

A High Standard Outcome to Power the Post-Covid Economy

ICC Working Group on E-commerce



COVID-19 has upended the normal course of business action across the global real economy. The “Great Lockdown” resulted in the worst economic downturn since the Great Depression of the 1930s—a collapse in activity of such magnitude and speed unlike anything in living memory, and whose full consequences remain to be seen.

Against this economic shock e-commerce proved itself to be a lifeline for millions of micro-, small- and medium-sized enterprises (**MSMEs**) hard hit by prolonged quarantines, and ensured continued access to goods and services for millions of people around the globe.

As communities have socially distanced to flatten the curve, contactless payments have enabled safe, COVID-free transactions; brick-and-mortar retailers have rapidly moved to sell their wares online, powered by a vibrant ecosystem of software as a service providers; citizens have used social media to maintain connection with friends and loved ones across the globe; and e-commerce marketplaces have provided consumers with safety, choice and convenience.

The COVID-19 pandemic has also brought to the forefront the importance of trade facilitation. In addition to the cross-border supply of personal protective equipment and critical medical supplies needed to fight the virus, international delivery of the full range of consumer goods has reduced potential virus transmission during prolonged quarantines and allowed many businesses to remain open, thereby reducing the negative economic impact of the virus. COVID-19 has also brought into sharp relief the inefficiencies of the paper-based trading system—from delayed processing times to increased fraud risk—underscoring the pressing need for legal frameworks to enable paperless trade at scale.

The digital economy will have an even more critical role to play in ensuring a rapid post-pandemic recovery. However, the ability of the digital economy and digitally-enabled trade to assist in the global economic recovery, promote inclusive economic growth, and ensure resilience in the face of future crises to a large extent hinges on a high standard agreement on the trade-related aspects of e-commerce.

Such an agreement needs to be concluded by the next WTO Ministerial Conference and, at a minimum, contain the following elements:

1. Market access and connectivity

- Common rules to ensure open, non-discriminatory access to digital and digitally-enabled markets that support competition and enable the development of vibrant ecosystems to support the growth of digitally-enabled trade and contribute to the resilience of global supply chains. The global use of ICT applications and e-commerce must also be supported by better conditions of deployment and adoption of very high-capacity networks.
- Provisions to ensure market access and national treatment for electronic payments providers to enable choice and service options for consumers and businesses. Additionally, new provisions to encourage the use of electronic payments for customs and duties in multiple currencies, without mandatory currency conversion.

2. Cross-border data

- A permanent prohibition on customs duties and discriminatory tariffs for digitally-supplied products and electronic transmissions to ensure that customs duties do not impede the flow of data, communications, music, video, software and games.
- A requirement not to impose the localisation of data, including for storage or processing.

- Recognition that existing WTO rules in GATS Annex on Basic Telecommunications, particularly but not limited to Article V, apply to all economic activity in both goods and services covered by the agreement, to ensure that international transfers of data continue to be protected, as well as an obligation to be bound by the Telecommunications Services Reference Paper.
- Any exceptions to this rule under applicable privacy or security regulations should be limited to public policy objectives and subject to GATS XIV. Such a framework could build on the OECD Guidelines on the Protection and Privacy of Trans-border Flows of Personal Data, and other regional policy frameworks, as appropriate.

3. Trade facilitation

- New disciplines, building on the Trade Facilitation Agreement, are now required to enable simplified processing of low value shipments, including through establishment of a commercially meaningful baseline de minimis threshold for low value / low risk goods and a separate threshold for informal clearance of goods valued above the de minimis threshold but below what is required for formal clearance.
- A provision mandating the adoption and implementation of the UNCITRAL Model Law on Electronic Transferable Records 2017.

4. Trust and security

- Commitments on cross-border consumer protection standards, data protection standards and dispute settlement to strengthen consumer trust and confidence in cross-border e-commerce, including a commitment from each Party to have a data protection framework in law, that is effective and transparent in operation and embodies the minimum best practice standards. Such a framework would help ensure legal certainty for businesses and also support consumers in cross-border business-to-consumer e-commerce.
- In addition, forced transfer of technology, source code, algorithms and encryption keys should be prohibited in order to ensure the protection of data and intellectual property rights.

5. Capacity building

- The United Nations should significantly scale up and enhance coordination of existing trade-related capacity building programs to expand connectivity, bridge digital divides and digitally-enabled market access, including targeted capacity building programs for MSMEs looking to expand through e-commerce.

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