

# Digital Trade and E-Commerce: Regulatory Challenges and WTO Discussions

Dr Shailesh N Hadli, Mayank Shrivastava

Amity University Chhattisgarh, Raipur (CG)

DOI : <https://doi.org/10.51583/IJLTEMAS.2025.140400016>

Received: 16 April 2025; Accepted: 18 April 2025; Published: 30 April 2025

**Abstract:** This chapter explores the rapid growth of digital trade and e-commerce, emphasizing the crucial role of digital technologies in global commerce and the regulatory challenges that arise from their expansion. It examines the definitions and key components of digital trade, including digital goods, services, and data flows, and highlights global trends and statistics. The chapter reviews national regulatory frameworks and their divergent approaches, focusing on the European Union, the United States, and China. It addresses legal and regulatory challenges such as data privacy, intellectual property, cybersecurity, and taxation. The role of the World Trade Organization (WTO) in shaping international rules for digital trade is analyzed, along with current discussions and dispute settlement mechanisms. The impact of digital technologies on trade facilitation and the benefits and challenges of digital platforms are discussed, supported by case studies. Emerging issues like the implications of 5G, IoT, and AI on digital trade are explored, followed by policy recommendations for harmonizing international rules and enhancing regulatory coherence. It concludes with an outlook on the future of digital trade and e-commerce, advocating for international cooperation and inclusive regulatory frameworks.

**I. Introduction:** The digital revolution has fundamentally transformed global commerce, creating unprecedented opportunities for businesses and consumers alike. The exponential growth of digital trade and e-commerce is a testament to the pervasive influence of digital technologies on economic activities. According to UNCTAD, global e-commerce sales surged to \$26.7 trillion in 2019, accounting for nearly 30% of global GDP. This growth trajectory has been accelerated by the COVID-19 pandemic, which significantly shifted consumer behavior towards online shopping and digital services. The pandemic-induced lockdowns and social distancing measures led to a dramatic increase in online transactions, with e-commerce sales in the United States alone growing by 44% in 2020, reaching \$861 billion.

Digital technologies are the backbone of modern commerce, enabling businesses to transcend geographical boundaries and tap into global markets. These technologies facilitate innovation, operational efficiency, and customer engagement, thereby driving economic growth.

**Artificial Intelligence (AI):** AI enhances business operations through predictive analytics, personalized marketing, and automated customer service. For instance, AI-powered chatbots are widely used in customer service to provide instant responses and improve user experience.

**Blockchain:** Blockchain technology ensures transparency and security in supply chain management by providing immutable records of transactions. A notable example is the TradeLens platform, developed by Maersk and IBM, which uses blockchain to enhance the efficiency and reliability of global supply chains.

**Internet of Things (IoT):** IoT connects physical devices to the internet, enabling real-time data collection and analysis. This technology is crucial for inventory management, predictive maintenance, and smart logistics. For example, IoT sensors in warehouses can monitor inventory levels and trigger automatic reordering processes.

The integration of these technologies into commerce not only enhances efficiency and reduces operational costs but also fosters innovation and economic growth on a global scale.

While digital trade and e-commerce offer numerous benefits, they also present significant regulatory challenges. The rapid pace of technological advancements often outpaces the development of regulatory frameworks, leading to gaps and inconsistencies that complicate governance. Some of the key regulatory challenges include:

**Data Privacy:** The protection of personal data is a critical issue in digital trade. Regulations such as the European Union's General Data Protection Regulation (GDPR) impose stringent data protection requirements, impacting cross-border data flows and necessitating compliance from global businesses.

**Cybersecurity:** The increasing frequency and sophistication of cyberattacks pose significant risks to digital trade. Governments are enacting cybersecurity laws and regulations to protect critical infrastructure and personal data. For instance, the United States' Cybersecurity Information Sharing Act (CISA) promotes the sharing of cybersecurity threat information between the government and private sector.

**Intellectual Property Rights (IPR):** The digital environment presents challenges in protecting intellectual property, including issues related to online piracy and counterfeit products. International treaties such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provide a framework for IPR protection, but enforcement remains challenging.

**Taxation:** The digital economy complicates traditional taxation models, leading to issues such as tax avoidance and base erosion. The OECD's Base Erosion and Profit Shifting (BEPS) project seeks to address these challenges by developing international tax rules that ensure fair taxation of digital activities.

The divergence in national regulations further complicates the governance of digital trade. Countries adopt different approaches to data protection, cybersecurity, and taxation, creating barriers to cross-border trade and increasing compliance costs for businesses.

The World Trade Organization (WTO) plays a crucial role in shaping international rules for digital trade. As digital trade continues to grow, the need for a coherent and inclusive regulatory framework becomes increasingly important. The WTO provides a platform for member countries to negotiate and establish rules that promote market access, regulatory coherence, and dispute resolution in digital trade.

WTO discussions aim to reduce barriers to digital trade, ensuring that businesses can access global markets without facing discriminatory regulations. This includes addressing issues such as customs duties on electronic transmissions and ensuring non-discriminatory treatment of digital products.

The WTO encourages member countries to harmonize their regulatory approaches to digital trade, reducing inconsistencies and promoting a level playing field. Initiatives such as the Joint Statement Initiative (JSI) on E-commerce, launched in 2019, involve over 80 WTO members working towards developing global rules for digital trade.

The WTO's dispute settlement mechanisms provide a forum for resolving conflicts related to digital trade. This ensures that member countries adhere to agreed rules and provides a means to address grievances, thereby promoting stability and predictability in global trade.

The ongoing efforts of the WTO are vital in ensuring that digital trade contributes to global economic development while addressing the regulatory challenges it poses. By fostering international cooperation and developing inclusive regulatory frameworks, the WTO helps create an enabling environment for the continued growth and success of digital trade and e-commerce.

## **II. Understanding Digital Trade and E-Commerce**

Digital trade refers to the exchange of goods, services, and data via digital means, encompassing a broad range of economic activities facilitated by the internet and digital technologies. This includes e-commerce, which specifically involves buying and selling goods and services online. Digital trade covers several key areas:

**Digital Goods:** Digital goods are intangible products delivered electronically, with some of the most common examples being:

**Software:** Including applications, operating systems, and various utility tools.

**E-books:** Digital versions of books that can be read on e-readers or other digital devices.

**Music and Videos:** Downloadable or streamable content available on platforms like iTunes, Spotify, and Netflix.

**Digital Services:** Digital services refer to services that are delivered over digital networks, which include:

**Online Banking:** Financial services provided over the internet, allowing for transactions, account management, and financial planning.

**Cloud Services:** Including storage, computing power, and software-as-a-service (SaaS) solutions provided by companies like Amazon Web Services (AWS), Microsoft Azure, and Google Cloud.

**Digital Marketing:** Marketing services delivered through digital channels like social media, search engines, and email marketing platforms.

### **Data Flows**

Cross-border data flows are crucial for enabling and supporting digital trade. They involve:

**Data Transmission:** The transfer of data required for international business operations, including customer information, transaction data, and communication between global teams.

**Regulatory Considerations:** The need to comply with different national regulations on data protection and privacy, such as GDPR in the EU and the CLOUD Act in the US.

### **Platforms**

Digital platforms are online spaces where businesses and consumers engage in trade. Key examples include:

**Amazon:** A global e-commerce platform offering a wide range of goods and services.

**Alibaba:** A Chinese e-commerce giant providing wholesale and retail platforms.

**eBay:** An online auction and shopping website where people buy and sell goods and services worldwide.

**Shopify:** A platform enabling businesses to set up online stores and sell products directly to consumers.

The expansion of digital trade globally is evident through several trends and statistical highlights:

**Global E-commerce Sales:** According to UNCTAD, global e-commerce sales reached \$26.7 trillion in 2019, reflecting a significant portion of global GDP. This growth is driven by increasing internet penetration, improved digital infrastructure, and evolving consumer behaviors.

**Online Shoppers:** The number of online shoppers worldwide grew to 1.5 billion in 2020, with emerging markets such as China, India, and Brazil showing substantial increases. For example, China alone accounted for over 50% of the world's e-commerce transactions.

**Mobile Commerce:** The rise of smartphones and mobile internet has fueled mobile commerce (m-commerce), with mobile devices accounting for more than 50% of global online traffic. In 2020, mobile commerce sales in the US reached \$339 billion, a 15% increase from the previous year.

**Improved Internet Infrastructure:** Advancements in internet infrastructure, including the rollout of 5G networks, have significantly enhanced the speed and reliability of online transactions, further boosting digital trade.

**COVID-19 Impact:** The COVID-19 pandemic accelerated the shift to online shopping and digital services, with many businesses adopting digital channels to reach customers. For instance, e-commerce sales in the US grew by 44% in 2020, driven by increased demand for online retail and home delivery services.

The continuous growth of digital trade underscores the transformative impact of digital technologies on global commerce, presenting both opportunities and challenges that necessitate coordinated regulatory efforts to ensure sustainable and inclusive growth.

### **III. Regulatory Frameworks for Digital Trade**

Countries adopt various regulatory approaches to govern digital trade and e-commerce, addressing key issues such as data protection, consumer rights, cybersecurity, and taxation. These frameworks vary significantly across different regions, reflecting diverse legal traditions and policy priorities.

#### **European Union (Eu)**

**General Data Protection Regulation (GDPR):** The GDPR, implemented in 2018, sets stringent standards for data privacy and protection. It applies to all companies processing the personal data of EU residents, regardless of the company's location. Key provisions include the requirement for explicit consent, the right to access and delete personal data, and significant penalties for non-compliance.

**E-commerce Directive:** This directive, adopted in 2000, aims to remove barriers to online services across the EU, promoting the free movement of information society services. It establishes rules on transparency, electronic contracts, and liability of intermediary service providers.

**Digital Services Act (DSA):** Proposed in 2020, the DSA aims to modernize the legal framework for digital services in the EU. It introduces obligations for online platforms to handle illegal content, ensures better protection for users, and enhances transparency and accountability.

#### **United States (Us)**

**California Consumer Privacy Act (CCPA):** Enacted in 2018, the CCPA provides California residents with rights to access, delete, and opt out of the sale of their personal information. It applies to for-profit businesses that meet certain thresholds, emphasizing transparency and consumer control over personal data.

**Electronic Communications Privacy Act (ECPA):** This federal law, enacted in 1986, addresses the interception and disclosure of electronic communications. It sets requirements for government access to electronic communications and protects user data stored by service providers.

**Free Flow of Data:** The US regulatory approach supports the free flow of data across borders and advocates for minimal regulatory barriers to promote innovation and economic growth.

#### **China**

**Cybersecurity Law:** Implemented in 2017, this law imposes stringent requirements on network operators, including data localization mandates and cybersecurity standards. It aims to safeguard national security, protect personal information, and maintain social order.

**Personal Information Protection Law (PIPL):** Enacted in 2021, the PIPL sets comprehensive rules for the handling of personal data in China. It provides rights for individuals to access, correct, and delete their data, and imposes obligations on data processors to ensure data security and protect user privacy.

**E-commerce Law:** Effective since 2019, this law regulates e-commerce activities in China. It addresses issues such as contract formation, consumer protection, and dispute resolution, promoting fair competition and fostering a healthy digital marketplace.

### ***Challenges Posed by Divergent National Regulations and Standards***

The divergence in national regulations and standards poses several challenges for digital trade:

**Inconsistent Data Protection Standards:** Variations in data protection laws, such as the GDPR in the EU and the CCPA in the US, create complexities for businesses operating across borders. Companies must navigate differing consent requirements, data transfer restrictions, and compliance obligations.

**Cybersecurity Regulations:** Discrepancies in cybersecurity laws, like China's Cybersecurity Law and the US's sectoral approach, result in varied security standards and reporting obligations. This fragmentation complicates global cybersecurity efforts and increases compliance burdens for multinational companies.

**Consumer Rights:** Different consumer protection regulations, including the EU's robust framework and the more fragmented US approach, lead to inconsistencies in consumer rights and remedies. This affects consumer trust and can limit market access for businesses.

**Taxation:** The lack of harmonized tax regulations for digital transactions and services poses challenges in determining tax liabilities and prevents fair taxation of digital activities. Initiatives like the OECD's BEPS project aim to address these issues, but achieving global consensus remains difficult.

### **Data Privacy and Protection Laws: Impact on Cross-Border Data Flows**

Data privacy and protection laws have a significant impact on cross-border data flows. These regulations are designed to protect personal information from misuse and unauthorized access, but they also create challenges for businesses that operate internationally.

#### **General Data Protection Regulation (GDPR)**

The GDPR applies to all companies processing the personal data of individuals within the European Union (EU), regardless of the company's location. The GDPR imposes strict requirements on data transfers outside the EU. Companies must use mechanisms like Standard Contractual Clauses (SCCs) or rely on adequacy decisions, where the European Commission recognizes that a non-EU country ensures an adequate level of data protection. Compliance with the GDPR can be complex and costly for businesses. It requires robust data protection measures and documentation, regular audits, and potential adjustments to data handling practices. Non-compliance can result in significant fines.

#### **California Consumer Privacy Act (CCPA)**

The CCPA applies to for-profit businesses that collect and process personal data of California residents and meet certain thresholds. It provides California residents with rights to access, delete, and opt out of the sale of their personal data. Businesses must implement measures to comply with these rights and may face fines for violations.

### **Issues in Digital Trade**

#### **Intellectual Property Issues in Digital Trade (e.g., Copyright, Trademarks, Patents)**

Intellectual property (IP) is crucial in digital trade, where digital goods and services often involve copyrighted material, trademarks, and patented technology. Protecting IP in the digital environment presents unique challenges.

#### **Copyright**

The rise of digital content such as music, films, software, and e-books has increased the risk of online piracy. Copyright holders face challenges in enforcing their rights and preventing unauthorized distribution. Laws like the Digital Millennium Copyright Act (DMCA) in the US provide mechanisms for copyright holders to request the removal of infringing content from online platforms.

#### **Trademarks**

The digital marketplace has made it easier for counterfeit goods to be sold online. Trademark holders must actively monitor and enforce their rights to protect their brand. Trademark laws and enforcement mechanisms vary by country, requiring businesses to navigate different legal systems to protect their trademarks globally.

**Patents** Patents protect technological innovations and inventions. In the digital economy, this includes software patents and technology used in digital platforms and services. Patent enforcement can be difficult across borders, and differences in patent laws and standards complicate international protection.

**Cybersecurity Concerns and Regulatory Responses** Cybersecurity is a critical concern in digital trade, where cyber threats can disrupt commerce and compromise sensitive information. Cyberattacks can result in the theft of sensitive information, financial losses, and reputational damage. Attacks that lock users out of their systems until a ransom is paid have become increasingly common.

### **Taxation Issues: Challenges in Taxing Digital Transactions and Services**

Taxation of digital transactions and services poses significant challenges due to the global nature of the digital economy.

#### **Traditional Tax Frameworks**

Traditional tax systems are often based on physical presence, making it difficult to tax digital businesses that operate globally without a physical presence in many countries.

#### **OECD's Base Erosion and Profit Shifting (BEPS) Project**

To address tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations. Includes measures like the Multilateral Instrument (MLI) to update international tax treaties and prevent base erosion and profit shifting.

#### **Digital Services Taxes (DSTs)**

Several countries, including France and the UK, have introduced DSTs to tax revenues generated from digital services provided to users in their jurisdictions. DSTs have sparked debates about their fairness and compatibility with international tax principles, leading to discussions about the need for a coordinated global approach.

### **IV. WTO and Digital Trade: Current Discussions**

#### **WTO Agreements Relevant to Digital Trade**

Several WTO agreements provide the foundation for regulating digital trade:

##### **General Agreement on Tariffs and Trade (GATT)**

GATT governs trade in goods, including digital goods such as software, e-books, and digital media. Articles XX and XXI of GATT address general exceptions and security exceptions, respectively, which may be relevant to digital trade issues. However, GATT primarily focuses on reducing tariffs and non-tariff barriers for goods traded internationally.

##### **General Agreement on Trade in Services (GATS)**

GATS covers trade in services, encompassing digital services like cloud computing, digital marketing, and online education. The agreement consists of specific commitments made by WTO members under various sectors and modes of supply. Articles XVI, XVII, and XVIII govern market access, national treatment, and additional commitments, ensuring non-discriminatory treatment of foreign service providers.

##### **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)**

TRIPS sets minimum standards for intellectual property protection, crucial for digital trade involving copyrights, trademarks, patents, and trade secrets. Articles 1 through 12 outline general provisions, including national treatment, most-favored-nation treatment, and enforcement of IP rights. Specific provisions within TRIPS address digital issues such as software patents (Article 27), copyright protection in the digital environment (Article 10), and enforcement mechanisms (Article 41).

#### **Addressing Challenges –**

The WTO actively engages in discussions and initiatives to address challenges and opportunities in digital trade

Initiated in 2019, the **Joint Statement Initiative (JSI) on E-commerce** aims to establish global rules for e-commerce and digital trade with an objective of discussions cover electronic transactions, digital trade facilitation, data flows, consumer protection, and cybersecurity. Over 80 WTO members participate in negotiations, seeking to enhance regulatory coherence and facilitate digital trade globally.

WTO's dispute settlement mechanisms play a crucial role in addressing disputes related to digital trade. The **Dispute Settlement Body (DSB)** provides a forum for adjudicating disputes between WTO members regarding violations of WTO agreements, including those related to digital trade. Disputes may involve issues such as intellectual property rights infringement, discriminatory practices against digital services, or barriers to data flows. WTO rulings ensure compliance with agreed rules and promote fair trade practices in the digital economy.

Digital technologies significantly enhance trade facilitation like **Blockchain** which improves transparency and security in supply chains, facilitating traceability, reducing fraud, and ensuring authenticity in digital transactions, and **Artificial Intelligence (AI)** that enables predictive analytics, automation of logistics and customs procedures, and personalized customer service, optimizing supply chain management and operational efficiency.



Digital platforms offer substantial benefits for international trade however, challenges are there like concerns over the protection of personal data and compliance with varying data protection regulations globally, navigating different regulatory frameworks across jurisdictions, particularly in areas like consumer protection and taxation, addressing issues of market dominance and ensuring fair competition on digital platforms, etc.

#### **Case Studies of Successful Digital Trade Facilitation Initiatives –**

**Trade Lens:** A blockchain-based platform developed by Maersk and IBM, enhancing transparency and efficiency in global supply chains by facilitating real-time data sharing among stakeholders. Aligned with WTO principles of trade facilitation and transparency in supply chain operations.

**Estonia's e-Residency Program:** Allows non-residents to establish and manage businesses online, providing access to the EU market and promoting digital entrepreneurship. Supports cross-border trade and demonstrates effective integration of digital technologies in business operations.

#### **Impact of Emerging Technologies (E.G., 5g, Iot) On Digital Trade**

##### **5G Technology:**

Enables faster and more reliable connectivity, crucial for real-time data exchange and the proliferation of connected devices. It enhances the efficiency of mobile commerce (m-commerce) platforms and supports high-bandwidth applications like augmented reality (AR) and virtual reality (VR). It facilitates seamless video conferencing, remote monitoring of assets, and enhanced mobile payment systems, all critical for global trade operations.

##### **Internet of Things (IoT):**

IoT connects physical devices embedded with sensors and software to collect and exchange data, transforming supply chain management and logistics. Improves inventory management, enables predictive maintenance of machinery and equipment, and enhances real-time tracking of shipments. IoT devices monitor environmental conditions during shipping, optimize routes based on traffic and weather data, and automate warehouse operations, reducing costs and improving efficiency.

#### **Regulatory Implications of AI and Machine Learning in E-commerce**

AI and machine learning technologies are increasingly integrated into e-commerce platforms, presenting regulatory challenges like ensuring transparency in algorithms used for product recommendations, pricing strategies, and customer profiling to prevent discrimination and unfair practices. Some jurisdictions are exploring requirements for disclosure of AI use and auditing mechanisms to verify algorithmic fairness and accountability. Another challenge involves addressing biases inherent in AI systems that can impact consumer choices, access to products, and employment opportunities. Developing guidelines and standards for unbiased AI development, including diverse training data and regular audits to mitigate bias may be a helpful step towards the same. Protecting consumer rights regarding data privacy, security, and informed consent in AI-driven personalized marketing and customer service through strengthening data protection laws, ensuring robust cybersecurity measures, and promoting transparency in data collection and usage practices.

#### **Future Trends in Global Governance of Digital Trade and E-commerce**

The future landscape of digital trade governance will likely evolve to address complex challenges and leverage opportunities. There is a need of greater collaboration among countries to harmonize regulations and standards for digital trade, encompassing data protection, cybersecurity, and AI ethics. Multilateral agreements (e.g., WTO discussions on e-commerce), regional trade agreements, and forums for policy dialogue to facilitate global consensus on regulatory frameworks. Establishment of global standards for data governance, including cross-border data flows, data localization, and interoperability. The focus should be on addressing challenges such as jurisdictional conflicts, data sovereignty concerns, and the rights of individuals in the digital age.

Promoting responsible AI development and deployment, emphasizing ethical considerations, human rights, and societal impact assessments through introducing guidelines for AI ethics, including principles for transparency, accountability, fairness, and the right to explanation.

#### **Policy Considerations For Harmonizing International Rules On Digital Trade**

To harmonize international rules on digital trade effectively, policymakers should focus on several key strategies:

##### **Promote Multilateral Cooperation:**

Utilize existing platforms like the World Trade Organization (WTO) to facilitate negotiations and agreements on digital trade rules with an objective to foster consensus among member states on issues such as data flows, e-commerce regulations, and cybersecurity standards.

##### **Develop Global Standards:**

Establish comprehensive global standards for data protection, cybersecurity practices, and digital transactions that may enhance predictability for businesses operating across borders and ensure consistent levels of protection for consumers globally.

**Encourage Interoperability:** Facilitate interoperability of national regulatory frameworks to enable seamless cross-border trade and reduce compliance burdens by implementing mutual recognition agreements and harmonizing technical standards to promote compatibility across different jurisdictions.

### **Recommendations For Enhancing Regulatory Coherence And Predictability**

Enhancing regulatory coherence and predictability is crucial for fostering a conducive environment for digital trade:

#### **Align National Regulations with International Standards:**

Ensure that national regulatory frameworks align with established international standards and best practices, eg. Harmonize data protection laws with frameworks like the GDPR (European Union) and APEC Privacy Framework (Asia-Pacific Economic Cooperation).

#### **Establish Clear and Consistent Rules:**

Develop clear and unambiguous rules for digital trade, encompassing areas such as consumer protection, intellectual property rights, and taxation. Provide businesses with certainty regarding regulatory requirements to encourage investment and innovation in digital technologies.

#### **Promote Transparency and Stakeholder Engagement:**

Involve stakeholders, including businesses, civil society organizations, and academia, in the regulatory decision-making process. Publish regulatory proposals and seek public feedback to ensure transparency and accountability in regulatory actions.

### **Concluding Remarks on The Future Outlook of Digital Trade and E-Commerce**

The future of digital trade and e-commerce holds immense promise, driven by technological advancements and increasing global connectivity. However, realizing this potential requires addressing regulatory challenges and fostering international cooperation:

Continued innovation in technologies like AI, blockchain, and IoT will further transform digital trade, enhancing efficiency and expanding market opportunities. Issues such as data privacy, cybersecurity threats, and the ethical use of AI necessitate robust and adaptive regulatory frameworks. Collaborative efforts through multilateral platforms will be essential for developing inclusive and coherent global rules that support sustainable economic development. Upholding high standards of consumer protection and privacy will foster trust in digital transactions, essential for the continued growth of e-commerce globally.

By prioritizing harmonization, regulatory coherence, and stakeholder engagement, policymakers can create an environment where digital trade and e-commerce thrive, benefiting economies, businesses, and consumers worldwide. This approach not only supports economic growth but also ensures that digital advancements contribute positively to society's well-being and development.

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