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GOVERNING GLOBAL DIGITAL TRADE IN THE AGE OF THE COVID-19 PANDEMIC

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Analytical report, July 2020

Today, the COVID-19 global pandemic reveals the major place of the digital sphere in the global economy and the necessity to adopt new standards regulating different aspects of the digital economy. The July report focuses on six interrelated international issues: (i) the plurilateral negotiations on electronic commerce; (ii) the efforts of powerful business associations to promote new digital trade rules; (iii) the political confrontation between the US administration and several national governments regarding the adoption of digital services taxes; (iv) the multilateral negotiations on digital taxation; (v) the Digital Economy Partnership Agreement between New Zealand, Chile and Singapore, as well as (vi) the trade negotiations between the US and the UK.

These issues show first that, in the context of the economic downturn spurred by the COVID-19 pandemic, governments aim to adopt new digital norms and to implement taxes and tariffs in order to support domestic industries and to contribute to economic stimulus efforts. In this context, several countries promote bilateral and plurilateral trade negotiations focusing on digital issues with the goal to create a free, non-discriminatory and predictable environment for digital trade; while the trade diplomacy of the Trump administration is mercantilist, unilateralist and unpredictable, carrying out a “one threatening all” strategy and generating mistrust.

Thus, the multilateral cooperation is extremely fragile, whereas political responses take place at national and regional levels, leading to trade tensions and to an increasing fragmentation in the governance of digital trade.

E-commerce plurilateral negotiations

In January 2019, at the World Economic Forum in Davos, the European Union (EU), the United States (US), China, Japan, Canada and 44 other members of the World Trade Organization (WTO) decided to start plurilateral talks to establish international common rules on electronic commerce. The negotiating rounds are chaired by Australia, Singapore and Japan.

WTO members to the e-commerce plurilateral negotiations will meet twice in July in order to establish a time frame for a consolidated text in the next few months. According to Australian WTO Ambassador Frances Lisson, “we have a real momentum and it’s important that we grab that momentum [...] in the next few months, we can start looking at setting the time frame for getting not just the consolidated text but also looking when we’ll conclude the negotiations”. Today, the negotiations include more than 80 WTO members.

In mid-June, in a joint statement, trade ministers from the Ottawa Group, a reform-oriented group of several WTO members, explicitly mentioned that the context of the COVID-19 pandemic could be an opportunity for new trade policy actions; therefore, their goal is to “accelerate and prioritize” the e-commerce negotiations in order to produce a negotiating text by the end of the year. Clearly, the pandemic showed the major place of the digital sphere in the global economy, accelerating the need for establishing common norms and rules in the electronic commerce. The Ottawa Group includes Canada, Australia, Singapore, the EU, Brazil, Chile, Japan, Kenya, South Korea, Switzerland, Mexico, Norway and New Zealand.

In a similar vein, early May 2020, a WTO Information Note explicitly mentioned that “the global nature of COVID-19 and its impact on e-commerce may encourage strengthened international cooperation and the further development of policies for online purchases and supply”.

As highlighted in the March analytical report, the plurilateral negotiations cover all e-commerce related issues, for both goods and services, going well beyond online shopping. One of the main challenges is the degree of inclusion and of ambition for the future agreement. The US is pushing for establishing an ambitious agreement on e-commerce, but, for several analysts, the scope of the deal should narrow down in order to be more inclusive, keeping key economies on board, such as China or Indonesia. Besides, there are several thorny concerns, notably between the US, China and the EU, which account for 80 percent of the world's cross-border e-commerce.

In addition, India and South Africa, two key WTO members, refuse to join the e-commerce talks. As explained in the March analytical report, one of the main issues is related to the WTO Moratorium on Customs Duties on Electronic Transmissions and the claim from major economies participating in the e-commerce talks, like the US, the EU, Japan, Canada and Brazil to make the moratorium permanent. According to the position of India and South Africa, the Moratorium prevents developing countries from utilizing electronic commerce tariffs in order to develop their digital sectors in the same way developed countries, like the US, have used tariffs for other industries, such as agriculture, steel and aluminium

In this respect, the two countries do not join the e-commerce negotiations because the main impact of the new deal could be the loss of the use of tariffs as a trade policy tool for supporting nascent industries. According to India and South Africa, "in the current configuration of policies, rules, market dynamics and corporate power, economic gaps are likely to increase". Therefore, without tariffs, developing countries lose their ability to protect their domestic digital industries "resulting in loss of jobs and destitution" and they would be "more reliant on imports from developed countries, which would hurt their chances for competitiveness".

Business associations for new digital trade rules

Early June, in an open letter, 32 powerful business associations spanning five continents called on the G20 forum to focus on digital trade issues and to prioritize free trade practices and norms including the free trade flow of data, a ban on e-commerce duties and negotiating digitally-focused rules in trade agreements.

In the open letter, underlying that digital technology “has a fundamental role to play in the global response to and recovery from the pandemic”, the business associations reaffirmed their commitment to free, non-discriminatory, transparent, predictable and stable trade and investment environments. The letter includes 25 recommendations to G20 Governments. Signatories to the letter include, among others, the US Chamber of Commerce, DIGITALEUROPE, Coalitions of Services Industries, Asia Internet Coalition, Telecommunication Industry Association.

Digital services taxes

Early June 2020, the Office of the US Trade Representative (USTR) announced that his office will initiate Section 301 investigations into digital services taxes considered or implemented by ten economies. The US administration claims that these taxes discriminate against US digital companies, such as Amazon, Netflix, Facebook and Google and that it is likely to retaliate against these economies, heightening trade tensions.

In the context of the economic downturn spurred by the COVID-19 pandemic, governments seek to use digital services taxes to contribute to economic stimulus efforts and to generate additional revenue for the economic relief funds. Digital services taxes are imposed or considered by Austria, Brazil, the Czech Republic, the EU, India, Indonesia, Italy, Spain, Turkey and the UK. It is revealing that, late May, the European Commission proposed imposing a digital tax on companies, which could bring nearly 1.3-1.5 billion USD. Last December, the USTR concluded a similar investigation into France’s digital services tax and found that it discriminated against US companies. Following the threat from the US administration to impose tariffs on 2.4 billion USD worth of French goods, France decided to delay the collection of the tax.

OECD negotiations on digital taxation

The plans of several governments to impose digital services taxes and the unilateralist and mercantilist attitude of the Trump administration have thrown the future of multilateral negotiations seeking to establish common norms on digital taxation in doubt. The US is no longer participating in the Organization for Economic Cooperation and Development (OECD)’s digital tax negotiations, including in total 137 countries.

The key reason is that a number of EU Member States aim to adopt taxes on digital companies above a certain revenue threshold, which will notably affect US digital companies, such as Google, Netflix, Amazon.

The OECD talks were based on two main pillars: the first pillar involved new taxation norms allowing a country to implement taxes on companies even though those companies are not physically located within that country. The second pillar focused on the adoption of a minimum corporate tax to dissuade tax avoidance.

Digital Economy Partnership Agreement

In mid-June, ministers from New Zealand, Chile and Singapore signed up to the Digital Economy Partnership agreement (DEPA) focused solely on the digital economy. Negotiations for the agreement began in May 2019. According to negotiators, the intention is that this agreement will complement the WTO negotiations on e-commerce. Based on the leadership and political willingness of some countries in Asia and the Americas, the 63 pages DEPA could generate new standards and become a normative example for broader and more inclusive agreements. Note that Chile, Singapore and New Zealand were three of the four countries to initiate and sign the Trans-Pacific Strategic Economic Partnership Agreement in 2005. In 2016, 12 countries of the Pacific Rim signed the Trans-Pacific Partnership (TPP) and in 2017 US President Donald Trump withdrew the US signature from the TPP.

In the DEPA (module 15), the signatories stressed that “nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures necessary [...] to support creative arts of national value”. According to the agreement, creative arts include the performing arts – including theatre, dance and music – visual arts and craft, literature, film and video, language arts, creative online content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions.

UK-US trade negotiations

Between 5-15 May 2020, around 200 negotiators from the UK and the US held the first round of negotiations for a UK-US Free Trade Agreement. The negotiations involve in total 30 different negotiating groups covering all aspects of a comprehensive trade agreement. In this respect, negotiations cover digital trade, telecommunications, public services, intellectual property, investment. According to the document describing the UK government's approach to trade negotiations, one of the UK negotiating objectives is to "protect the right to regulate public services, including [...] public service broadcasters".

During the second round of negotiations taken place in mid-June, the US Trade Representative Robert Lighthizer said that a deal with the UK is unlikely before the US presidential election in November. One of the main issues is the digital services tax imposed by the UK government.

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