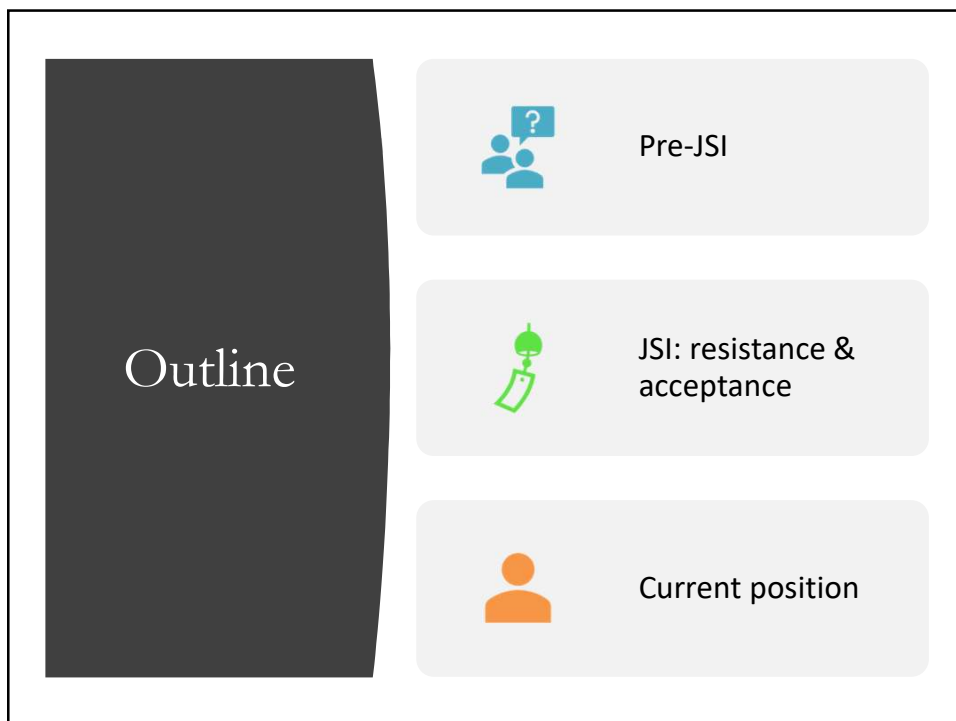




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- Gao, Henry S., Across the Great Wall: E-commerce Joint Statement Initiative Negotiation and China (September 19, 2020). Available at SSRN: <https://ssrn.com/abstract=3695382> or <http://dx.doi.org/10.2139/ssrn.3695382>



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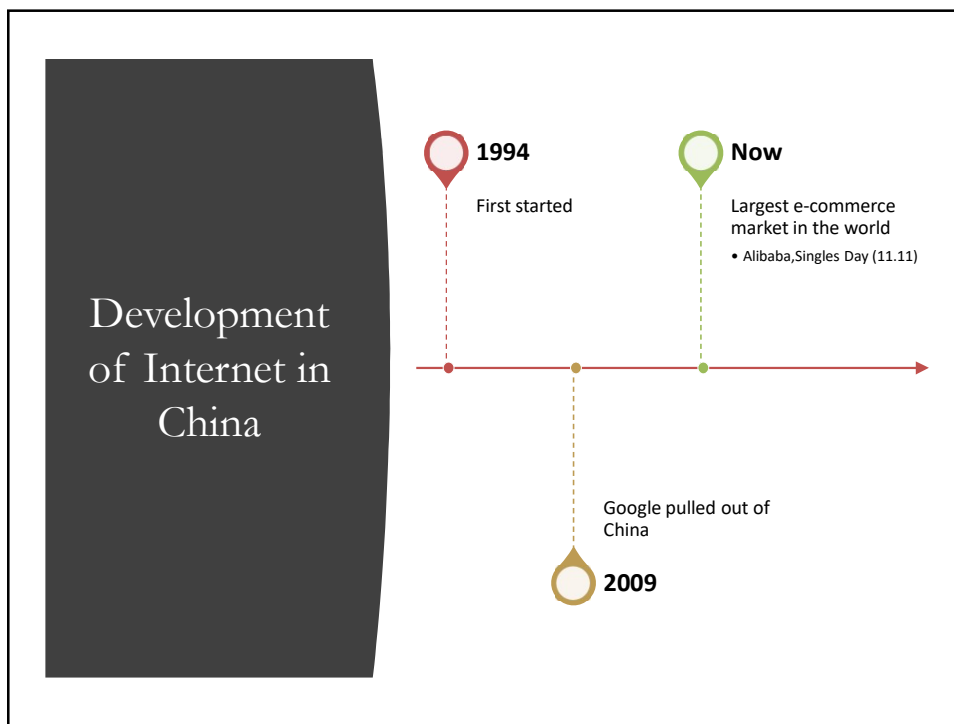
3

1987:  
First email  
from China

(Message # 50: 1532 bytes, KEEP, Forwarded)  
 Received: from unika1 by irau11.germany.csnet id aa21216; 20 Sep 87 17:36 MET  
 Received: from Peking by unika1, Sun, 20 Sep 87 16:55 (MET dst)  
 Date: Mon, 14 Sep 87 21:07 China Time  
 From: Mail Administration for China <MAIL@ze1>  
 To: Zorn@germany, Rotert@germany, Wacker@germany, Finken@unika1  
 CC: lhl@parmesan.wisc.edu, farber@udel.edu,  
 jennings%irlean.bitnet@germany, cic%relay.cs.net@germany, Wang@ze1,  
 RZL1@ze1  
 Subject: First Electronic Mail from China to Germany

"Ueber die Grosse Mauer erreichen wie alle Ecken der Welt"  
 "Across the Great Wall we can reach every corner in the world"  
 Dies ist die erste ELECTRONIC MAIL, die von China aus ueber Rechnerkopplung  
 in die internationalen Wissenschaftsnetze geschickt wird.  
 This is the first ELECTRONIC MAIL supposed to be sent from China into the  
 international scientific networks via computer interconnection between  
 Beijing and Karlsruhe, West Germany (using CSNET/PMDF BS2000 Version).  
 University of Karlsruhe Institute for Computer Application of  
 -Informatik Rechnerabteilung- State Commission of Machine Industry  
 (IRA) (ICA)  
 Prof. Werner Zorn Prof. Wang Yuen Fung  
 Michael Finken Dr. Li Cheng Chiung  
 Stefan Paulisch Qiu Lei Nan  
 Michael Rotert Ruan Ren Cheng  
 Gerhard Wacker Wei Bao Xian  
 Hens Leckner Zhu Jiang  
 Zhao Li Hua

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6

## FTAs

2015 FTAs with Korea and Australia

Main provisions:

- Korea: moratorium on customs duties on electronic transmission; electronic authentication and electronic signature; protection of personal information in e-commerce; paperless trading; cooperation
- Australia: transparency; domestic legal frameworks governing electronic transactions; equivalent level of protection

But still weak with explicit rejection of the DS chapter

7

## Rapid development of e-commerce

Biggest e-commerce market in the world


4 of the top 10 e-commerce firms in the world:

- Baidu, Alibaba, Tencent, JD

Heavy regulations

- Hardware & network: authorized gateway, no VPN
- Content: no safe harbor rule re ISP liability
- Data localization requirements: 2017 Cyber-security Law
- Source code: 2014 Banking Rules

8



- Platform to collectively forge rules governing e-commerce, exchange best practices, build future facilities and achieve inclusive trade
- Three components
  - Rules level: platform for stakeholders to discuss and incubate new rules and standards for the digital age: digital border, tariff policy, data flow, credit system and consumer protection
  - Commercial level: build the new infrastructure for the internet age: e-commerce platform, finance and payment, logistics and storage, trade-related services, marketing and education and training
  - technological level: technological framework based on the internet, big data and cloud computing, internet of things, and artificial intelligence.
- More specific examples:
  - tariff exemption for SMMEs < 1 million USD of annual exports
  - 24-hour customs clearance
  - expedition of customs procedures and logistics
- Started operation in Malaysia in Nov 17

9



2017 MC11: Refused to join the JSI

2019 WEF: Join the JSI at the last minute

- Amb Zhang: to “reinvigorate the negotiating function of the WTO, and shore up confidence in the multilateral trading system and economic globalisation”
- But doesn’t like the text of the joint statement

10

# Joint Statement

JOINT STATEMENT ON ELECTRONIC COMMERCE

Ministers representing the following Members of the World Trade Organization (WTO): Albania; Argentina; Australia; Bahrain; Brazil; Brunei Darussalam; Canada; Chile; China; Colombia; Costa Rica; El Salvador; European Union; Georgia; Honduras; Hong Kong, China; Iceland; Israel; Japan; Kazakhstan; Korea, Republic of; Kuwait, the State of; Lao PDR; Liechtenstein; Mexico; Moldova, Republic of; Malaysia; Mongolia; Montenegro; Myanmar; New Zealand; Nicaragua; Nigeria; Norway; Panama; Paraguay; Peru; Qatar; Russian Federation; Singapore; Switzerland; Chinese Taipei; Thailand; the former Yugoslav Republic of Macedonia; Turkey; Ukraine; United Arab Emirates; United States; and Uruguay, welcome the progress made toward WTO negotiations on electronic commerce since the Eleventh WTO Ministerial Conference at Buenos Aires.

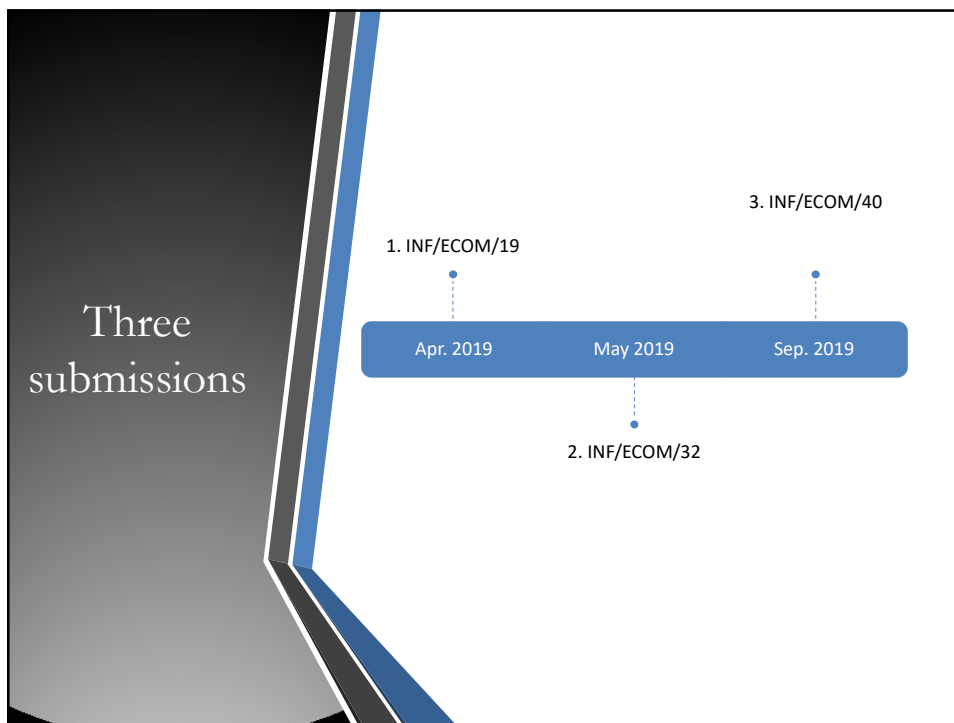
We confirm our intention to commence WTO negotiations on trade-related aspects of electronic commerce.

We will seek to achieve a high standard outcome that builds on existing WTO agreements and frameworks with the participation of as many WTO Members as possible.

We recognise and will take into account the unique opportunities and challenges faced by Members, including developing countries and LDCs, as well as by micro, small and medium sized enterprises, in relation to electronic commerce.

We continue to encourage all WTO Members to participate in order to further enhance the benefits of electronic commerce for businesses, consumers and the global economy.

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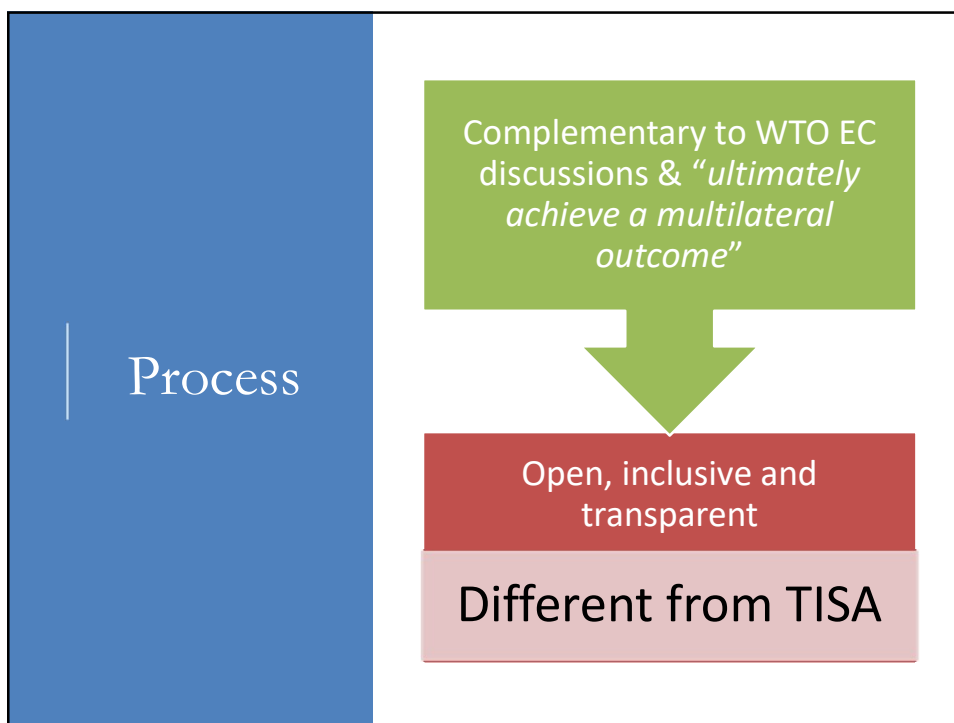


12

General position

- Objective: Development
  - *“tapping into the great potential of electronic commerce, helping Members, particularly developing Members and LDCs, to integrate into global value chains, bridge the digital divide, seize development opportunities and benefit from inclusive trade, and hence better participating in the economic globalization.”*

13



14

**Focus**

- *“focus on the discussion of crossborder trade in goods enabled by the internet, together with relevant payment and logistics services”*
  - Alibaba, Alipay, BRI & Courier services
- *“while paying attention to the digitalization trend of trade in services, and explore the way to develop international rules for electronic commerce centering on a sound transaction environment and a safe and trustworthy market environment.”*

15

**Specific Issues**

Definition:	What is (not) covered: <i>“trade-related aspects of electronic commerce”</i>
Trade facilitation measures:	<p>Customs procedures: expedition, paperless trading, moratorium on customs duties</p> <p>Legal framework: recognition of Electronic Signatures, Electronic Authentication, &amp; Electronic Contracts .</p>

16



## Specific Issues - contd

### Safety:

- Online Consumer Protection
- Personal Information Protection
- Unsolicited Electronic Commercial Messages

### Security:

- Internet sovereignty & cyber security
- Focus on national rather than commercial interests

### Development:

- Electronic Commerce for Development Program

17

## Other issues?

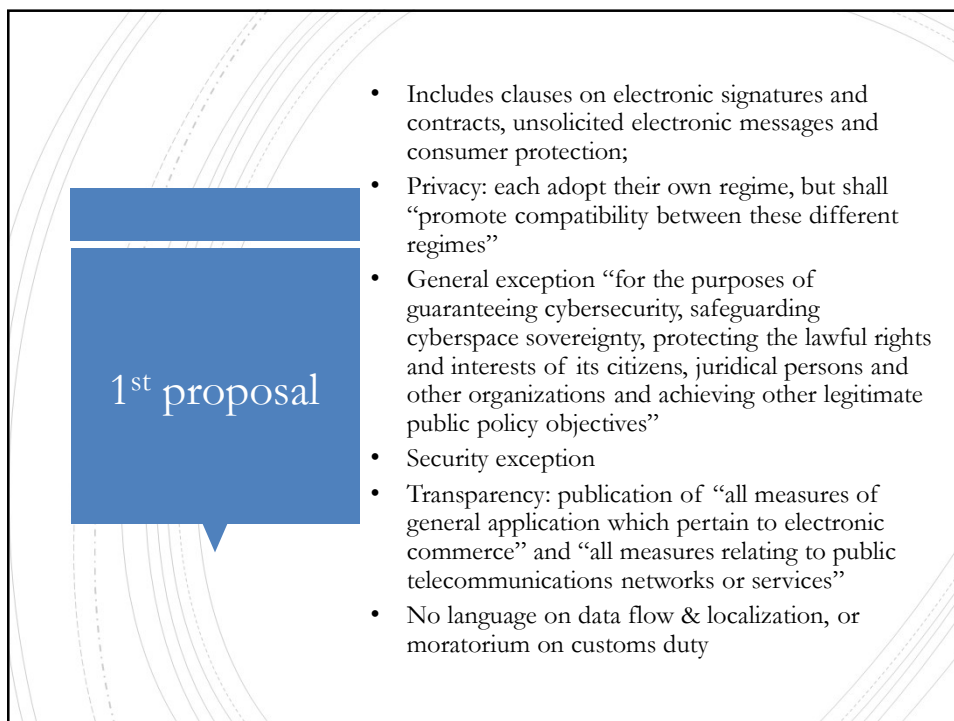
### Key US demands:

- Free flow of data
- Prohibition on data localization
- Forced transfer of source code

### China's position:

- *“more exploratory discussions are needed before bringing such issues to the WTO negotiation”*
- *“data flow orderly in compliance with Members' respective laws and regulations”*

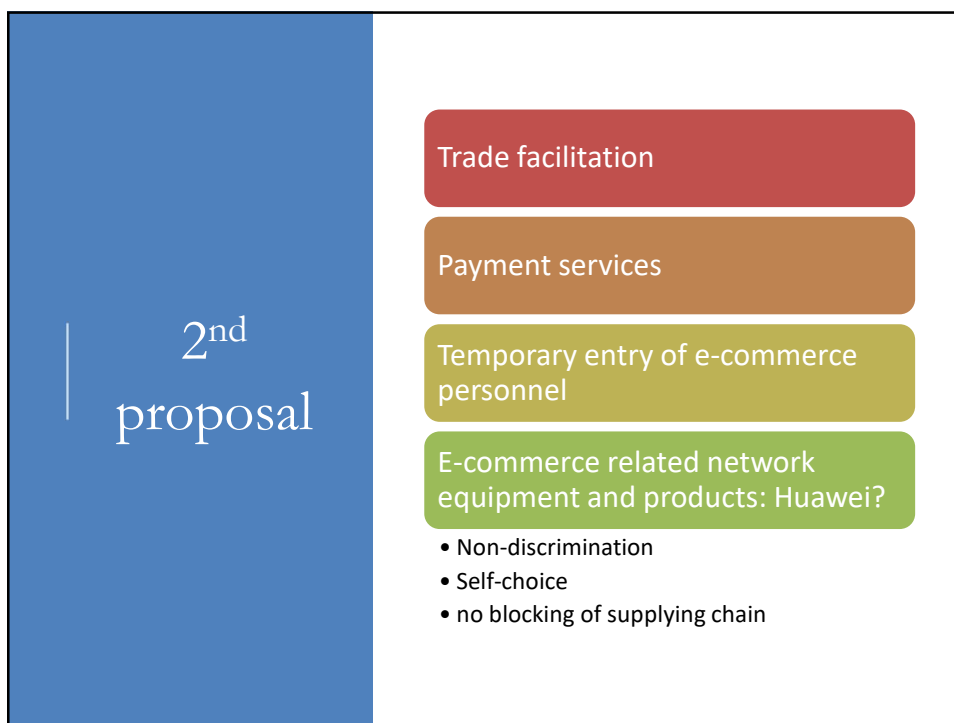
18



1<sup>st</sup> proposal

- Includes clauses on electronic signatures and contracts, unsolicited electronic messages and consumer protection;
- Privacy: each adopt their own regime, but shall “promote compatibility between these different regimes”
- General exception “for the purposes of guaranteeing cybersecurity, safeguarding cyberspace sovereignty, protecting the lawful rights and interests of its citizens, juridical persons and other organizations and achieving other legitimate public policy objectives”
- Security exception
- Transparency: publication of “all measures of general application which pertain to electronic commerce” and “all measures relating to public telecommunications networks or services”
- No language on data flow & localization, or moratorium on customs duty

19



2<sup>nd</sup> proposal

- Trade facilitation
- Payment services
- Temporary entry of e-commerce personnel
- E-commerce related network equipment and products: Huawei?
  - Non-discrimination
  - Self-choice
  - no blocking of supplying chain

20

<p>Is a deal possible?</p>	<hr/> <p>Data flow?</p> <hr/> <p>Data localization?</p> <hr/>
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21

<ul style="list-style-type: none"><li>• Gao, Henry S., Across the Great Wall: E-commerce Joint Statement Initiative Negotiation and China (September 19, 2020). Available at SSRN: <a href="https://ssrn.com/abstract=3695382">https://ssrn.com/abstract=3695382</a> or <a href="http://dx.doi.org/10.2139/ssrn.3695382">http://dx.doi.org/10.2139/ssrn.3695382</a></li></ul>	 <p><b>SCAN ME</b></p>
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22