accessed on September 15 2004]



electronic commerce. WTO members will negotiate specific market access commitments under the GATS for all E-commerce services in the future.

To sum up, the market access of E-commerce under the GATS is different from market access under the GATT. There is no general prohibition of custom duty and quantitative restriction. In the GATS, quantitative restrictions are prohibited only in sectors where a country has made a commitment to provide market access without limitations.<sup>47</sup> Therefore, the market access of E-commerce as services depends on specific commitment schedule of each different country. Because the WTO does not generally require the elimination of quantitative restriction in the GATS, the market access of E-commerce in this case should vary from different commitment. Moreover, the recognition issues of services providers as mentioned above could be the key issues in this field.

### **3. Discrimination Issues of E-commerce**

In many countries, governments subsidize and support the domestic E-commerce industry because it is still an infant industry and has great potential in the future. This subsidization could cause discrimination issues on E-commerce industry. Difference between the international standard and the domestic standard to regulate E-commerce would lead to discrimination issues as well. With the modern electronic transmission of goods or services, it is becoming increasingly possible to induce dumping of trade by E-commerce because of its lower cost in the transportation process. Moreover, telecommunication services, as the infrastructure for E-commerce, are usually limited by governments because of the specificities of the telecommunication. These aspects inevitably cause discrimination of foreign and domestic E-commerce industries.

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<sup>47</sup> See p.12, Aaditya Mattoo and Ludger Schuknecht, 2000



However, one of the fundamental principles under the WTO for the international trade is National treatment. Based on National treatment, the like services imported from other countries should be also treated no less favourable than the domestic services. The major measurement for implementation of National Treatment is likeness of goods or services. For E-commerce, the issues about likeness of goods or services will be caused because of the different delivery methods. However, according to the technological neutrality of commitments, the treatment for services transferred by electronic methods or physical methods should be the same. Fortunately, the fact that members recognize the technological neutrality of commitments reassures us that the commitments we obtained from third countries will not be jeopardised by arguments about the likeness of the physical service and the electronically delivered one.<sup>48</sup>

Even though it is hard to embrace the principle of non-discrimination into E-commerce, the E-commerce should not be discriminated just because its special delivery method is different from the traditional commerce. The purposes and results of electronic commerce and traditional commerce are exactly the same. E-commerce only improves the efficiency of whole business process compared to the traditional commerce by using high technology. Due to the technology neutrality and difficulty of E-commerce transactions measurement, it is unnecessary to discriminate or provide better conditions for electronic commerce in the current WTO framework.

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<sup>48</sup> See p. 8, Discussion paper on electronic commerce and the WTO



## CHAPTER FOUR --- INTELLECTUAL PROPERTY ISSUES RELATED TO E-COMMERCE

### 1. Importance of IPRs for E-commerce

Intellectual property rights protection is essential for the sustainable development of electronic international trade. For many countries, reinforcing and clarifying IP rules in the digital environment are necessary to promote the growth of E-commerce transactions.<sup>49</sup> The growth of E-commerce is closely linked with the growing importance of intellectual property. Indeed, much of the trade on Internet and other electronic communications networks are selling or licensing of information, cultural and creative products and technology that should be protected by intellectual property. The downloadable products such as books, music, movies, pictures, computer program and software have become very popular on the Internet, which are covered under the TRIPS agreement binding for all WTO members. Online shopping for these IP-related products have also become no longer strange for us. Intellectual property protection provides the incentives and rewards necessary to motivate the related people to develop and disseminate creative content service, and technologies on the Internet related to E-commerce. The protection of IPRs is also the critical factor for encouraging the development and transfer of technology. E-commerce as a newly developed business method is heavily related to the technology. The intellectual property protection could keep the development of E-commerce smooth and stable.

As one of the three major pillars of the WTO, the TRIPS is the agreement focusing on the intellectual property protection. The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), negotiated in the 1986-94 Uruguay Round, introduced intellectual

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<sup>49</sup> See p. 5, David Vivas Eugui, 2001



property rules into the multilateral trading system for the first time.<sup>50</sup> The TRIPS Agreement is a set of minimum standards that covers the acquisition, maintenance and enforcement of Intellectual Property over a wide range of areas.<sup>51</sup> Due to the importance of the protection of intellectual property rights, the TRIPS become very crucial and necessary for the development of E-commerce.

The importance of setting up an E-commerce regime that protects and promotes IPRs is crucial to many interests in the North as enormous world wide “rents” can and will flow to companies and individuals in developed countries who today own over 90 percent of patent and copyrights in the world.<sup>52</sup> For this reason, there are acute disputes about trademarks and domain name. Since trademark issues and other intellectual property issues related to E-commerce is not unique issues created by E-commerce and has been discussed in many articles, the major focus in this part is domain name issue, which will be discussed as follows.

## **2. Focus: Domain Name Issues**

In terms of E-commerce related to intellectual property issues, the domain name issues have started to attract more and more concerns. Domain name is the name to represent the Internet Protocol (IP) address in order to make people to access the website more conveniently. Originally, a computer/server or a device on the Internet is showed by an IP address. The format of an IP address is a 32-bit numeric address written as four numbers separated by periods. Each number can be zero to 255. For example, 1.160.10.240 could be an IP address. However, the IP address is very difficult for people to remember it. Therefore, domain name is used to replace one or more IP address to identify the specific machine on the Internet. With the domain name,

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<sup>50</sup> Available from: [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm7\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm) [Accessed 12 September, 2004]

<sup>51</sup> See p.2, David Vivas Eugui, 2001

<sup>52</sup> See P. 35, A. Didar Singh, 1999



people could just type some easily simplified address to access to the server machine, such as, [www.microsoft.com](http://www.microsoft.com), or [www.wti.org](http://www.wti.org). Therefore, people normally call the domain names as the brands on the virtual Internet.

Just like a real brand name of one specific product in real life, the virtual brand has the equivalent function. A brand is an identifying symbol, words, or mark that distinguishes a product or company from its competitors. Usually brands are registered (trademarked) with a regulatory authority and so cannot be used freely by other parties. On the Internet, the domain name is also unique and exclusive address and cannot be used freely by other parties. Moreover, the value of the brand for E-commerce may have heightened importance due to the intangible nature of the web.

Since E-commerce is increasingly significant to modern enterprises, it is very important for the enterprises to have a consistent domain name on the Internet as their real brands. For example, [www.nike.com](http://www.nike.com) should obviously be the domain name for the Nike Corporation. People will only think about that [www.dell.com](http://www.dell.com) should obviously be the domain name for the Dell Corporation. Nevertheless, nowadays, several addresses containing the trademark names of established companies have been registered by others as domain names thus leading to disputes over their usage as well as to allegations of what is referred to as “cyber-squatting”.<sup>53</sup> Those people register well-known or common terms, brand names and trademark names as domain names with a willingness to later sell them for a profit. Actually, Cyber-squatting is one unethical mean to register, sell, and use a domain name with the intent of making profit from the goodwill of someone else's trademark. It is a general process to firstly buy domain names that uses the names of existing businesses, and then with the intent to sell the names for a profit to those businesses.

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<sup>53</sup> See p.79, A. Didar Singh, 1999

### 3. Incentives for Cyber-Squatting

As a new object in the legal research, cyber-squatting has its special characteristics. It is necessary to understand incentives for cyber-squatting.

- Every domain name on the Internet is unique in the worldwide. There is no repeated domain name of the existing one. However, the central part domain name could be registered by different categories. For example, it is possible to have [www.computer.com](http://www.computer.com) and [www.computer.net](http://www.computer.net) on the Internet. This unique characteristic leads to people to register the specific website as soon as possible because the rule of registration of domain name is the First-come, First-Serve basis.
- Even though people with creativity can think of a special name for the website, but some unique domain names are also rare. As we know, most of the easily remembered website has been registered already. The exiguity of special domain name also pushes people to do cyber-squatting.
- Since normally those famous enterprises will use their owned company names as domain names to identify themselves. For example, the IBM Company use [www.ibm.com](http://www.ibm.com) as its domain name. The identity of domain name also made people to register the names of famous companies and brands in order to make profits afterwards.



- Since every domain name on the global Internet is unique, there is not balance between supply and demand. The identification function of domain name adds more value to get a good and remarkable domain name. Therefore, a creative, featured domain name will include huge potentials for commercial value. Moreover, its value will increase as the development of the Internet goes on. People would like to register some featured websites to make profit afterwards as well.

#### **4. Comparison between Domain Name and Trademark**

Based on the definition from the WTO, Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.<sup>54</sup> Intellectual properties encompass four separate and distinct types of intangible property — namely, patents, trademarks, copyrights, and trade secrets. Domain name is an intangible property as well. Based on its characteristics, a domain name should be more equivalent with trademark in real life. However, comparing trademark with domain name, there are several general differences.

- Domain name is globally unique. Domain name can be protected internationally in terms of the jurisdiction. However, trademark is only protected in one jurisdiction rather than worldwide. The trademarks present limitations because they are subject to national registration procedures and are therefore territorial.<sup>55</sup> If trademark is authorized in only one country, then it could not be protected in other countries.

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<sup>54</sup> Available from [http://www.wto.org/english/tratop\\_e/trips\\_e/intel1\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/intel1_e.htm) [Accessed 22 August 2004]

<sup>55</sup> See p.11, David Vivas Eugui, 2001



- No matter where you access into the Internet, no matter which website you browse, the domain name for the website are internationally unique. However, as for the trademark, it is possible for the same trademark to use on the different types of products or services.
- Trademark can be consisted with text, images, and symbols, but domain name can only be constructed by text or numbers. Therefore, domain name cannot be easily regarded as a term included in Intellectual Property, like trademark.

The trademark is a protectable subject matter. In TRIPS, *“any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such sign, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use.”*<sup>56</sup>

Trademarks are protected in the TRIPS. However, this is not specific article in the TRIPS for domain name. The protection of trademark stated in the TRIPS cannot be directly adapted to the domain name. As we know, domain name can be consisted only by letters and numerals, rather than figurative elements. The TRIPS is not specific enough for protecting domain name. Therefore, many international organizations, like the WIPO (World Intellectual Property Organization), the ITU (International Telecommunication Union) and the WTO are doing research in this field to make more appropriate policies for the protection of domain name.

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<sup>56</sup> See Article 15.1, Trade-related Intellectual Property Rights Agreement



Since some people with profit intent or with interests of domain-name registering, are eager to do cyber-squatting on the well-known trademark, the WIPO considers giving the exclusive right for the owners of well-known trademark in order to protect the well-known trademark in terms of domain name. The WIPO approved that some trademarks are well known and, regardless of the technology used, they should be protected in accordance with Article 6bis of the Paris Convention and the WIPO Recommendations Concerning Provisions on the Protection of Well-Known Trademarks.<sup>57</sup> Only the owners of well-known trade can register the related domain name.

In the TRIPS, Article 16.2 states, “*Article 6bis of the Paris Convention (1967) shall apply, mutates mutandis, to services. In determining whether a trademark is well known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.*”<sup>58</sup> In addition, Article 16.3 states, “*Article 6bis of the Paris Convention (1967) shall apply mutates mutandis, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicated a connection between those goods or services and those owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.*”<sup>59</sup> These two paragraphs have already extended the promotion of trademark to the service trademark. Even though using one trademark is not even similar with the well-known trademark, if the trademark is related well-known trademark and it is proved to cause the prejudice for the well-known trademark, it can be regarded as the tort of the trademark.<sup>60</sup> In essence, based on the articles of the TRIPS, the suggestions of the WIPO are

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<sup>57</sup> Recommendations approved by the WIPO Standing Committee on Trademarks, Industrial Designs and Geographical Indications (September 1999)

<sup>58</sup> See Article 16.2, Trade-Related Intellectual Property Rights

<sup>59</sup> See Article 16.3, Trade-Related Intellectual Property Rights

<sup>60</sup> GuangLiang Tang, 2003



aimed to extend further protection of the well-known good or service trademarks into the domain name field. According to the WIPO proposals<sup>61</sup>, if a domain name is proved to have a connection with the well-known trademark, and the use the domain name cause damages for the trademark, it could be determined as the tort of trademark.

The currently existing WIPO agreements and the TRIPS are generally applicable to electronic transactions. Nevertheless, E-commerce requires more special regulations and integration of regulations from the WTO and the WIPO. Based on the existing regulations of intellectual property protection, domain issues cannot be solved adequately. Fortunately, the WTO in conjunction with other international organizations are working on this issue. They will refine and rebalance the TRIPS and other related agreements so as to make these agreements to deal with domain name issue properly. WTO members also press ahead with full implementation of TRIPS. In the context of the 2002 TRIPS review, WTO members may need to consider new provisions that will better adapt TRIPS to the digital environment.<sup>62</sup> With the further development of technology and the refinement of the related agreements, the cyber-squatting problem will be prevented and controlled effectively. The regulation of domain name will be more adequate and specialized.

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<sup>61</sup> Available from <http://www.wipo.int/> [Accessed on 16 September 2004]

<sup>62</sup> Available from: [http://www.wto.org/english/news\\_e/news02\\_e/trips\\_reg\\_020307\\_e.htm](http://www.wto.org/english/news_e/news02_e/trips_reg_020307_e.htm) [Accessed on 25 September 2004]



## CHAPTER FIVE --- ANALYSIS ON E-COMMERCE LAWS IN CHINA

### 1. Current Status of E-Commerce Development in China

As one of biggest developing countries in the world, China has been developing many industries since 1978.<sup>63</sup> E-commerce as a new commercial manner, has its own special feature in modern business in China, and offers unprecedented opportunities for China. Even though the current status of E-commerce is still behind the E-commerce development in developed countries, E-commerce will have huge potential and bright future in China. The E-commerce, together with the use, convergence and improvement of new information technologies, is creating new challenges and opportunities for China.

#### **Infrastructure:**

In China, computer network infrastructure had a remarkable development. The bandwidth of the network has been expanded and the speed has been increased. By June 30, 2004, the total number of Internet users in China has reached 87.0 million, which increases by 27.9% over a 12-month period. In the mean time, the number of computer hosts in China has raised to 36.30 million. The bandwidth of international connection has reached 53.9 G, which has increased by 190.3% over the same time of last year. Also, there have been 382216 CN domain names.<sup>64</sup> In the 14th Statistical Survey Report on the Internet Development in China, surveys on the issues like online chatting services and online recruitment services have been conducted for the first time. More and more E-commerce services are introduced in China.

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<sup>63</sup> Since 1978, China has embarked on a massive program of economic reform aimed at achieving rapid modernization of the country. This effort is recognized as requiring many decades to accomplish the intended results and is seen as intrinsically linked to a long-term commitment to an "open-door" policy, especially toward the West.

<sup>64</sup> See 14th Statistical Survey Report on the Internet Development in China, published on July 20, 2004. It is available from [www.cnnic.net.cn/download/2004/2004072003.pdf](http://www.cnnic.net.cn/download/2004/2004072003.pdf) [Accessed 20 September 2004]



By June 30, 2004, the number of WWW sites has reached 6.27 million, increasing by 32.2% over a 12-month period. In the mean time, the number of broadband users has reached 31.10 million, an increase of 13.70 million over the past 12 months (an increase by 78.7% over a 6 month period).<sup>65</sup> All these figures indicate a prospective Internet market in China. And those figures also have clearly shown that Internet has pervaded into each corner of our life. Moreover, Internet has become one of the most influential, rapid-developing and promising industries in China. The development of Internet provides huge opportunities and bases for E-commerce development.

Besides, the rapid development of national telecom network, wireless network, and united cable TV network of China also facilitate the growth of E-commerce. Those networks provide wide infrastructure basis for development of E-commerce. Even though the threshold of the development of information industry was later than major developed countries, China is trying to catch up the pace of development of the world in this field. After several-years endeavour in China, many new web-based companies have set up rapidly, which mainly provide services for online transactions closely related to E-commerce. At the same time, the traditional industries in China also tried to reform and catch up the movement of E-age by introducing information technology component into the industries, such as MIS (Management Information Systems), ERP (Enterprise Resources Planning)<sup>66</sup>, and Intranet.

The E-commerce in China has only a very short history, and much work has to be done to improve the infrastructure of telecommunication, to train the human resources and to enact adequate laws. The Chinese government has attached great importance to E-commerce and

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<sup>65</sup> See 14th Statistical Survey Report on the Internet Development in China, published on July 20, 2004. It is available from [www.cnnic.net.cn/download/2004/2004072003.pdf](http://www.cnnic.net.cn/download/2004/2004072003.pdf) [Accessed 20 September 2004]

<sup>66</sup> It attempts to integrate all departments and functions across a company onto a single computer system that can serve all those different departments' particular needs.



social digitalization, regarding it as a new chance for economy development and for enhancing the international competitive capacity of China. Chinese government are trying to keep pace with the world in this area.<sup>67</sup> The concerns and efforts from the government greatly facilitate the development of E-commerce in China.

## **2. Effect of the WTO to E-commerce in China**

With the accession of China to the WTO, the integration of China's Market and the world market is becoming deeper and deeper. China's entry into the WTO will open the market for foreign investment and create a competitive environment that should bring down the access cost and improve service quality. It will also provide Chinese enterprises with opportunities for cooperation, leading to faster adoption of e-commerce practice.<sup>68</sup> The accession of China to the WTO extends the range and quality of international trade in order to encourage the E-commerce growth in China. More and more international trade are processing related to or based on E-commerce now, mainly because of its high efficiency. The current practice of the WTO about continuing of not imposing customs duties on electronic transmissions also greatly promotes the development of E-commerce.

Generally speaking, there are several effects that WTO could bring to facilitate the development of E-commerce in China:

1. After China's accession in the WTO, the gradual openness of the networking, banking, transportation, and insurance for foreign companies, will also stimulate the global online bookstores, online music stores and online gifts store to capture the

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<sup>67</sup> Aldrich, Baker, & McKenzie, 1998

<sup>68</sup> E-Commerce and Development Report, UNCTAD, 2001



market share in China.<sup>69</sup> At the same time, online payment, online security, and offline transportation will be involved in the international standardization. Therefore, the competition of E-commerce in China will become more intensive after China's accession to the WTO.

2. The accession to the WTO will allow foreign banks to operate their business by using local currency, and relatively release the constraints for the domestic people to exchange foreign currencies.<sup>70</sup> The borderless E-commerce will further motivate the foreign banks to providing E-banking services and other related business in domestic market of China.
3. With the openness of Chinese telecommunication sectors, foreign telecommunication companies can legally enter to the domestic market in China,<sup>71</sup> so as to provide firmer and better backbone for the development of E-commerce.
4. The access services of Internet Services Provider (ISP) can be opened as well for foreign ISP as well after the accession of the WTO. More ISPs come to China and participate the competition of China market. Better Internet services and low Internet fee will attract more people to use Internet in China in order to promote the development of E-commerce.

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<sup>69</sup> China's Accession to the WTO "Embracing the Opportunities, Meeting the Challenges", Available from <http://www.tdctrade.com/wto/tid.htm> [Accessed 20 September 2004]

<sup>70</sup> Available from <http://shanghainews.net/mainnews/010402.htm> [Accessed 20 September 2004]

<sup>71</sup> Xing Fan, China's WTO Accession and Its Telecom Liberalization, Available from <http://www.csis.org/ics/chinaswtoaccession.html> [Accessed 20 September 2004]



5. With the help of E-commerce, the international trade of Chinese textile, clothes, machinery, etc. will be developed more quickly because of the higher efficiency. More international trade for these traditional industries will be dealt online.

In summary, WTO regulations in terms of information technology will further open Chinese IT industries, so as to develop E-commerce quickly. E-commerce development will lead China to make more efforts on the legislation of E-commerce. The absence of a sound legal system will greatly hamper the development of E-commerce.

### **3. Legislation Development of E-commerce in China**

E-commerce creates a new manner for people to communicate online as well as doing business electronically. Compared to the traditional business, E-commerce has many advantages for doing business in terms of efficiency. However, in order to make E-commerce operate properly, technology must be improved to protect the E-commerce. At the same time, laws and regulations concerned to E-commerce should be established and developed as well.

During the past few years, with the development of computer science and Internet, E-commerce has undergone unprecedented development in a wide range of aspects, such as a transaction mode, a communication medium, and an enterprise organization pattern. China is no exception in these respects. As to the development of E-commerce, not only should we attach importance to the influence exerted by the private industrial and commercial enterprises, but we should also enhance the government's ability to offer macro plan and guide for the development of E-commerce and provide sound political and legal environments for the development of E-commerce. At the Fifth China International Electronic Commerce Summit, Chinese



governmental officials and experts proposed that it is urgent to build a better legal system for protecting business activities in electronic commerce.<sup>72</sup>

Usually, the legislation development is always behind the development of certain industries or certain affairs. The Chinese government has already concerned on the legislation of E-commerce since 1990's. Issued by State Council on February 18, 1994, the Statute on Computer Information System Security and Protection Regulation of People's Republic of China (CISSPR)<sup>73</sup> plays a very important role in protecting the security of computer systems, promoting the application and development of computers.

Concerning the rapid development of Internet and protection of information communication on Internet, China Internet Network Information Center (CNNIC)<sup>74</sup>, the state network information center of China, was founded as a non-profit organization on June 3rd 1997. CNNIC takes orders from the Ministry of Information Industry to conduct daily business, while it was administratively operated by Chinese Academy of Sciences<sup>75</sup>. Computer Network Information Center of Chinese Academy of Sciences takes the responsibility of running and administrating CNNIC. CNNIC Steering Committee, a working group composed of well-known experts and commercial representatives in domestic Internet community supervises and evaluates the structure, operation and administration of CNNIC.

The Administrative Method of Internet Information Service (AMIIS)<sup>76</sup>, issued by the State Council on September 25, 2000, is a basic regulation on Internet information services. Under the AMIIS, any entities that provide information services for profits over Internet are obligated to

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<sup>72</sup> People Daily, 2001, China Urges Better Legislation on E-commerce, April 6

<sup>73</sup> The full text is available from [http://www.shanghaiit.gov.cn/policy&statute.htm#Information\\_Security](http://www.shanghaiit.gov.cn/policy&statute.htm#Information_Security) [Accessed 21 September 2004]

<sup>74</sup> Its homepage is: <http://www.cnnic.cn/en/index/index.htm>

<sup>75</sup> Its homepage is: <http://english.cas.ac.cn/Eng2003/page/home.asp>

<sup>76</sup> The full text is available from [http://www.shanghaiit.gov.cn/policy&statute.htm#Information\\_Service\\_Industry](http://www.shanghaiit.gov.cn/policy&statute.htm#Information_Service_Industry) [Accessed 21 September 2004]



obtain a licence from authorities. This is the preliminary regulation for those companies who is doing E-commerce. On September 29, 2002, the State Council also issued Statute on the Administration of Places of Business that Provide Internet Access Services. The statute underlines that any business places that provide Internet access services to the public must get licence from Ministry of Culture and its local counterparts. Furthermore, the other Ministries are responsible for their respective administrative functions.<sup>77</sup> The regulation on Internet business order has been established by these statutes from that time.

In China, the Administrative of Industry & Commerce is an authority to regulation of registers of new business. If any individuals or entities would like to do business in China, they should register in the relative Administrative of Industry Commerce to get a legal “business certificate” to operate their business. This purpose of the “business certificate” is to control the market access, identify different businesses, and taxation. According to this regulation, the E-commerce also needs to register with the authority. This tradition regulation could be suitable to manage the E-commerce in this sense.

In summary, there are some progress has been made on the legislation in the fields of E-commerce and the Internet. The laws and regulations related to these fields have been successively enacted. However, the development of E-commerce itself is always faster than the development of related regulations and laws. With the further development of information technology, the legislation of E-commerce in China must be revised and improved to be compatible with the rapid development of E-commerce.

#### **4. Future Development of E-commerce Regulation in China**

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<sup>77</sup> Fuping Gao, 2003



On 1st and 2nd of September 2004, “China Internet Conference 2004 & Asia-Pacific Digital Technology Expo 2004”<sup>78</sup> was held in Beijing. In the conference, Chinese government announced that the Chinese legislature would enact more management regulations on Internet, in order to gradually build up a more complete security system for Internet and information distribution. From the development point of view, the current laws & regulations and market demand is relatively behind compared to the Internet development. Concerning with hot issues of Internet, such as trust issues, market access issues, security management and credit system building, the related law system will be one of major projects for Chinese government.

In August 28th 2004, China state council has approved a “Digital Signature Act ”, which will be implemented from April 1st 2005.<sup>79</sup> It states that the digital signature has the equivalent force effect with the text signature, and defines the market access of the digital certificate to ensure the electronic transactions security. Before the Act, the force effect issue of the digital signature was a limitation for the development of E-commerce in China. The Contract Act in 1999 has already stated the validity of the electronic text, but there is lack of regulations of digital signature. Currently, there are more than 4,000 E-commerce websites in China and about 70 certification organizations. The transaction amount of E-commerce in 2003 has already achieved 35 billion US dollars (270 billion Chinese Yuan).<sup>80</sup>

The implementation of “Digital Signature Act” will greatly solve the bottleneck issue of E-commerce in China, strength the security and validity of electronic transactions. The Act will play a very important role in ensuring the stable and smooth development of E-commerce in China. With the further growth of E-commerce, the related act should be revised and refined consecutively.

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<sup>78</sup> The information about this conference is available from <http://www.internetdigital.org/p11zongtjijianjie.htm> [Accessed 21 September 2004]

<sup>79</sup> Available in Chinese from: <http://tech.sina.com.cn/i/w/2004-08-30/1746415108.shtml> [Accessed 8 September 2004]

<sup>80</sup> *i.d.*



As mentioned at the beginning of this paper, E-commerce can never be limited in the domestic environment of one individual country. The WTO makes very important effects for the globalization of E-commerce. The international E-commerce is an inevitable tendency. Overall speaking, global E-commerce will have huge potential for development. However, the related laws and regulations are still weak, especially for how to regulate cross-border online transactions. Many developed countries have been attracted to this concern. Currently, besides domestic regulations, the U.S. and the E.U. strengthen the communication in terms of the regulation of E-commerce, so as to create a widely acceptable E-commerce regulation for most of countries and areas in the world.<sup>81</sup> As a member of the WTO, China should also actively participate such communications and contribute her efforts. With a complete international legal regime for E-commerce will benefit greatly the E-commerce legislation in China. If the regulations for cross-border transactions cannot be established, International E-commerce will be affected negatively. The key for such a regulation is how to effectively prevent and punish those cyber criminals internationally. For this aim, the most feasible method is making a united regulation of consumer protection act accepted by all the WTO members.

Even though the interests and culture differences could be an obstacle for this progress, many developed countries have been involved into this global project, such as the U.S., the E.U. and Japan. China, as a biggest developing country, has to actively participate into the project as well. Therefore, China should not only focus on the domestic legislation only, but also join the legislation of International E-commerce progress as well. The establishment of an international E-commerce Act is a tendency in the future.

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<sup>81</sup> Carlos A. Primo Braga, 2004



## **5. Implications for China E-commerce Laws**

Until now, there is not specific laws or regulations in China to classify E-commerce into goods or services. With a tendency of classifying E-commerce into services<sup>82</sup>, China also opts for identify E-commerce as services<sup>83</sup>. After all, E-commerce is a new intangible business method in the modern society compared to the tangible trade in goods. In addition, E-commerce development is behind the development of E-commerce in western countries. China could get more benefits from classifying E-commerce as services. The absolute zero barrier will injure Chinese E-commerce industry if E-commerce is classified as goods. It is the better solution for China to classify E-commerce as services currently.

With the classification of E-commerce in services, it would be very flexible for China to adjust its market access level in this field. As a developing country, it would be reasonable for China to liberate infant E-commerce industry gradually. Having certain level of barriers in market access will be helpful the development of the domestic E-commerce market in this sense. Therefore, China could partially open the E-commerce market by have different specific commitments with different countries.

Moreover, the extension of IP protection to E-commerce would provide increased costs and limitations, but also some benefits for developing countries. Although China is still weak at the protection of IPRs, China will be benefited from the IPRs protection after all. The extension of IPRs protection of E-commerce will also facilitate the export of products and services, especially services with intellectual property value such as software, technology, use of trademarks, etc. It can also increase legal security for producers, investors, creators and innovators of Intellectual

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<sup>82</sup> Arvind Panagariya, 2000

<sup>83</sup> See China Internet Network Information Center (CNNIC), available from: <http://www.cnnic.net.cn/> [Accessed on 26 September 2004]



property. It will also strengthen the comparative advantages in exports of intellectual property contents that need cheap labour in the production process.

In terms of Domain Name issues, Chinese courts have already paid attention to cyber-squatting. On 21 June 2000, the Beijing No. 2 Middle People's Courts judged that the domain name www.ikea.com.cn registered by the Beijing CInet Information Company is invalid. The Beijing CInet Information Company must stop using this domain name.<sup>84</sup> The case focus was whether the protection of trademark could be extended to the Internet. The court stated that, domain name is technical abbreviation form of Internet address. With the development of more and more online business, the link between domain name and trademark become even closer than before. The cyber activities are the electronic forms of social activities based on the new technology. Therefore, the business activities and online interests conflicts should be adjusted by the relevant existing laws. The register of www.ikea.com.cn has intentions to use the good reputation of the famous trademark IKEA<sup>®</sup>. Moreover, due to the globally unique characteristic, this registered domain name will harm the right of IKEA<sup>®</sup> company to use this famous trademark online. Therefore, the registering activity of www.ikeas.com.cn was identified as an injury of famous trademark.<sup>85</sup>

This case has proved that the trademark protection has been extended online in terms of domain name by some case laws. However, obviously, the relevant laws for the famous trademark protection on the Internet is not enough. Therefore, the Chinese legislative institutions are still making more and more specific laws for preventing and controlling the cyber-squatting activities. The legislation for IPRs protection on Internet in China should be strengthened and extended on the Internet as well.

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<sup>84</sup> Available in Chinese from: <http://www.people.com.cn/GB/channel5/28/20000621/112044.html> [Accessed 25 September 2004]

<sup>85</sup> Available in Chinese from: <http://www.chinaiprlaw.com/wsjsx/wsxd4.htm> [Accessed 25 September 2004]



## CONCLUSION

The growth, integration, convergence and sophistication of information communication technology are changing our world. The world continues to witness a revolution in the way business is conducted, and the uncharted area of E-commerce presents many opportunities and challenges to a newly emerging world economy. E-commerce is an inevitable reality as the prime promoter of commerce & trade, and become one of the most components for current international trade; it greatly changed the ordinary manner of international trade. Under the WTO framework, E-commerce is making progress and continues to improve the current framework. However, the E-commerce related regulatory disciplines are so weakly developed as Mattoo (2000) noted that it is extremely difficult to develop effective multilateral disciplines in this area without seeming to encroach upon national sovereignty and unduly limiting regulatory freedom.<sup>86</sup> The WTO regulations will be refined for directing the proper development of international E-commerce in the future. The concern from the WTO and member states will further facilitate the legislation development of international E-commerce. With the cooperation of other international organizations, such as the WIPO and the ITU, E-commerce will have further growth in terms of international legislation.

By providing a clear image of E-commerce at the beginning chapter, this paper firstly discussed the main classification issues of E-commerce within the WTO framework. After the analysis of E-commerce characteristics and the current facts, more and more people apt to classify E-commerce as trade in services with GATS discipline applied to it. Standing in the point of views from developing countries, regarding E-commerce as services could provide more benefits for them, since zero custom duties and the elimination of quantitative restrictions is not

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<sup>86</sup> See Aaditya Mattoo and Ludger Schuknecht, 2000



obligatory in the GATS agreement. Furthermore, the classification of E-commerce among four modes of trade in services was also analyzed in the paper. Most of countries treated E-commerce in mode 1 or mode 2, based on each country's preference as mentioned.

Since there is no official classification in the WTO, the market access of E-commerce was studied according to different classifications. If E-commerce is classified as trade in goods, market access should be generally regulated under the GATT. If E-commerce is classified as trade in services, market access should be generally regulated under the GATS. The respective advantage was also analyzed in chapter three. In addition, the discrimination issues of E-commerce were briefly discussed as well.

The E-commerce related to Intellectual Property was studied in chapter four. Intellectual property protection can address the risks of online piracy and help to keep the environment for E-commerce trade stable and healthy. Since the domain name issue is a unique issue from E-commerce, the focus in this paper is about cyber-squatting of domain name. By analyzing the differences between domain name and trademark, it is proved that it is not adoptable to directly apply to TRIPS to the domain name. Any future reform of TRIPS should seek ways to integrate those rights into the legal structure, and find new solutions to the IP-related issues of E-commerce. The WTO should make more cooperation with other International Organizations, such the WIPO and the ITU to develop a new international regulation regime or refine the existing regime for the domain name of E-commerce.

As one of biggest developing countries, China has started to concern about E-commerce issues. The rapid development of economy in China and consequences from the accession of China into the WTO stimulate E-commerce development in China. For the E-commerce development, the most developed and expensive technology is not the key, but business acumen,



entrepreneurship and the adequate legal regime are more important. The key to success in this area is to enact the efficient domestic regulations and strengthen the international cooperation. China must first concentrate on understanding the various issues related to E-commerce development in the WTO and their implications for development and trade of E-commerce, and then seek to formulate a co-ordinated approach at the international level and help to set guidelines for domestic policies, regulations, and plans.

E-commerce, as a newly developed technology, is playing a more and more important role in our life. Because the effect of E-commerce to international trade, the development within the WTO framework has already started to increasingly attract concerns from member states. Besides the existing efforts on this issue, the WTO will put more efforts to develop E-commerce regulations with the cooperation with other international organizations. The international regulation for E-commerce will be placed on the future agenda of the WTO with further development of international E-commerce. In the future negotiations related to E-commerce, the influence from developing countries could not be ignored because of their rapid growth.



## BIBLIOGRAPHY

1. Aaditya Mattoo and Ludger Schuknecht. 2000. *Trade Policies for Electronic Commerce*. World Trade Organization.
2. Aldrich. July 1998. *An Overview of Electronic Commerce Issues in the People's Republic of China*. Baker, & McKenzie.
3. Arivind Panagariya. 2000, E-commerce, WTO and Developing Countries, UNCTAD.
4. Agency for International Trade Information and Cooperation. August 1999. *Electronic Commerce within the Framework of the WTO: Implications for the Less Advantaged Countries*.
5. A. Didar Singh. October 1999. *Electronic Commerce: Issues for the South*. South Centre.
6. A. Didar Singh. September 2002. *Electronic Commerce: Issues of Policy and Strategy for India*. Indian Council for Research on International Economic Relations.
7. Bacchetta, M., Low, P., Mattoo, A., Schuknecht, L., Wager, H. and Wehrens, M. 1998. *Electronic Commerce and the Role of the WTO*. Special Studies.
8. Barfield, C. 1999. *E-commerce and the GATS 2000*. Washington, DC: American Enterprise Institute.
9. Berkey, Judson O. A. December 2001. *Framework Agreement for Electronic Commerce Regulation Under the GATS*. Institute of International Finance.
10. Berkey, Judson and Tinawi, Emad. 1999. *E-Services and the WTO: the Adequacy of the GATS Classification Framework*. OECD.
11. Carlos A. Primo Braga. April 23-24, 2004. *E-Commerce Regulation: New Game, New Rules?* Paper prepared for the conference of "The Regulation of Development and the Development of Regulation", University of Illinois, Urbana-Champaign,
12. Center for International Development at Harvard University, Available from:  
<http://www.cid.harvard.edu/cidtrade/issues/ecommerce.html> [Accessed on 7 September 2004]
13. China Internet Network Information Center (CNNIC). July 20, 2004. *14th Statistical Survey Report on the Internet Development in China*.
14. Charles Owen Verrill, Jr. and Timothy C. Brightbill. 1999. *E-Commerce and the WTO Seattle Ministerial*. Available from: <http://www.wrf.com/publications/publication.asp?id=1684410172000> [Accessed 10 September 2004].
15. Dieter Ernst and HeJie Cheng. October 2000. *The Future of E-commerce in China*. Analysis from East-



- West Center, No.4.
16. David Vivas Eugui. September 2001, *Issues on the Relationship between E-Commerce and Intellectual Property Rights in the WTO: Implications for Developing Countries*. South Centre.
  17. Dufour, A, Que Sai-je, quoted in *International Trade Forum*, 1/99, ITC, Geneva.
  18. ESN Office. 25 June 1999. *ESN Position Paper on Electronic Commerce and the GATS*. Final, UNISE.
  19. Forrester Research. 2000. Available from: <http://www.forrester.com/> [accessed 6 July 2004].
  20. Fuping Gao. 2003. *The Introduction to E-commerce Legislations in China*. East China University of Politics and Law.
  21. Goldstein, Andrea and O'Connor, David. September 2000. *E-Commerce for Development: Prospects and Policy Issues*. Organization for Economic Cooperation and Development.
  22. GuangLiang Tang. 2003. *Internet Domain Name and related issues*. Institute of Law, China.
  23. Hauser, Heinz and Wunsch, Sacha. February 2001. *A Call for a WTO E-Commerce Initiative*. Swiss Institute for International Economics and Applied Economic Research.
  24. Hong Kong Trade Development Council, *China's Accession to the WTO "Embracing the Opportunities, Meeting the Challenges"*, Available from: <http://www.tdctrade.com/wto/tid.htm> [Accessed 20 September 2004].
  25. International Trade Centre (UNCTAD/WTO). 2001, *Secrets of Electronic Commerce, A guide for small and medium-sized exporters*.
  26. L. Lee Tuthill. 1999. PowerPoint file, *WTO implications of classification issues*. Trade in Services Division, World Trade Organization.
  27. Ludger Schuknecht. September 1999. *A Quantitative Assessment of Electronic Commerce*. World Trade Organization.
  28. Mann CL. 1999. *Electronic Commerce in Developing Countries*. Institute for International Economics, Washington.
  29. Meng Xia. 2002. *E-Commerce Legal Framework Country Report: China*. APEC Study Center of Nankai University.
  30. Mia Mikic and Tina S. Kao. 21 June 2000. PowerPoint file, *E-commerce and the WTO in search for rules?* Issues relevant to the interface between the electronic commerce and the WTO, Workshop on E-commerce.
  31. Microsoft Corporation. September 8, 1999. *WTO and Electronic Commerce: Issues for World Trade*. A Microsoft white paper, Electronic Commerce Issues for World Trade,



32. Organisation for Economic Co-operation and Development. 2000b. *Market Access Issues -- Existing Commitments for Online Supply of Service*.
33. UNCTAD. 2000. *Building Confidence: Electronic Commerce and Development*.
34. UNCTAD. 2001. *E-Commerce and Development Report*.
35. UNCTAD. 2002. *E-Commerce and Development Report*.
36. UNCTAD. 2003. *E-Commerce and Development Report*.
37. WTO. 1998a. *Declaration on Global Electronic Commerce. Ministerial Conference*. Geneva, (WT/MIN(98)/DEC/2).
38. WTO. 1998b. *Electronic commerce and the role of the WTO*. WTO, Geneva, Working Paper.
39. WTO. 1998c. *Work programme on Electronic Commerce*. Council for Trade in Goods, (G/C/W/128).
40. WTO. 1998d. *Work Programme on Electronic Commerce*. Council for Trade in Goods, (WT/L/274).
41. WTO. 1999c. *The Work Programme on Electronic Commerce - Background Note by the Secretariat*. Council for Trade-Related Aspects of Intellectual Property Rights, (IP/C/W/128).
42. WTO. 1999d. *Work Programme on Electronic Commerce- Information to the General Council*. Council for Trade in Goods, Geneva, (G/C/W/158).
43. WTO. 1999e. *Work Programme on Electronic Commerce- Progress Report to the General Council*. Council for Trade-Related Aspects of Intellectual Property, Geneva, (IP/C/18).
44. WTO. 1999f. *Work Programme on Electronic Commerce- Submission by the US*. Council for Trade in Services, Council for Trade in Services, Geneva, (WT/GC/16).
45. WTO. 1999g. *Work Programme on Electronic Commerce-Interim Report to the General Council*. Council for Trade in Services, Geneva, (S/C/8).
46. WTO. 1999h. *Work Programme on Electronic Commerce*. Council for Trade in Goods, Geneva, (G/C/W/158).
47. WTO. 2000a. *Chairman's factual progress report to the General Council on the Work Programme on Electronic Commerce*. Council for Trade in Goods, (G/L/421).
48. WTO. 2000b. *Import Licensing for IT products: Canadian national experience paper*. WTO, Geneva, (G/IT/9).
49. WTO. 2001. *Ministerial declaration, Doha WTO MINISTERIAL 2001*, (WT/MIN(01)/DEC/1).
50. WTO. 2003. *International Trade Negotiations and ICT Products and Service*. 5th Ministerial conference,



---

Cancun.

51. WTO. Electronic Commerce Gateway. Available from:  
[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/bey4\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/bey4_e.htm), [Accessed 6 July 2004].
52. WTO. General Agreement on Trade in Services.
53. WTO. General Agreement on Tariffs and Trade 1947.
54. WTO. Market access for goods – gateway. Available from:  
[http://www.wto.org/english/tratop\\_e/markacc\\_e/markacc\\_e.htm](http://www.wto.org/english/tratop_e/markacc_e/markacc_e.htm) [Accessed 23 September 2004].
55. WTO. Trade-related Intellectual Property Rights Agreement.
56. Wunsch, Sacha. October 2002. *The European Communities' WTO Trade Negotiation Jurisdiction Relating to Cross-Border Content Services*.
57. Wunsch, Sacha. October 2002. *Outstanding WTO Issues and Deliverables with Respect to the Electronic Cross-border Trade of Digital Products*.
58. Wunsch, Sacha. July 2001. *Electronic Services: Its Regulatory Barriers and the Role of the WTO*.
59. Xing Fan. *China's WTO Accession and Its Telecom Liberalization*. International Communications Studies Program Center for Strategic and International Studies Washington, D.C. Available from <http://www.csis.org/ics/chinaswtoaccession.html> [Accessed 20 September 2004].
60. Yousaf Haroon Mujahid. 2003. *E-commerce & WTO, Digitalizing Trade Liberalization*. PTCL, IT & Telecom Division, Ministry of Science and Technology, Government of Pakistan.
61. ZhongFu Yu. 2001. *The Prospect of E-commerce Development in China*, The Academy of Social Sciences of Ningbo.