

DIGITALEUROPE Recommendations for WTO Joint Statement Initiative on E-Commerce

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Introduction

DIGITALEUROPE, the association representing the digitally transforming industries in Europe, welcomes the decision to proceed to formal negotiations on a new plurilateral agreement on trade-related aspects of e-commerce, announced on the fringes of the World Economic Forum in Davos in January 2019. Building on the discussions following the Joint Statement on E-Commerce, adopted by 71 countries at the 11th WTO Ministerial Conference in Buenos Aires in December 2017, the launch of formal negotiations is an important step in the right direction to enhance the benefits of e-commerce and digital transformation for businesses, and consumers across the globe.

Whilst all industrial value chains (including manufacturing goods) depend more and more on research and innovation, flows of services and data have become the real connector and growth engine of economies in the 21st century. Over the last decade, trade in services at global level has grown 60% faster than trade in goods.¹ In fact, services already create more value in global trade than goods when using alternative measures.² Digital technologies and e-commerce are vital to ensure (i) the successful digital transformation of businesses and business models of European companies; (ii) the growth of the global economy, creation of jobs and ability of companies to innovate in Europe; and (iii) the future competitiveness of Europe in the world market. Therefore, clear-cut and modern e-commerce rules are essential to facilitate inclusive global digital trade, free from barriers today and in the future.

DIGITALEUROPE strongly supports the goal of concluding an agreement on e-commerce at the WTO. Achieving this will help to better harness existing and future opportunities of digitisation in global markets, while recognising the important role of the multilateral rules-based system of WTO in promoting open, transparent, non-discriminatory and predictable regulatory environments. Therefore, the establishment of common global rules for digital trade can contribute not only to the digital transformation of society and industry in Europe but can also help close the increasing digital divide among citizens and consumers.

DIGITALEUROPE supports an ambitious timeline regarding the finalisation of a first text, with the aim to reach an agreement by the 12th WTO Ministerial in June 2020 in Astana (Kazakhstan). To achieve the most from the agreement, it is important that it is both ambitious in enabling and promoting e-commerce as well as inclusive in bringing on board as many WTO members as possible.

¹ McKinsey Global Institute, "Globalization in transition: The future of trade and value chains", January 2019 Report. Available at <https://www.mckinsey.com/~/media/McKinsey/Featured%20Insights/Innovation/Globalization%20in%20transition%20The%20future%20of%20trade%20and%20value%20chains/MGI-Globalization%20in%20transition-The-future-of-trade-and-value-chains-Full-report.ashx>

² Ibid

With the below recommendations, DIGITALEUROPE would like to contribute constructively to the ongoing discussions and provide policy-makers with a better understanding of the European digital technology industry's perspective on how e-commerce should be facilitated globally.

Recommendations for an e-commerce text

DIGITALEUROPE encourages the participants in negotiations to aim for a high standard agreement with ambitious provisions on a large array of issues, including but not limited to the following:

a) Facilitating cross-border data flows and preventing forced localisation measures

Barriers to the free flow of data constrain cross-border trade and investment, impede innovation, and reduce access to the most advanced technologies with affordable cost. They also undermine data protection and privacy standards and reduce public welfare benefits in areas such as education, health and security. Forced localisation does not assist with data protection in any way but can rather reduce the security offered to affected data. It causes significant operational disruption and increases the cost of doing business.

DIGITALEUROPE has long advocated for the recognition of the fact that cross-border data transfers are increasingly a key prerequisite for any business operating internationally to be successful in taking advantage of today's digital technologies. Forced localisation of storage and data processing and other types of restrictions on the transfer of data prevent firms of all sizes from effectively serving their global customers. It hinders the access and distribution of information at a global scale and makes it difficult to benefit from the lower cost-of-entry and increased economies of scale that global data centres can provide. Technical barriers to free flow of data from third countries to the EU may force European firms to transfer related jobs (e.g. data analytics) and investments into such third countries with protectionist policies. Therefore, the introduction of robust provisions allowing the free flow of data is an essential element of a healthy global digital trade environment.

We encourage all participants of the e-commerce initiative to pursue ambitious provisions to enable cross-border data flows and prevent forced localisation. In DIGITALEUROPE's view, Art. 14.11 on cross-border transfers of information by electronic means and Art. 14.13 on location of computer facilities of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership provide useful benchmarks.³ So do Art. 19.11 and 19.12 of the US-Mexico-Canada Agreement,⁴ as they establish general rules to enable cross-border data flows and limit forced data localisation while ensuring that any restrictions on these transfers are tailored to a government's legitimate public policy concerns and administered in a non-discriminatory manner. No such restrictions should be used for or legitimised by protectionist purposes.

³ Comprehensive and Progressive Agreement for Trans-Pacific Partnership, Art. 14 on E-Commerce is available here: <https://www.mfat.govt.nz/assets/Trans-Pacific-Partnership/Text/14.-Electronic-Commerce-Chapter.pdf>

⁴ Agreement between the United States of America, the United Mexican States, and Canada, Art. 19 on Digital Trade is available here: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/19_Digital_Trade.pdf

b) Prohibiting disclosure requirements for source code, encryption keys and technology transfer

Encryption is fundamental for the economic growth and societal enhancement of digital trade as it allows citizens and organisations to communicate and store information securely and confidentially while protecting data against increasingly sophisticated cyberattacks. Government mandates on the design of technology for civilian use, including the creation of backdoors, will impede innovation, hurt the economy, and weaken data security and privacy. Technology providers should be enabled to develop and implement encryption solutions tailored to achieve the best possible data security and privacy.

In addition, forced transfer of technology, source code, algorithms and encryption keys as well as the use or integration of a particular cryptographic algorithm/cipher create uncertainty regarding the protection of intellectual property and customer data. This significantly impacts companies' export operations and should be prohibited. Governments must not mandate any access to proprietary information, source code or require forced transfers of technology as a condition of market access for civilian use of ICT. In DIGITALEUROPE's view, the USMCA Article 19.16 and CPTPP Article 14.17 provide useful benchmarks.

c) Prohibiting customs duties on electronic transmissions

Countries should commit to refrain from imposing tariffs and discriminatory taxes on cross-border data flows and digital products, so that all firms can compete on a level playing field globally and all consumers have access to the best and most innovative digital technologies, services and products in order to avoid a digital divide. The WTO moratorium on the imposition of tariffs on digital goods and electronic transmissions has been in place since 1998, subject to renewal at the biannual Ministerial Conference. With the moratorium, ministers declare that members continue their practice of not imposing customs duties on electronic transmissions.

The WTO moratorium has been crucial to advance e-commerce as an essential element of global trade. Now it is also a vital underpinning for the rest of the economy and digital transformation of all industries. Should the moratorium cease, as some countries have advocated for, it would be a significant protectionist move under the aegis of the WTO, going against its trade liberalising mission. DIGITALEUROPE views that it is essential that the moratorium be made permanent and binding, in order to provide the certainty that digital or digitally enabled businesses need to invest and expand their trade.

d) Encouraging expansion of WTO Information Technology Agreement

ITA is a historic tariff-busting agreement that has significantly contributed to the digital transformation of our societies and our industries. It led to the elimination of import duties on products, which in 2013 accounted for an estimated US \$ 1.6 trillion. Ever since its signing in 1996, global industry regards ITA as one of the most commercially viable WTO trade pacts as it promotes jobs, increases competitiveness, lowers consumer prices, boosts economic growth and fosters innovation around the world. DIGITALEUROPE applauded the expansion of ITA in 2015 to expand the list of covered products to keep pace with technological change. The new accord covers *inter alia* new generation semiconductors, optical lenses, GPS and medical equipment. Annual trade in the

additional 201 products is valued at US \$1.3 trillion per year and accounts for approximately 7% of total global trade today. It thereby results in around US \$50 billion in tariff savings on ICT sales globally each year, adding approximately US \$190 billion to global GDP through increased trade. We now encourage more governments around the world to become signatories and seek appropriate ways to remove non-tariff barriers. In addition, negotiators should consider a third expansion, bringing into the ITA's remit not only new emerging technology goods, such as 3D printers, but also underpinning technology to the digital economy, for example fibre optic and copper wiring.

e) Eliminate or reduce red tape and discriminatory regulatory barriers

DIGITALEUROPE supports trade facilitation policies that foster administrative ease, cost-effectiveness, speedy and barrier-free entry to markets, predictability, fair enforcement, and transparency relative to the import, export and transit of goods. In particular, we support efforts that achieve the following priorities:

- Deployment of automated (paperless) systems and procedures that expedite the release of goods and the processing of customs information, foster consistency with international IT standards, ensure system interoperability/compatibility, and embrace common worldwide data elements and related processes established by the WCO.
- Availability of “management by account” programs that enable customs authorities to flexibly tailor administration of customs rules related to classification, value, admissibility, etc. to a trader’s particular business practices.
- Acceptance of the legal validity of electronic signatures, electronic authentication and electronic contracts.

f) Setting standard minimum *de minimis* threshold

DIGITALEUROPE would like to recommend that the EU works with foreign customs authorities to increase *de minimis* thresholds that reflect the modern reality of today’s global value chains. In the EU, *de minimis* duty free threshold for imports from third countries is € 150 but this threshold is not aligned with the *de minimis* threshold for VAT collected on importation which is currently € 22. Alignment between import duties and VAT free treatment thresholds in the EU is recommended as well as alignment with similar rules applicable in other countries such as the US. Global harmonisation in this area would facilitate e-commerce business by removing tariff and other indirect tax barriers for low value shipments. Harmonisation should also include reduction of customs formalities for this type of imports.

g) Facilitating electronic transactions

Each of these examples shares a common denominator – the free movement of safe and secure data within and across borders. Thus, in addition to the integration of innovative technologies, we recommend that the European Commission works to prohibit the imposition of duties, tariffs, and/or taxes on the importation or exportation of data flows, digital products, and any electronic data transmission to prevent the deceleration of the digital economy and avoid undermining technological innovation as a critical element of customs modernisation efforts globally.

The movement of data and electronic transactions across borders underpin the digital economy. At the core of this new and rapidly evolving trade environment is an intricate network of data supply chain models that serve as the backbone of the digital economy consisting of data centres, the Internet of Things (IoT) ecosystem, and an ever-evolving telecom infrastructure (soon to be enhanced with 5G technologies). The ability for the electronic transmission of data to move freely across borders also enables the implementation of more efficient trade facilitation measures.

Rapidly growing digital technologies such as distributed ledgers or blockchain, according to the OECD, “have the potential to create novel ecosystems for trade: helping coordinate value chains by increasing trust and speed of transactions; empowering actors; enabling the verification of the provenance of products; facilitating the transfer of funds and helping better enforce or automate contracts (such as through smart contracts). At the same time, these digital technologies can enhance trust for consumers, increase the resilience of value chain for private actors, and enable the public sector to better manage risk and costs for customs authorities”.⁵

In addition, DIGITALEUROPE recommends looking to the integration of Artificial Intelligence (AI), Machine Learning (ML), and commercial cloud computing applications which can assist in commodity classification, valuation, and tariff compliance.

h) Facilitating open access to government data

In a data driven global economy, access to data is an important spur to innovation and growth. Governments can play a key role in promoting an inclusive and innovative digital ecosystem by pursuing policies to make government data open and machine readable. By doing this, they can help prevent data silos where incumbent players have an advantage through greater access to data than small and medium sized enterprises. In DIGITALEUROPE’s view the US-Mexico-Canada Agreement Article 19.19 can provide a useful baseline to promote the open government data as default.⁶

⁵ OECD Trade and Agricultural Directorate-Trade Committee, Working Party of the Trade Committee; “Digital Trade and Market Openness”, August 2018.

⁶ Agreement between the United States of America, the United Mexican States, and Canada, Art. 19 on Digital Trade is available here: https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/19_Digital_Trade.pdf

ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digitally transforming industries in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE's members include in total over 35,000 ICT Companies in Europe represented by 66 Corporate Members and 39 National Trade Associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

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