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DIGITAL TRADE IN THE ERA OF RESILIENT ECONOMIES

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Technological innovations have continually revolutionised international trade, as advancements in transportation and communication make the process of exchanging goods and services easier. The digitisation of the global economy has continued this trend, with the share of digitally-enabled trade perpetually growing, representing 25% of global trade in 2020¹. Cross-border data flows underpin not only the export of digital services but increasingly participate in the production of sophisticated electronic products across global value chains and facilitate trade between digitally connected businesses and consumers across the world through online e-commerce platforms. Digitalisation of procedures like certification through e-signatures also simplifies administrative burdens, allowing trade to be both more efficient and transparent.

The reduction of barriers to market access provides particular opportunities for Small and Medium Enterprises (SMEs) to internationalise their activities and find customers abroad, allowing them to participate in world trade without needing the resources of large firms and multinational corporations.

The importance of digital services to the resilience of global economy faced with shocks such as supply chain disruptions was most recently illustrated by the COVID19 pandemic, during which firms relied on remote work software and video conference applications to mitigate the impact of physical distancing restrictions on operations.

However, while the digitisation of trade presents key opportunities, these come with important challenges related to the divide in access to digital infrastructure and the need to build an adequate international regulatory framework. As such, it is imperative to develop clear strategies for states to tackle these issues and reduce unnecessary barriers to digital trade in order to unlock the full potential of these services for the global economy.

Accordingly, in January 2019, 76 WTO members committed to initiating plurilateral negotiations on e-commerce in a joint statement that agreed to “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”. Following the final negotiating round of 2023, participants in the Joint Statement Initiative on Electronic Commerce (JSI) announced a ‘substantial conclusion’ in negotiations relating to the three broad areas of digital trade facilitation, open digital environment and business and consumer trust, with co-conveners pointing to the conclusion of articles on various issues ranging from paperless trade, online consumer protection, cybersecurity, and e-signatures.

¹ OECD (2023) “Key issues in Digital Trade - OECD Global Forum on Trade 2023: Making Digital Trade Work for All” <https://www.oecd.org/trade/OECD-key-issues-in-digital-trade.pdf> p.1

Nevertheless, the current package still lacks agreement on several key areas, most notably a deal between participants on the status of the moratorium on electronic transmissions, as well as proposals related to regulations on data flows and localisation, as countries such as the US have expressed the need to maintain regulatory policy space as domestic debates persist. Pushing for agreement on the outstanding issues of extension of the e-commerce moratorium and the limiting of data flow restrictions should thus count among the main priorities both within negotiations over the e-commerce JSI and among the broader multilateral discussions with WTO members.

In the meantime, there should also be a solution as regards the “legal architecture” of the agreement. Regardless of the final form of the agreement, this will require consensus between all contracting parties. Indeed, the conclusion of ‘open’ plurilateral agreements (whose benefits are spread to all contracting parties) is only possible when a ‘critical mass’ of members’s share of international trade is reached, while ‘closed’ plurilaterals (whose benefits are reserved to participants in the agreement) need the consent of all WTO members to be approved. Plans to ultimately integrate this agreement into the broader multilateral framework of WTO rules will also naturally require the consensus of all members.

I. Extending the moratorium on custom duties for electronic transmissions

In 1998, WTO members agreed to continue the practice of not imposing custom duties on electronic transmissions, broadly defined as the delivery of ‘digitizable products’ like films, video games, e-books, music and software. Since then this moratorium has been extended every two years at the WTO Ministerial Conference and has promoted the growth of digital trade. Nevertheless, certain countries have started to express concerns about the potential costs associated with the extension of the moratorium on their economies. As net importers of digitalised products, these developing countries point to estimations of foregone customs revenue. The last Ministerial Conference saw members commit to intensifying discussion on the scope, definition and impact of the Moratorium while also seeking a permanent solution. Unless a new agreement is reached to extend it, the moratorium is set to expire on the 31 March 2024.

However, the renewal of the e-commerce moratorium should be an essential priority for MC13, as should advancing negotiations to make the measure permanent. Indeed, the OECD’s own estimate of foregone customs revenue place it on average at only 0.68% of total customs revenue and 0.1% of total government revenue, when calculations account for the other commitments made by countries that restrict their ability to levy tariffs on electronic transmissions.² Such revenues could thus easily be compensated by revenue from VAT and other internal taxes, including on digital services. Meanwhile, the imposition of such tariffs would risk undermining the free flow of digital services, potentially reducing digital imports and exports in low and middle income countries in particular. Yet raising the costs of digital imports would only lower the competitiveness of domestic firms while making it more difficult for SMEs to access digital tools key to their international growth. Accordingly, pushing for the extension of the e-commerce moratorium at the upcoming 13th Ministerial Conference is of major importance to protect the efficiency gains and development potential of digital trade.

II. Striking a balance between limiting data flow restrictions and data protection and consumer privacy

In all its forms, digital trade relies on the cross-border flow of data, which continues to grow at an unprecedented rate. However, the last decade has seen a strong trend towards further restrictions on the free flow of data by national governments³. These restrictions are motivated by a variety of policy objectives, such as concerns over the treatment of citizens’ personal information by companies based in foreign jurisdictions, protectionist attempts at channelling data to the development of domestic digital industries and their competitiveness, a desire to limit the spread of data deemed sensitive for national security, or making data more easily accessible for auditing and

² OECD (2023) “Understanding The Potential Scope, Definition And Impact Of The WTO E-Commerce Moratorium” OECD Trade Policy Paper <https://www.oecd-ilibrary.org/docserver/59ceace9-en.pdf?expires=1704707239&id=id&accname=ocid194994&checksum=31DF44F15C07EE97952BAD353E422B8B> p.25

³ Ferracane, M.F (2017) “Restrictions on Cross-Border data flows: a taxonomy” European Centre for International Political Economy Working Paper <https://ecipe.org/wp-content/uploads/2017/11/Restrictions-on-cross-border-data-flows-a-taxonomy-final1.pdf> p.2

regulatory purposes. Particularly in the case of concerns over privacy, the level of restrictiveness of countries on the export of data depends on the level of adequacy or equivalence of the third country's data protection regulations, usually established by public bodies such as data protection authorities.

As in other areas, regulatory divergence thus constitutes a risk of posing non tariff barriers to the data flows necessary for digital trade. In addition, local storage and processing requirements are a major impediment to the liberalisation of cross border data flows and harm the efficiency gains achieved by the structuring of global value chains. Such data localisation requirements are only growing in number as well as becoming more restrictive, with nearly a hundred of these measures across 40 countries by early 2023⁴, and two thirds imposing a local storage and processing requirements combined with a restriction of the possibility of any data export at all⁵. Considering the importance of cross border data flows not only to a range of high value exporting industries such as IT, media and manufacturing, but also sectors like healthcare that rely on international research and development cooperation and digital technology intensive products, the continued imposition of such restrictions should be avoided. Indeed, according to estimates from a 2021 Frontier Economics report commissioned by Digital Europe, the difference between a moderately liberalising path and a moderately restrictive path would amount to €2 trillion over a ten year period to 2030⁶.

Yet, it is important to strike the right balance between the promotion of free data flows and addressing threats towards consumer privacy and data protection arising from digital trade, notably to the fundamental rights and protections afforded to citizens, for example under the 2016 General Data Protection Regulation (GDPR). Consequently, the EU has embraced an approach to data flows that stresses that high standards of data protection and the liberalisation of digital trade should come hand in hand, for example in bilateral agreements with countries such as Japan. In order to promote this balanced approach internationally, these actions should be accompanied with efforts at the WTO level, pushing for global rules on tackling data flow restrictions while preserving legitimate policy space for digital regulation in plurilateral agreements such as the Joint Statement Initiative on E-Commerce.

III. Increasing connectivity and overcoming the digital divide

E-commerce and trade in digital services relies on access to the internet and digital infrastructure. Yet while digitalisation continues to grow, there remains a significant divide in internet access across the world, with 2.7 billion people remaining unconnected and more than half of the global population not having access to high-speed broadband⁷. This reflects inequalities in digital infrastructure between levels of development, but also across gender, age, socio-economic class and rural vs urban populations. Indeed, 264 million fewer women had internet access than men in 2022, while the number of internet users in urban areas is double that in rural ones⁸. These disparities are also present within the European Union, with data from Eurostat indicating that 2.4% of the 450 million people in the EU do not possess the financial means to afford an internet connection⁹, limiting their access to job opportunities and essential public services. Digital inclusion among poorer segments of the population also varies considerably across member states with countries such as Bulgaria and Romania presenting large shares of unconnected citizens among the population while these proportions are much lower in places like Denmark and Finland¹⁰.

In order to make the availability of open digital trade's benefits more inclusive, the EU should strive to spread access to the internet and ICT networks evenly within its single market as well as in developing countries. At home, the EU has established clear connectivity targets as part of its

⁴ OECD (2023) "The Nature, Evolution And Potential Implications Of Data Localisation Measures" OECD Trade Policy Paper <https://www.oecd-ilibrary.org/docserver/179f718a-en.pdf?expires=1704823209&id=id&accname=ocid194994&checksum=1DA9FB430BB232770507189CACACC1D5> p.3

⁵ ibid

⁶ Frontier Economics (2021) "The Value Of Cross-Border Data Flows To Europe: Risks And Opportunities" <https://www.digitaleurope.org/resources/the-value-of-cross-border-data-flows-to-europe-risks-and-opportunities/> p.6

⁷ International Telecommunication Union (2022) "Internet surge slows, leaving 2.7 billion people offline in 2022" <https://www.itu.int/en/mediacentre/Pages/PR-2022-09-16-Internet-surge-slows.aspx>

⁸ Signé, L. (2023) "Fixing the global digital divide and digital access gap" Brookings Instituturw <https://www.brookings.edu/articles/fixing-the-global-digital-divide-and-digital-access-gap/>

⁹ Bhatia, V. (2023) "Bridging the digital divide in the European Union" <https://www.weforum.org/agenda/2023/08/how-to-bridge-the-digital-divide-in-the-eu/>

¹⁰ ibid

'Digital Decade' framework, which aims to empower people and businesses for a successful digital transformation of the economy by 2030. Nonetheless, according to the first state of the Digital Decade report released in 2023, the EU is thus far falling short of its objectives with goals like expanding 5G coverage and the digitalisation of companies remaining below targeted levels¹¹. A renewed push for investment is therefore needed, not only in the deployment of a digital infrastructure network but also policies aimed at developing the digital skills of businesses and citizens in training and education in order to benefit from such access.

Meanwhile, the EU is also supporting infrastructure development and capacity building with trading partners. Through its 'Digital4Development' approach, the EU has mainstreamed digital technologies into its development policy by working with the private sector on promoting access to affordable and secure broadband connectivity, developing digital literacy and skills, fostering digital entrepreneurship and job creation, and supporting the use of digital technologies as an enabler for sustainable development¹². Along with financial support, the EU also works closely with partners to offer policy recommendations on harnessing the sustainable development and job creation potential of digital trade in partnerships such as the EU-African Union Digital Economy Task Force¹³. Bridging the discrepancies in access to digital services between countries and within societies remains a necessary prerequisite to building an inclusive and sustainable international digital economy.

IV. Promoting Paperless Trade

Another major efficiency gain that lies in digital trade is the digitisation of cross-border exchange in trade related documents such as purchase orders and regulatory certificates between companies, buyers, supply and logistic providers and custom and regulatory agencies. According to the International Chamber of Commerce, 4 billion documents move across the international trade ecosystem at any given time, with a typical transaction involving up to 27 documents, and taking up to 2-3 months to process¹⁴. The transition from paper-based to an electronic-based system for the handling of these documents would present significant efficiency gains for traders, allowing them to save both time and money in handling administrative barriers and avoiding unnecessary bottlenecks in supply chains. This is especially relevant for small and medium enterprises for whom trade documentation costs may come into consideration in deciding over the export of products of lower value. The advantages of paperless trade also lie in traceability, as online-based documentation systems allow the provision of real-time information on the movement of goods and services which can be used by government agencies for national security considerations or to monitor respect for regulatory standards. Digital technologies like the blockchain may additionally enable a more secure form of data collection than the prevailing paper-based documentation of current international trade transactions.

The WTO's Trade Facilitation Agreement already contains multiple provisions encouraging the electronic exchange of transaction data, while more than half of preferential trade agreements since 2005 address the need for custom administrations and traders to adopt paperless trade¹⁵. However, these provisions generally represent soft commitments which do not necessarily translate to action by governments. A significant step forwards was nevertheless taken with the UK's recent Electronic Trade Documents Act, which allows for trade documents such as bills of lading and exchange in electronic form to receive the "same legal treatment, effects and functionality" as those in paper form. The WTO should start to discuss the legal recognition of electronic trade administration documents similar to that implemented by the UK and supporting the development of countries' electronic single window interfaces for the submissions of regulatory and administrative documents.

¹¹ European Commission (2023) "2030 Digital Decade" <https://digital-strategy.ec.europa.eu/en/library/2023-report-state-digital-decade>

¹² European Commission (2017) "Digital4Development: mainstreaming digital technologies and services into EU Development Policy" Commission Staff Working Document https://international-partnerships.ec.europa.eu/system/files/2019-09/swd-digital4development-part1-v3_en.pdf p.4

¹³ European Commission - Shaping Europe's digital future <https://digital-strategy.ec.europa.eu/en/policies/africa>

¹⁴ International Chamber of Commerce (2021) "United Kingdom | Creating A Modern Digital Trade Ecosystem - Cutting The Cost And Complexity Of Trade - Reforming laws and harmonising legal frameworks" https://www.dsi.iccwbo.org/files/ugd/0b6be5_9a983b7c954d49389dd25a54033bcf78.pdf?index=true

¹⁵ UNECE (2018) "White Paper: Paperless Trade" https://unece.org/fileadmin/DAM/cefact/GuidanceMaterials/WhitePapers/WP-PaperlessTrade_Eng.pdf