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# Comparative Analysis of Digital Trade Rules between China and the United States: Taking USMCA as an Example

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## Abstract

With the rapid development of digital economy, the rule setting and practice of China and the United States in the field of digital trade have become the focus of international attention. The coordination and cooperation of digital trade rules between China and the United States will definitely play a key role in the healthy development of the global digital trade. Taking USMCA as an example, this paper conducts an in-depth comparative analysis of the digital trade rules between China and the US, summarizes the differences between China and the US in the field of digital trade rules at the levels of national strategy, interest orientation, rule claims and dispute settlement mechanism, and puts forward policy suggestions on China's docking of international high-standard digital trade rules as well as how to construct a digital trade rules system with Chinese characteristics.

**Keywords:** Digital trade; Digital trade rules; USMCA

## 1. Introduction

In recent years, the trade of global digital products, digital services, and digital technology has rapidly developed. Digital technology trade and cross-border data flows, as new forms of digital trade, play an important role in global information connectivity. According to the World Trade Organization (WTO), in 2022, the export value of globally deliverable digital services accounted for 57.1% of the total global service exports; global e-commerce retail sales exceeded USD 5 trillion; and from 2011 to 2022, the proportion of ICT services in total service exports rose to 23.2%. As one of the top five countries in terms of digital trade scale, China boasts a large domestic market, abundant data resources, advanced network

infrastructure, and a vibrant group of innovative enterprises, showcasing significant growth potential in digital trade. In 2021, China's total import and export of digital services reached USD 359.69 billion, with a growth rate surpassing that of overall service trade and goods trade by 6.2 and 0.9 percentage points, respectively. In digital technology trade, China has demonstrated a clear competitive advantage, with the trade of telecommunications, computer, and information services (ICT) amounting to approximately USD 117.11 billion, an increase of 27.3%.

During the rapid potential growth of digital trade, the formulation and promotion of digital trade rules have been prioritized by countries as a strategic tool to gain more national benefits and global strategic positioning in digital trade. Currently, digital trade rules face numerous urgent issues, including the "digital divide", system fragmentation, the resurgence of trade protectionism, and increasing governance challenges<sup>[1]</sup>. China needs to understand and align with high-standard international digital trade rules to enhance its competitiveness in the global digital economy and address the challenges in digital trade governance.

### 1.1 Definition and Composition of Digital Trade

Although digital trade has flourished in the new era, there is still no unified and clear rule direction for defining digital trade in the trade rules of various countries and international organizations. The Organisation for Economic Co-operation and Development (OECD) defines digital trade from three dimensions: the nature of the transaction, the products, and the participating partners, considering transactions as digital trade if they involve digital ordering, platform-facilitated transactions, and digital delivery services (digital service trade). In 2013, the United States International Trade Commission (USITC) defined digital trade as the commercial transfer of products and services through digital networks. In 2014, the USITC further extended the definition of digital trade. By 2017, the USITC redefined digital trade as the delivery of products and services by companies within any industry via the internet. In its "White Paper on the Development and Impact of Digital Trade (2019)", the China Academy of Information and Communications Technology (CAICT) defines digital trade as a form of trade in which information and communication technology (ICT) plays a crucial role. The Trade in Services Department of the Ministry of Commerce of China proposed a new interpretation of digital trade in its "2019 China Digital Service Trade Development Report," distinguishing digital trade from traditional e-commerce. Digital trade primarily involves the research, design, and production of products using digital technology, delivering results to users via the internet and modern information technology, with the core being the provision of services in digital form. The OECD, WTO, and IMF in March 2020, in their "Handbook on Measuring Digital Trade", define digital trade as "all trade that is digitally ordered and/or digitally delivered". Comparing various definitions reveals that international organizations have yet to fully unify the definition of digital trade.

The evolution of the concept of digital trade shows that it initially focused on e-commerce transactions and gradually shifted to purely digital products and services, excluding physical goods and products with only digital elements. Since 2014, the definition of digital trade has expanded to encompass more dimensions, including domestic and international commercial activities where the internet and other modern information technologies play a core role

in the ordering, production, or delivery process. As long as the core of trade involves the transmission and completion of products or services via digital networks, whether these products or services are digital or traditional physical forms, they are considered part of digital trade<sup>[2]</sup>. The existing conceptual system of digital trade does not clearly stipulate whether business activities with non-digital delivery results fall within the scope of digital trade. However, various countries include e-commerce sales in their digital trade statistics, indicating that cross-border e-commerce goods trade is an important component of the digital trade system, a view widely accepted in both industry and academia.

Based on this, this article defines digital trade as trade activities requiring the support of information and communication technology, primarily including digital product trade, digital ordering trade, digital service trade, digital technology trade, and data trade.

### **1.2 Current Research on US and China Digital Trade Rules**

Relevant domestic and international literature related to this study mainly focuses on two research directions: American digital trade rules and the Sino-US digital trade rules game. In terms of American digital trade rule research, Aaronson (2016), Meltzer (2016), Zhou Nianli and Chen Huanchi (2017), and Malkawi (2019) have systematically reviewed the development of American digital trade rules. Burri (2017) believes that American digital trade rules inherit the WTO+ and WTO-X clauses. Gong Yongqin and Wang Jian (2016) argue that “free cross-border data flow” is the core demand of the “American template”. Similarly, the USITC and the Congressional Research Service (CRS) point out that ensuring “free cross-border data flow” in regional trade activities is the core goal of the USMCA in constructing digital trade rules. In terms of the Sino-US digital trade rules game, Li Yang, Chen Huanchi, and Zhou Nianli (2016) compared the digital trade rule fields involved in the US-led TPP, TISA, and TTIP agreements with the China-Korea and China-Australia FTAs, summarizing the main differences between China and the US in the digital trade field. Bai Jie and Su Qingyi (2020) pointed out the intention of “locking” China in the USMCA, believing that the USMCA will have limited negative impacts on the Chinese economy and will continue to affect China’s reform and opening-up and external environment. Wang Pengyuan and Zhu Yingni (2020) also believe that this agreement will significantly weaken China’s foreign trade advantages and have a huge negative impact on Chinese enterprises going global. Zhang Monan, Fang Yuanxin, and Qiu Chenxi (2022) believe that the US and Europe dominate the global digital trade landscape, with bilateral/regional trade agreements leading the construction of global digital trade rules, proposing that China should accelerate the construction of a “Chinese solution” for digital trade rules.

Existing literature mainly focuses on the systematic review of the development of American digital trade rules and the analysis of the opportunities and challenges brought by future digital trade rule changes to China from a global digital trade rule system perspective. The literature usually points out how to cope with the impacts and challenges of digital trade rules, but there is still a certain gap in the research on China’s own digital trade rules and how to establish a “Chinese template”. In-depth exploration of the differences between China and the US in digital trade rules is of great strategic value for promoting global digital economic growth and facilitating negotiations on digital trade rules. Based on

this, this article will use the USMCA as an example to conduct a comparative analysis of Sino-US digital trade rules and propose policy recommendations on how China can align with high-standard digital trade rules and construct a “Chinese template”.

## 2. Differences in Digital Trade Rules between China and the United States

The digital economy regulations formulated by the United States are hailed as the modernization standard for digital trade in the 21st century, providing significant references for World Trade Organization (WTO) discussions on digital trade and other multilateral trade agreements. The Biden administration is also calling for the global adoption of more open and binding digital economy regulations. Taking the USMCA as an example, the USMCA formally revised the e-commerce chapter of the original North American Free Trade Agreement to a digital trade chapter. Table 1 shows the content of the digital trade chapter in the USMCA, where the digital trade rules significantly exceed other parts of the agreement in scope and number. The main goal is to promote the elimination of regulations that may hinder the free growth of digital trade, building an international framework more conducive to the development of American digital trade<sup>[3]</sup>.

China has participated in discussions and negotiations on e-commerce and information technology products within the WTO framework. Regarding e-commerce (digital trade) issues, China submitted four proposals covering cross-border e-commerce development, trade facilitation, logistics, and payments. At the regional cooperation level, China expressed its intention to join the CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) and DEPA (Digital Economy Partnership Agreement) in 2021. By August 2022, the DEPA Joint Committee had established a working group for China's accession to promote the negotiation process for China's membership. To understand the differences in digital trade rules between China and the United States, we need further comparative analysis based on the specific content of the USMCA and the digital trade agreements that China has already implemented or applied to join.

### 2.1 Differences in National Strategies

The digital trade rules led by the United States focus on its global discourse power in the fields of digital technology and data flows, while China prioritizes national data sovereignty and public information security.

Regarding cross-border data flows (electronic cross-border transmission of information), Article 19.11 of the USMCA stipulates that "each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person." The parties should not restrict or prevent the free flow of "cross-border data" as defined in the USMCA on the grounds of harming national public security or violating government regulations. As shown in Table 2, compared to other agreements such as the RCEP, the USMCA adopts a more open and liberal stance on cross-border data flows, reducing recognition of each party's regulation of cross-border data flows, reflecting the United States' strategy of promoting liberalization and minimizing digital barriers in the field of digital trade. The USMCA's provisions on cross-border data transmission significantly increase the freedom of data flow among the three USMCA

member countries but also somewhat weaken each country's regulatory power and efforts over cross-border data, posing challenges to the implementation of digital trade regulatory policies<sup>[4]</sup>. On the other hand, China has established the "Great Firewall" (GFW), strictly regulating the input of cross-border data through methods such as blocking specific IPs or domains and censoring traffic content. Especially during the rapid development of new media, the United States, leveraging its advanced digital information technology industry, exports American views in digital product content, establishing international discourse hegemony. The "Great Firewall" blocks a large number of mainstream media applications controlled by the United States, such as Google and Yahoo, building its digital barrier to combat forces undermining national security and protecting China's cyber environment security, while also limiting the liberalization of data flows to some extent.

Regarding the non-discriminatory treatment of digital products, Article 19.4 of the USMCA states that each party shall accord to digital products of another party treatment no less favorable than it accords to like digital products. In practice, the digital products the United States can provide to the North American region obviously far exceed those of Mexico and Canada in terms of traffic and quality, making the latter information recipients, with many American digital platform companies becoming channels for disseminating American universal values. In the USMCA framework, the United States can legally and conveniently conduct "cultural invasion" in North America.

## **2.2 Differences in Interest Orientation**

The United States formulates regional digital trade rules primarily oriented towards commercial interests. In contrast, China emphasizes the coordinated development and security of digital trade, focusing more on the impact of data on public interests in the formulation and participation in digital trade rules.

According to the "Science and Engineering Indicators 2016," the United States holds a significant share in global knowledge-intensive industries, particularly leading the world in high-tech manufacturing and knowledge-intensive services, contributing up to 39% of its GDP. As early as 1997, in the "Global Electronic Commerce Framework," the United States established the principle of digital trade being dominated by private enterprises in the e-commerce field, with subsequent policies being expansions and extensions of this foundation<sup>[5]</sup>. Article 19.16 of the USMCA proposes a "ban on forced disclosure of source code," while according to the "Export Control Law of the People's Republic of China," technical materials, software, and other items related to national security, economic interests, and international obligations are subject to export control, including source codes and algorithms. This means that in certain situations, enterprises or individuals may need to review key technologies in source codes provided externally to ensure they do not harm national interests.

Article 12.C.2 of the USMCA defines the concept of encryption protection, prohibiting parties from obtaining encryption keys as a prerequisite for opening domestic markets to foreign technology under the condition that "intellectual property is not infringed"<sup>[6]</sup>. Since 2017, China has implemented the "Cybersecurity Law of the People's Republic of China," which restricts access to some foreign websites. According to this law, the content

of websites needs to be stored within China's territory, ensuring that specific content servers are located in China, and server migration can only proceed with corresponding approval. The RCEP also includes reservation clauses for "free cross-border data flow" and "non-compulsory data localization," allowing member states to refuse to implement treaty content based on their national conditions, which obviously contradicts the USMCA's provisions on "non-compulsory data localization."

### 2.3 Differences in Rule Demands

The core demand of the United States is the cooperation for free cross-border data flow and the elimination of digital trade barriers, seeking a liberalized cyberspace led by the United States. In contrast, China focuses on the development of cross-border e-commerce in global digital trade negotiations.

The differences in rule demands between China and the United States are closely tied to their respective industrial structures. The United States, in its long-term process of "deindustrialization," has lost a large number of physical industries. The main contributions of the US digital economy industry come from information technology services and businesses related to cross-border data flows, with a relatively small proportion of physical industries<sup>[8]</sup>. Therefore, the United States has been trying to address excessive digital trade barriers in digital trade rule negotiations. The provisions on cross-border data free flow and non-compulsory localization of source codes in the USMCA reflect the US's suppression of digital trade protectionism. In contrast, China's core advantage in global digital trade lies in cross-border e-commerce, essentially reflecting its strong manufacturing system. China's e-commerce sales totaled 45 trillion yuan in 2022, making it the world's largest e-commerce market. Thus, in bilateral and multilateral trade negotiations, China focuses more on improving the efficiency of cross-border goods circulation while optimizing payment and logistics services closely related to cross-border transactions. In the "China's Position on WTO Reform" document released in November 2018, China proposed promoting the open and inclusive development of e-commerce topic negotiations.

Regarding the imposition of tariffs on electronic transmissions and digital services taxes (DSTs), Article 19.3 of the USMCA stipulates that "no party shall impose customs duties, fees, or other charges on digital products transmitted electronically between a person of one party and a person of another party." However, according to the United Nations Conference on Trade and Development (UNCTAD), exempting tariffs on electronic transmissions will cause more losses to developing countries, with the United States gaining the most economic benefits<sup>[9]</sup>. On this issue, China holds a reserved position on whether to impose DSTs: on one hand, China's digital trade development benefits from its vast domestic digital consumer market, with domestic digital platforms primarily focusing on the Chinese market, and their revenue share in overseas markets is relatively small; on the other hand, faced with the "American template" aiming for digital trade rule hegemony, Chinese digital platform enterprises face numerous challenges in further expanding into overseas markets<sup>[10]</sup>. Therefore, unlike the United States' urgent stance on strictly exempting tariffs, China proposes temporarily maintaining tariff exemptions in its RCEP and WTO negotiation proposals, advocating that the issue of permanent exemption from digital tariffs be resolved

through WTO's multilateral system negotiations.

#### **2.4 Differences in Dispute Resolution Mechanisms**

The "American template" limits the sovereignty rights of contracting countries in dispute resolution mechanisms, emphasizing the protection of investor rights, ensuring their economic interests through legal means, and promoting its values and standards in international trade agreements. In contrast, China adopts an open stance on the types of arbitrable disputes, seeking to balance investor protection and national sovereignty rights within the framework of trade rules.

According to the investor-state dispute settlement (ISDS) clause in the USMCA, the agreement authorizes individuals and enterprises to directly initiate arbitration against contracting parties, with only investors being able to activate this mechanism. Thus, the ISDS mechanism somewhat limits the sovereign rights of host countries, serving as a tool for the investor's home country to protect its overseas investors' interests<sup>[11]</sup>. Although China joined the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States" (ICSID) in 1990, it has retained the use of the ICSID mechanism for a considerable period. Currently, most of the bilateral investment treaties (BITs) signed by China with countries related to the "Belt and Road" initiative strictly limit the types of disputes that can be submitted to investment arbitration, with about 60% of the treaties stipulating that only disputes involving expropriation compensation amounts are allowed to be resolved through arbitration<sup>[12]</sup>.

Existing reform ideas on the investor-state dispute settlement mechanism can be roughly divided into three types: the gradual improvement of the investment arbitration approach advocated by the United States, the more judicial system-oriented investment court model promoted by the European Union, and the return model under the Calvo doctrine supported by some developing countries. Currently, the gradual investment arbitration reform advocated by the United States and the judicial investment court model led by the European Union have become the two main factions in the reform process<sup>[13]</sup>. China maintains an open attitude towards these dispute resolution mechanisms. The regional free trade agreements that China participates in significantly adopt the investor-state dispute settlement mechanism rules in the US-style bilateral investment treaties (BITs). However, these rules still have issues, such as the lack of legal protection for the implementation of arbitration awards, that need to be resolved<sup>[14]</sup>.

It is evident that although China has conducted relevant negotiations on specific issues regarding joining the CPTPP and DEPA, China's claims in the field of digital trade rules still have clear differences from the currently effective clauses. The subsequent policy measures on digital trade rules will directly affect the results of China's negotiations on aligning with international digital trade rules.

### **3. Policy Recommendations**

The development of digital trade rules between China and the United States is influenced by their respective industrial comparative advantages and the existing international digital trade rule negotiations. As shown in the previous sections and Figure 2, the main differences

between China and the United States are in balancing information security with commercial interests, digital sovereignty, and global discourse power. Digital trade activities in both countries are crucial to the development of global digital trade, and their positions and strategies in formulating digital trade rules will impact other countries' digital trade. On the other hand, the United States, with its early development of the digital economy and relatively complete digital trade regulatory system, tends to externalize domestic rules into international rules, putting China in a passive position in accepting and participating in multilateral negotiations on digital trade rules<sup>[15]</sup>. Therefore, it is necessary for China to continuously promote multilateral negotiations on digital trade rules and establish a "Chinese template" for digital trade rules for the development of both national and international digital trade.

### ***3.1 Balancing Digital Sovereignty and Trade Development to Enhance the Level of Digital Trade Liberalization***

Comparing the USMCA with other agreements reveals that the United States pursues comprehensive openness in digital trade rules, seeking digital trade liberalization under technological hegemony<sup>[16]</sup>. In contrast, China adopts an open yet cautious strategy, recognizing the foundational position of data free flow while emphasizing data localization, regulated cross-border flows, and personal information protection. China should formulate reasonable data governance policies under the premise of protecting national security and personal privacy, clarifying rules for data collection, storage, processing, and transmission, improving domestic data regulatory mechanisms, and strengthening the supervision of cross-border data flows to prevent illegal use or leakage of data. On this basis, China can enhance data sharing, strongly support the free flow of cross-border data within defined limits, optimize the business environment for the digital economy industry, promote the improvement of intellectual property protection laws, encourage technological innovation, and lower the costs and barriers of cross-border e-commerce. Additionally, China should strengthen its digital infrastructure construction, promote the widespread application of 5G, cloud services, and blockchain technology in enterprises and government, consolidate the technical and industrial foundation of its digital trade development, and cultivate and attract talent in the digital trade industry, enhancing the training system for digital trade talent, not only focusing on technological innovation talent but also emphasizing institutional innovation talent.

### ***3.2 Aligning with National Strategic Layout to Promote High-Standard Digital Trade Rules***

At this stage, China should actively respond to the challenges posed by the "American template," represented by the USMCA, to its digital trade development. By adopting a pilot approach, such as establishing free trade ports and free trade pilot zones, regions with mature conditions can first align with high-level international trade rules to enhance the convenience of cross-border factor flows. While the United States maintains a relatively aggressive competitive stance, China should maintain strategic composure, guiding and encouraging various micro entities to explore and deepen other international markets,



continuously advancing the construction of the "Belt and Road" initiative and China-Europe freight trains, and establishing a mechanism for regular evaluation of institutions to ensure the effectiveness and adaptability of domestic and international digital trade rules.

### **3.3 Advancing the Construction of the Digital Silk Road and Building a Digital Economy Corridor**

The "Belt and Road" initiative spans different countries, development stages, cultural religions, and customs, with more mutual benefit and win-win economic cooperation among developing countries along the route. China has close geographical proximity and trade ties with Eurasian countries and ASEAN member states, with smaller value differences compared to China-US differences. In the future, China is likely to prioritize signing digital trade agreements with Asia-Pacific countries<sup>[17]</sup>. Achieving institutional results in digital Silk Road trade negotiations is undoubtedly a significant step in promoting the "Chinese template" and the development of global digital trade. Therefore, on the basis of respecting the sovereignty and national conditions of countries along the route and mutual benefit, China should invest in the construction of digital infrastructure such as fiber optic networks, satellite communications, and data centers in these countries to enhance network coverage and data transmission capacity. Additionally, China should strengthen financial infrastructure construction, improve the RMB cross-border payment system, and promote currency exchange and settlement among countries along the route.

Different preferences for gains and risks among countries have led to the fragmentation of digital trade rules. However, exception clauses based on public policy goals have to some extent promoted the consistency of rule models or claims. Developing countries need to remain highly vigilant against the trend of forming "allied" small group rules by Western Europe and the Americas and further popularizing them<sup>[17]</sup>. The construction and development of the "Digital Silk Road" is a key factor in countering the risks posed to China's digital trade development by the expansion and deepening of the "American template" internationally.

### **3.4 Actively Participating in Multilateral Negotiations on Digital Trade Rules and Promoting China's Voice**

China should play a constructive role in multilateral economic cooperation mechanisms such as the WTO, G20, and APEC to advance digital trade issues. Since the interests of developing and developed countries differ significantly on issues such as digital trade tariffs and cross-border data free flow, China should consider the interests of all parties in multilateral negotiations and help developing countries integrate into the global digital trade value chain by optimizing exception clauses. Leveraging opportunities to lead regional dialogues and cooperation, China should actively promote its policy positions and claims in digital trade through official statements, media reports, academic seminars, and other channels. Inviting representatives from international organizations and foreign governments to participate in digital economy forums and seminars held in China can enhance mutual understanding and trust. China should innovate and improve ISDS rules in supplementary agreements of multilateral economic cooperation mechanisms, promote the diversification

process of the ISDS system, and open more robust investment dispute resolution paths for Chinese investors and the government. Additionally, China should push for the establishment of digital trade courts and diversified dispute resolution mechanisms for digital trade, using international trade fair platforms to showcase China's achievements and visions in digital trade, publicize the integration results of the digital economy and physical industries, and deepen China's rule discourse power in the international digital trade market.

### Note

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