

Conference Report

sef:

sef: Policy Lunch, November 2021 – Online

Data Protection vs. “Free Flow” of Data? Inclusive digitalisation and the planned WTO e-commerce agreement

Michèle Roth

Digitalisation has fundamentally changed international trade. Yet rules for digital trade are still largely lacking. In 2019, the Friends of E-commerce, a group now comprising 86 states, began informal negotiations on a possible World Trade Organization (WTO) agreement on e-commerce. While the members of the group have already achieved alignment on a number of issues, other topics remain highly contentious. From a social and development policy perspective, the further liberalisation of e-commerce, particularly the institutionalisation of the presumably free flow of data, and exemption from customs duties on electronic goods and

transmissions are highly controversial, as the lively debate at the sef: Policy Lunch (online) in November 2021 showed. The EU’s strategy in the negotiations and beyond was also an important topic at this event, which was chaired by Dr Niclas Poitiers from Bruegel.

Sven Hilbig, Senior Policy Advisor at Bread for the World in Berlin and author of a recent sef: Global Governance Spotlight on the topic (see Box), laid the foundation for the following debate by first outlining the history of the e-commerce negotiations and referring to the global imbalances in the field of digitalisation. The liberalisation of e-commerce began in 1998 with the Information Technology Agreement and the Declaration on Global Electronic Commerce, which resulted in a customs ban on IT goods and a customs moratorium on immaterial digital goods, respectively. This has proved detrimental to developing countries, while only a few countries have clearly benefited from it. This experience explains the refusal of developing countries to give the WTO an official negotiating mandate for an e-commerce agreement, Hilbig explained.

Digital divide and trade imbalances as key challenges

Nevertheless, the Friends of E-commerce affirmed in May 2020 that the pandemic and the rapid growth of e-commerce demonstrate the need for



sef: Policy Lunch 11/2021 (clockwise): Niclas Poitiers (Chair), Sven Hilbig, Maija Celmiņa and Sanya Reid Smith

global rules. Opponents countered that from a development perspective, the challenge of the digital divide will need to be addressed first, with its physical (infrastructure), social (education) and legal (regulatory framework) components. They are particularly concerned that global liberalisation rules could undermine the ability of nation states to establish their own legal frameworks. The digital divide is also reflected in the current negotiations, Hilbig said. 70% of the negotiating text so far is based on the proposals of only seven countries (USA, China, Japan, South Korea, Singapore, Chile and Canada) and the EU, while the developing countries have not contributed a single line.

Hilbig also pointed to the imbalance in global digital trade, in which Latin America and the Africa/Middle East region each have a share of only 1% (as of 2017). Nevertheless, the exemption of digital goods from customs duties is a major challenge for many developing countries, whose national budgets are particularly reliant on customs revenues. Furthermore, a general duty-free regime would undermine the advantages of regional free trade areas such as the African Continental Free Trade Area (AfCFTA). 90% of the digital turnover is generated by 70 platforms from two countries alone, the USA and China, Hilbig added. This leads directly to the question of how "free" a free flow

of data can be under these circumstances, since ultimately the companies own this data, which is neither free nor usable for all. A ban on data lo-



Sven Hilbig, Bread for the World

calisation requirements would be directed against states that want to store locally collected data on local platforms as public goods, Hilbig said. It would deprive the Global South of an important resource for the 21st century.

Global Governance Spotlight 3|2021

Development Opportunity or Digital Colonialism? The planned WTO e-commerce agreement

Sven Hilbig
November 2021; 4 pages

Since the Ministerial Conference of the World Trade Organization (WTO) in Buenos Aires in 2017, the Friends of E-commerce have been pushing for a comprehensive new agreement on digital trade. Will the planned agreement further exacerbate existing inequalities between the Global North and the Global South, as many developing countries and NGOs fear? What kind of global framework would be necessary to enable an independent digital economy in the Global South? Sven Hilbig from Bread for the World discusses these questions in Global Governance Spotlight 3|2021.

Download: <https://www.sef-bonn.org/en/publications/global-governance-spotlight/32021/>.

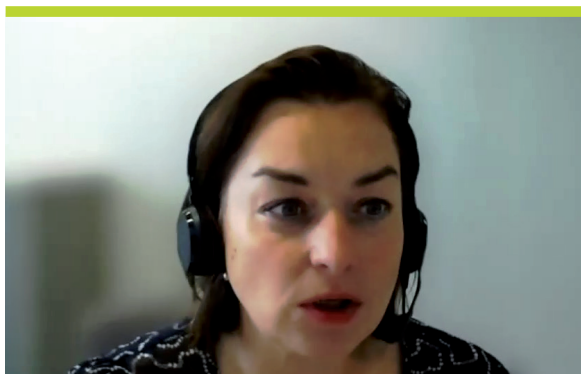


Further detrimental effects expected from the agreement

Sanya Reid Smith, Legal Advisor at Third World Network in Geneva, identified further shortcomings in the possible agreement, as well as largely unforeseeable consequences that would affect consumers all over the world. As she explained, the negotiating partners have already agreed that it should be left to companies to decide how to secure transactions. This would mean that European Banking Authority standards on payment services would have to be removed. The proposed liberalisation of services could force countries to allow advertising on everything, e.g. on tobacco or drugs. Stronger intellectual protection even in least developed countries would hinder the much-needed technology transfer. Furthermore, all parties would need to join the Information Technology Agreement, causing substantial loss of tariff revenue in developing countries. The ban on data localisation is not only a threat to the local use of data and to data protection regulation; it could also obstruct the adoption of rules requiring tax records to be stored locally. This would deprive governments of the possibility of control, Smith said. She therefore warned against wide-ranging liberalisation in the name of e-commerce, particularly as there is no clear definition of what e-commerce/digital trade is.

The EU in support of an e-commerce agreement

This criticism led directly to the question of what benefits the EU hopes to gain from the agreement. Maija Celmiņa, Policy Assistant to the Executive Vice-President Valdis Dombrovskis at the European Commission, explained that the EU has put a



Maija Celmiņa, European Commission

focus on digital trade in its new trade strategy and considers the WTO a key player in the field. The pandemic provided strong evidence that existing rules need to be updated; the EU therefore supports efforts to reach an e-commerce agreement. She expressed the hope that the WTO's 12th Ministerial Conference, due to take place from 30 November to 3 December 2021 (later postponed to March 2022), will bring substantial progress and that the negotiations can be concluded by the end of 2022.

In parallel, the EU is working on digital sovereignty, she said, and intends to create a European data space. It must therefore be recognised that the General Data Protection Regulation (GDPR) or strong protection of private data globally has to be integrated into a digital trade strategy. Celmiņa expressed confidence that the new WTO Director-General will take the concerns of developing countries into account in the negotiations. Trade will be an important tool for economic recovery after the pandemic, she concluded, but we will also have to work on general digital trade principles, like the ones issued by G7 and endorsed by the EU.

Liberalisation vs. protectionism

In the plenary debate, there was a heated argument about whether more liberalisation or more protectionism is the right way to go. Hilbig reminded the audience of the fact that the WTO's mission is to promote trade liberalisation – and not to regulate trade in the spirit of sustainable development. For fair digitalisation, data ownership is key, he said. Therefore, the policy space of devel-

oping countries should be expanded, not restricted, so that they are able to protect their data and their companies. This was strongly supported by Smith, who added that WTO rules are not there “to regulate the Wild West in global e-commerce”. She reminded the audience that tariffs are important to protect the development of local industries. Once local industries are compatible with the global market, liberalisation could follow. That is how all countries have developed, she said. Both speakers called upon the EU to oppose any attempts to limit the policy space of the Global South.

E-commerce rules are important for global markets, Celmiņa reiterated. Furthermore, the EU is considering adding digital trade issues to future bilateral trade agreements as well, she said.

There were further doubts in the audience as to whether digital protectionism would really help. The big platforms would then have to stay outside, but the countries would not be able to develop their own big platforms, one expert said. The only country where this has worked is China, but it cannot serve as a blueprint for other countries in the Global South. Another speaker from the audience commented that a form of principled protectionism is needed under the current circumstances



Sanya Reid Smith, Third World Network

even more than before, and that protectionism of some sort is practised by everybody anyway. He added that it might be helpful that the EU was a bit weak in digitalisation, too, so that it needs to consider regulation to protect itself from the USA and China. This might be a good opportunity to work with the African Union and others, he concluded.

The further debate showed that there is not a strict “either/or”, but many different shades. New approaches have to be thought about, for example, when it comes to the question of taxation of digital trade. There was agreement that a broader public debate is needed on the manifold implications of a possible e-commerce agreement, but also on the possibilities for shaping digital trade fairly in terms of sustainable development outside of the WTO framework.

Further reading (as recommended by sef: Policy Lunch participants)

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