

APEC ODR and More

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1. Increasing Demands for ODR

- E-Commerce has drastically increased world-widely.

Economy	Online retail sales (\$ billions)			Retail sales (\$ billions)			Online share (% of retail sales)		
	2018	2019	2020	2018	2019	2020	2018	2019	2020
Australia	13.5	14.4	22.9	239	229	242	5.6	6.3	9.4
Canada	13.9	16.5	28.1	467	462	452	3.0	3.6	6.2
China	1,060.4	1,233.6	1,414.3	5,755	5,957	5,681	18.4	20.7	24.9
Korea (Rep.)	76.8	84.3	104.4	423	406	403	18.2	20.8	25.9
Singapore	1.6	1.9	3.2	34	32	27	4.7	5.9	11.7
United Kingdom	84.0	89.0	130.6	565	564	560	14.9	15.8	23.3
United States	519.6	598.0	791.7	5,269	5,452	5,638	9.9	11.0	14.0
Economies above	1,770	2,038	2,495	12,752	13,102	13,003	14	16	19

Source: UNCTAD, based on national statistics offices

<https://unctad.org/news/global-e-commerce-jumps-267-trillion-covid-19-boosts-online-sales>

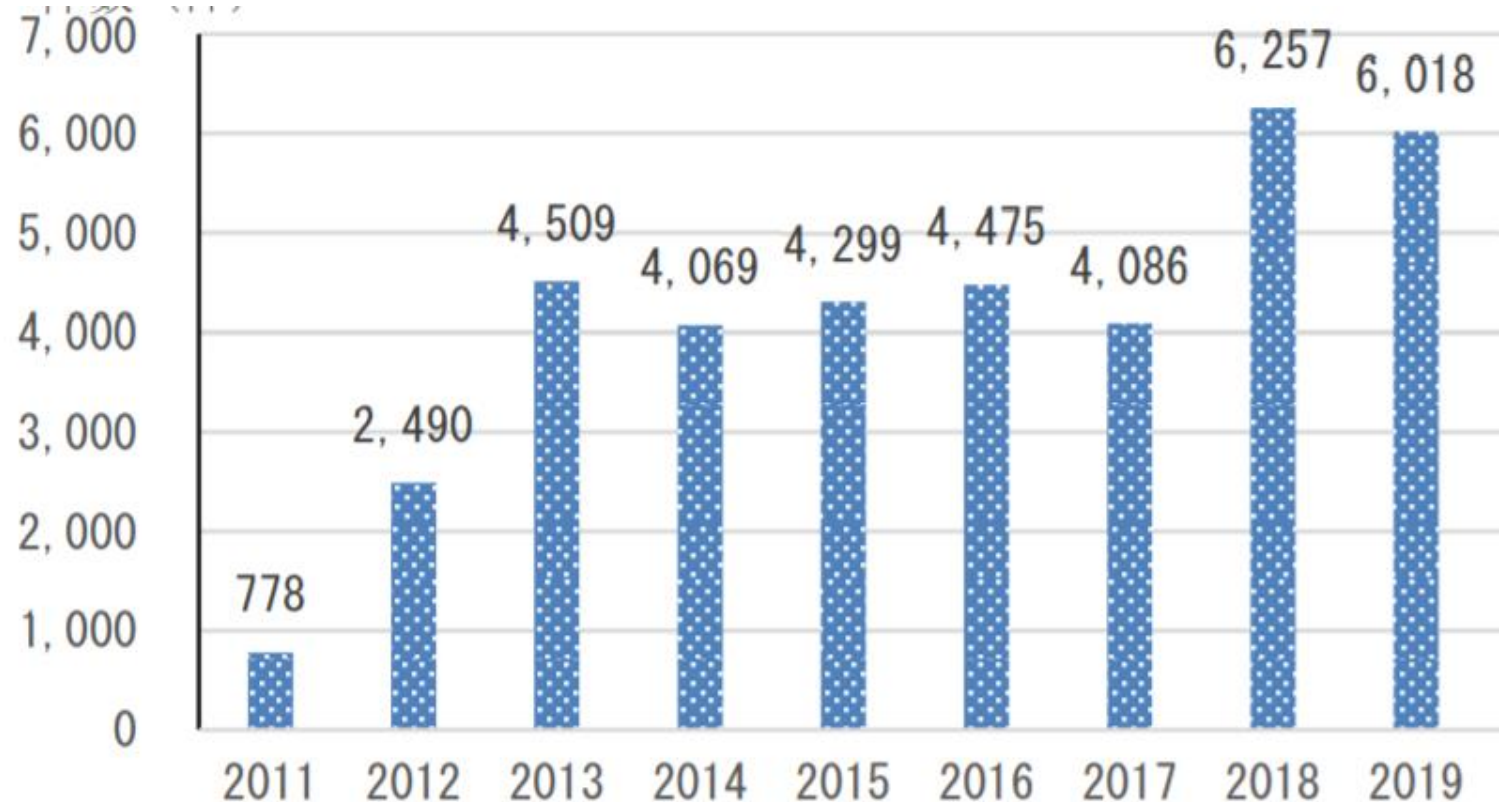
1. Increasing Demands for ODR

- Wide use of E-Commerce has increased the number of related disputes, including cross-border ones.

<Number of the Complains filed in Cross-border Consumer Center Japan>

http://www.kokusen.go.jp/pdf_dl/nenpou/2019_nenpou.pdf

2011	778 cases
2012	2,490 cases
2013	4,509 cases
2014	4,069 cases
2015	4,299 cases
2016	4,475 cases
2017	4,086 cases
2018	6,257 cases
2019	6,018 cases






1. Increasing Demands for ODR

- In the online shopping, average of the order value of consumers is approximately more or less 50 USD.

<Amazon Prime Day 2021: A look beyond the topline numbers (Jessica Young | Jul 2, 2021)>

<https://www.digitalcommerce360.com/2021/07/02/amazon-prime-day-2021-a-look-beyond-the-topline-numbers/>

Consumer buying patterns, 2019-2021

		Prime Day 2021 (June 21-22)	Prime Day 2020 (Oct. 13-14)	Prime Day 2019 (July 15-16)
	Orders per household	2.8	2.9	2.6
	Order size (\$)	\$52.33	\$54.34	\$58.77
	Order size (no. of items)	1.7	1.7	1.7

1. Increasing Demands for ODR

- At the time of dispute, litigation or traditional alternative dispute resolutions cannot substantially resolve the disputes, especially cross-border ones.
- ADR Systems using online (Online Dispute Resolution) for the easy and speedy dispute resolution have been gradually and widely used for E-commerce related disputes until now.
- For the harmonization of ODR schemes and for the smooth introduction of ODR systems in the Emerging Market Countries, International Organizations have issued or started to examine international legal instruments for ODR.

1. Increasing Demands for ODR

- **UNCITRAL Technical Notes on Online Dispute Resolution (2010-16)**

https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf

- **Model Procedural Rules for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes (2017-present)**

http://mddb.apec.org/Documents/2019/EC/EC2/19_ec2_022.pdf

- **ISO TC321 (Transaction Assurance in E-commerce) ODR Project (2022-)**

2. APEC ODR Project after the UNCITRAL ODR Project

UNCITRAL Technical Notes on Online Dispute Resolution (2010-16)

At the beginning stage, UN Online **Arbitration** Rules were tried to established:

- 1) A **single arbitrator** chosen by ODR Administrator
- 2) All awards shall or should be **in public** on web-site except private information
- 3) Substantial **Enforcement by Trustmark system**
- 4) World-wide **Uniform Rules for the Merits !**

2. APEC ODR Project after the UNCITRAL ODR Project

UNCITRAL Technical Notes on Online Dispute Resolution (2010-16)

But ... gradually ... a serious issue appeared:

Validity of the Pre-Dispute Arbitration Agreement
between a Consumer and a Business Corporation

US and other countries: **Of course, it should be valid !**

EU, Japan and other countries:

Consumer should have a cancel right !

2. APEC ODR Project after the UNCITRAL ODR Project

UNCITRAL Technical Notes on Online Dispute Resolution (2010-16)

Regulations in EU (and Japan):

Since **A Consumer should not be removed its right to go to Courts**, the Consumer shall have a right to cancel the Pre-Dispute Arbitration Agreement

ex. **ADR Directive 2013/11/EU**

ODR Regulation 524/2013

2. APEC ODR Project after the UNCITRAL ODR Project

UNCITRAL Technical Notes on Online Dispute Resolution (2010-16)

UNCITRAL Technical Notes on ODR

http://www.uncitral.org/pdf/english/texts/odr/V1700382_English_Technical_Notes_on_ODR.pdf

- *No Legal Effect*
- *Three Steps but No Explanation about the Third Step*

Since the rules to be established there were a model **private** rules with **no overring effect to the regulations of each State**, we should have compromised and created more substantial model rules at UNCITRAL.

2. APEC ODR Project after the UNCITRAL ODR Project

APEC Model Procedural Rules on ODR of Cross-Border B2B Disputes (2017-)

EU is now establishing its own ODR platform.

But other States **still need** uniform rules and schemes for the global ODR platform with negotiation and the third party's interventions.

APEC started its project to establish another global ODR platform.

UNCITRAL and UNIDROIT assist the APEC Project on ODR.

B to C issues were avoided, at least, at the beginning stage.

2. APEC ODR Project after the UNCITRAL ODR Project

APEC Model Procedural Rules on ODR of Cross-Border B2B Disputes (2017-)

APEC will not work as a provider of the ODR Platform

Instead, APEC will encourage Members to collaborate for the wide use of ODR, provide model procedural rules and encourage many ODR providers to be listed at the APEC Satellite Website.

Now a document of *APEC Collaborative Framework on ODR* and *APEC Model Procedural Rules on ODR* has been approved.

It is the substantially same as the final draft on Model Procedural Rules of UNCITRAL. http://mddb.apec.org/Documents/2019/EC/EC2/19_ec2_022.pdf

2. APEC ODR Project after the UNCITRAL ODR Project

APEC Model Procedural Rules on ODR of Cross-Border B2B Disputes (2017-)

APEC Collaborative Framework on ODR aims to assist Member States (Economies) to encourage the wide use of ODR in its jurisdiction and to assist business corporations, including e-commerce market providers, to actively use ODR in the APEC region.

Academic Institutions (*Lead Academics*) in the APEC region jointly assist to maintain a website on the Satellite Website of APEC, where ODR Providers adopting *APEC Model Procedural Rules on ODR* are listed.

<https://www.apec.org/seli/>

The ODR Providers on the list are regularly monitored by *Lead Academics*

2. APEC ODR Project after the UNCITRAL ODR Project

<https://www.apec.org/seli/>

The screenshot displays the APEC website's overview page for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes. The page features a navigation menu with categories like News, Groups, Topics, Projects, and Declarations and Statements. The main content area is titled "Overview" and provides a detailed description of the framework, including its purpose, the role of ODR providers, and the APEC Economic Committee's involvement. The page also lists upcoming events and provides contact information for the framework.

THE APEC COLLABORATIVE FRAMEWORK FOR ODR OF CROSS-BORDER B2B DISPUTES

Overview

Under [the APEC ODR Collaborative Framework](#), APEC partners with ODR providers located in APEC economies that have opted-in to the APEC ODR Collaborative Framework.

Platform hosts and ODR providers shall provide their own platform, to offer online negotiation, mediation and arbitration and to comply with the APEC ODR Collaborative Framework and Model Procedural Rules.

The APEC Economic Committee promotes ODR providers on its website and encourages small businesses to use them to resolve commercial cross-border disputes.

ODR providers shall keep all information confidential, maintain secure databases and websites, and report to APEC on the success of the initial pilot. They shall also charge fees proportionate to the amount in dispute.

Furthermore, ODR providers should use modern technologies such as artificial intelligence wherever possible.

Partnering ODR providers will be responsible for process issues, including fairness, due process, transparency, accountability, neutral selection and appointment and the performance of their ODR platforms.

The listed ODR providers will be governed by the relevant laws and regulations of the respective participating economies. Additionally, if a listed ODR provider is not in compliance with any part of the APEC ODR Collaborative Framework and Model Procedural Rules, APEC may remove the ODR provider from its list of partnering ODR providers.

Participating APEC economies should encourage businesses, especially micro, small and medium sized businesses (MSMEs), to use the services of ODR providers to resolve appropriate disputes. APEC will enlist other entities for outreach to businesses, such as the APEC Business Advisory Council (ABAC) and local chambers of commerce.

3. And More for the Worldwide Rules

ISO TC321 (Transaction Assurance in E-commerce) ODR Project

The Project for **TC321** was proposed by China.

Japan proposed to use this ISO standards as a **Trustmark** for the implementation of a settlement achieved in the scheme of ODR.

Customers, including Consumers, **can easily know a good e-commerce vender with the ISO mark**, which means the vender promised to provide ODR Systems for complains from Customers and to obey a settlement achieved in the ODR Scheme.

Basic Principles, Technical Conditions and Operational Manuals on ODR are expected to be established as one of the ISO Standards.

3. And More for the Worldwide Rules

Another UNCITRAL Project for new types of dispute resolution with IT?

The rules to be established at the previous ODR WG of UNCITRAL were a model **private** rules with **no overruling effect to the regulations of each State**.

Nevertheless, we could **not compromise** considering **each State's existing regulations too much**.

Demands for ODR are much more increasing now.

Why not **another WG** for new types of **dispute resolution** using **information technologies, including Online Dispute Resolution**, at UNCITRAL?

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