

Resolution on Digital Trade

Introduction

Over the past few years, there have been concerted efforts driven by a group of WTO-member countries to launch negotiations to establish a new World Trade Organization (WTO) agreement on e-commerce. The proponents of this agenda were unable to secure the required mandate from all WTO members during the 11th Ministerial conference in December 2017 to launch such talks. The bloc of like-minded countries then issued a [Joint Statement](#) agreeing to start "exploratory work together towards future WTO negotiations on trade-related aspects of electronic commerce".

Since then, the group has grown and has been meeting to advance discussions. The stated objective of this initiative is to develop global rules for e-commerce on a plurilateral basis among a subset of WTO with like-minded countries, which the supporting countries seek to open for any WTO member country to join. However, under the terms of the Agreement Establishing the WTO, such an agreement could only be made part of the WTO by consensus approval of all WTO member nations.

Despite the lack of mandate to initiate new WTO e-commerce negotiations, during the 2019 World Economic Forum Annual Meeting in Davos, Switzerland, the bloc of like-minded countries issued a [statement](#) to: "confirm our intention to commence WTO negotiations on trade-related aspects of electronic commerce" and "welcome the progress made toward WTO negotiations on electronic commerce since the Eleventh WTO Ministerial Conference at Buenos Aires. It is clear that not all WTO members agree with this initiative and therefore TACD raises questions about this process. The first procedural meeting is likely to take place in March 2019. The European Union (EU) and the United States (US) are part of this initiative.

For some time, EU and US free trade agreements (FTAs) have included limited-scope e-commerce chapters. However, the most recent US and EU FTAs, such as the [EU-Mexico trade agreement](#) and the renegotiated version of the North American Free Trade Agreement ([NAFTA 2.0](#)), include comprehensive "digital trade" chapters that cover a wide range of sensitive issues, including cross-border data transfers, privacy, net neutrality and access to source code.

The countries that unsuccessfully sought a mandate for WTO e-commerce negotiations in 2017 and have been meeting since are pushing to establish rules that would cover a broad range of issues that would have far-reaching implications for privacy, competition, cybersecurity, artificial intelligence and the future of jobs, among other matters. Whether such terms are incorporated into any trade agreement or are contained in a free-standing agreement, if not carefully negotiated, they could undermine consumer rights in the digital environment for decades to come.

By building on relevant past TACD resolutions, this resolution aims to bring the voice of consumers to the negotiating table and set the parameters for these WTO negotiations on e-commerce.

Our recommendations:

- **Ensure transparency and meaningful engagement:** Any trade negotiation or international discussion on digital trade must be conducted in a transparent, open and inclusive manner. Legislators, stakeholders and citizens must be able to monitor what is on the table and be proactively consulted and provide input. This will require public access to proposed texts in negotiations. A deal developed without meaningful engagement with public interest groups will likely become subject to regulatory capture and fail to enjoy consumer confidence.
- **Put consumers first:** Consumer interests and protections have not been high on the trade agenda. The failure to prioritize consumer interests and protections must not be replicated in any future international negotiations relating to e-commerce matters. Regardless of the forum, any negotiation or prospective outcome on e-commerce must put consumers at the centre. Provisions that ensure protections and rights for consumers could enhance consumer trust online, e.g. by ensuring the safety of products, proper consumer information, contractual rights information and redress options.
- **Recognize that some digital policy issues do not belong in a trade deal:** Trade agreements are not the appropriate fora to tackle every aspect of digital policy. Topics such as cybersecurity, internet of things, artificial intelligence, net neutrality or data protection are important, but their importance does not mean they should automatically be addressed in the context of trade agreements. For most of these issues, sufficient consumer protections are not yet established domestically in most WTO member countries. Thus, if some countries were to create international rules on these sensitive issues, it could limit the ability of countries to enhance consumer rights and protection in the future.

Background resources

1. Ensure transparency and meaningful engagement

We are pleased with the European Commission's approach to systematically publish its trade proposals, as well as information and reports about its trade negotiating rounds. This has been an important step forward for openness and a democratic process. It is essential to ensure consistency and apply the same level of transparency for all of the EU's upcoming negotiations. Other countries should follow this best practice in negotiations of international rules that will affect consumers. Publication of broad policy is not a substitute for publication of actual textual proposals. The public must be able to analyze and comment on opening proposals, including on concepts under negotiation. Thus, it is vital that all participating countries commit to publish consolidated negotiating texts on an ongoing basis.

We also recommend the establishment of formal mechanisms for regular meetings and interactive events, where stakeholders are not only briefed, but also listened to by negotiators.

Improvements on both transparency of documents and meaningful engagement with public interest groups are necessary to enhance the legitimacy of the process and to build trust that any negotiations are prioritizing the public interest.

2. Put consumers first

- **Electronic commerce**

Many new digital policy matters have entered trade negotiations under the umbrella term "e-commerce". It has now become the common word used in trade discussions, including at the WTO, to refer to issues that go beyond matters related to how consumers buy goods and services online.

As TACD however, we have understood e-commerce to be concerned primarily with how and whether consumers are able to purchase goods online, particularly with sellers located outside of their country. Our position on this particular matter was outlined in [our previous resolution](#) on e-commerce. Namely, we hold that the development of international cross-border online commerce has the potential to boost the competitiveness of the economy and improve consumer choice and welfare.

We call on negotiators at any venue where such issue is being discussed to prioritize the enhancement of consumer trust online. It is not always easy for consumers to shop online and get all the information they need to make an informed choice: what are the characteristics of the product, where does the seller come from, how do consumers contact the seller, what is the applicable consumer right. Consumers need to know how they can act if something goes wrong after an online purchase. In this regard, the EU Communication to the WTO from May 2018¹ is a good starting point, as is the provision on online consumer trust proposed by the EU in talks with Australia and New Zealand². If international rules relating to international cross border e-commerce are to be negotiated in any forum, they should focus on guaranteeing consumers a floor of basic protections relating to provision of the information needed to make informed choices and have easy access to dispute resolution and redress.

It is essential to ensure that products that pose a risk to health and safety are not marketed or sold to consumers. Product safety warnings and information on safe use should be made clear to consumers prior to purchase. To further ensure consumer trust, it would be important to guarantee that products sold online to consumers comply with domestic rules on consumer protection and product safety. Authorities should cooperate with the OECD Global recalls portal for instance. Countries should also commit to promoting parallel voluntary dialogues between regulators working on enforcement, product safety, competition, market surveillance, redress and dispute resolution.

- **Telecommunications**

From a consumer perspective, it is crucial to create the conditions for a more competitive telecoms market. We already witnessed a commitment to clearly inform consumers of prices as part of the EU-Japan economic partnership. We call on negotiators to go one step further. These negotiations should promote competition and cost-oriented prices, as this leads to more affordable prices for consumers when it comes to messages, calls and roaming prices.

¹ EU Communication to the WTO from May 2018 [JOB/CG/188](#)

² EU proposal for a digital trade chapter with [Australia](#) and for a digital trade chapter with [New Zealand](#)

3. Recognize that some digital issues do not belong in trade agreements

- **Net neutrality**

Open internet access has been vaguely addressed in some of the recent trade deals. Experience shows that there is no consensus among WTO countries on how best to articulate such a provision. Until countries commit to adequately safeguard net neutrality, trade deals should not address issues related to internet governance in general, and specifically not the crucially important issue of net neutrality. Net neutrality and internet governance-related matters should be addressed via open, multi-stakeholder processes to ensure a meaningful participation by civil society.

- **Cross-border data flows, data protection & privacy**

We must ensure that nothing in a trade deal diminishes the protection of personal data and privacy afforded by the countries' respective safeguards. For example, US consumer groups are advocating for a strong and comprehensive federal law on privacy. TACD and its members BEUC and EDRi have [welcomed the EU's recent proposals for provisions on cross-border data flows and protection of personal data and privacy in trade agreements](#). These provisions are balanced and are the result of hard work and extensive consultation with stakeholders and other trade partners. This is not about imposing the EU General Data Protection Regulation (GDPR) on other countries, but rather about ensuring that all countries can regulate in the public interest to protect people's rights to privacy and data protection. It aims to bring more trust to the digital economy and trade in general. Without trust, there is no digital trade.

- **Artificial intelligence**

Regulators have not kept pace with the immense technological advances made during the past decade. They are only starting to explore the possibilities of how to regulate artificial intelligence (AI) and make algorithmic decision-making transparent, accountable and non-biased. However, some countries have already linked AI with provisions on cross-border transfer of data and disclosure of source code and algorithms in trade agreements. This would restrict or make difficult the introduction of public supervision of AI and algorithmic decision-making. Thus, inclusion of provisions related to AI governance are not appropriate in any trade agreement.

- **Cybersecurity & internet of things**

Robust international standards for cybersecurity are needed. Effective cybersecurity measures must protect consumers, devices and networks. Including such measures in the context of trade discussions is likely to interfere with ongoing efforts to achieve those goals. Doing so could lock countries into deficient technical standards. Sound technical standards require dynamic and participatory discussions leading to consensus from a variety of stakeholders - a process that is inherently not possible through a trade deal. The technical aspects are better discussed in standardization bodies, such as the International Telecommunication Union (ITU), the International Organization for Standardization (ISO) or the Internet Engineering Task Force (IETF).

Further information can be found in the individual contributions of TACD and its members:

- Transatlantic Consumer Dialogue (TACD)
 - [A positive Consumer Agenda: New Rules for the Global Economy](#)
 - Resolution on the [open and neutral internet](#)
 - Resolution on [e-commerce in the Transatlantic Trade and Investment Partnership \(TTIP\)](#)
 - Resolution on the [internet of things](#)
 - [University of Amsterdam's study 'Trade and Privacy: complicated bed fellows. How to achieve data protection-proof free trade agreements'](#), jointly commissioned by TACD, the Center for Digital Democracy, BEUC and EDRI.
- The European Consumer Organisation (BEUC)
 - [Model consumer chapter in trade agreements](#)
 - [position paper on AI and automated decision making](#)
 - [joint position with ANEC on cybersecurity for connected products](#)
 - [Study: the challenges of protecting EU consumers in online global markets](#)
- Consumers International: [The consumer checklist for an international e-commerce deal](#)
- Privacy International: <https://www.privacyinternational.org/topics/cyber-security> (contains a number of resources, including briefings, reports and podcasts)