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nccr trade regulation
swiss national centre of competence in research

digital trade

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The National Centre of Competence in Research (NCCR) TRADE is a research programme of the Swiss National Science Foundation (SNSF) and the University of Applied Sciences (HES) in the field of Trade Law and Economics.

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digital trade governance

- **2 dimensions**
- **micro: how to adapt existing trade rules to the practical reality of doing trade over the internet?**
- **macro: WTO law as one element of the complex internet governance landscape**

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the micro context (i)

- **(so far failed) adaptation of WTO law**
- **direct or indirect solutions found in PTAs**
- **11 US PTAs since 2002; spillovers of templates for e-commerce provisions in non-US PTAs**
- **emergence of specific trade regime tailored to digital products**

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the micro context (ii)

- **dedicated e-commerce chapters**
 - clear digital trade definitions
 - recognition of WTO law applicability to e-commerce
 - clear duty-free moratorium for digital products (but not services)
 - MFN and NT treatment of digital products

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the micro context (iii)

- **trade in services chapters**
 - negative list approach
 - dropping local presence requirements
 - dropping MFN exemptions
 - strengthened transparency
 - domestic regulation
- **e-commerce cooperation pledges + ‘deep’ digital trade rules**
(data and consumer protection; paperless trading; digital signatures)

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the micro context (iv)

- **IP chapters with ever increasing digital trade relevance**
 - evolution of the templates to include more digital copyright issues, such as rules on the limitations on liability of ISPs or online piracy prevention (e.g. KORUSFTA)
 - increased level of IP protection and enforcement in cyberspace – export of US domestic standards
 - TRIPS → WIPO Internet Treaties → DMCA → PTAs + (ACTA/SOPA/PIPA type of rules)

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the micro context (v)

- overall trends discernible
 - PTAs address the unresolved e-commerce issues under the GATS
 - digital IP bias; IP chapters copy high domestic standards of protection
 - digital trade not so much about market access but about interfacing domestic regimes, so as to provide interoperability and some certainty

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the macro context (i)

- 2 elements to consider:
- the state of the 'new' information and communication environment
 - different business models and type of innovation; different public policy goals and toolboxes to achieve them
 - almost complete disconnect between cyberlaw and international trade law discourses
- the state of 'messy' governance
 - fragmented institutional architecture; unilateral state actions; regulation through intermediaries; regulation through code; private ordering

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