

# Global watch on culture and digital trade

## **FROM WTO NEGOTIATIONS ON E-COMMERCE TO AFRICAN FREE TRADE AREA: A STATE OF PLAY**

**By Dr. Antonios Vlassis (Center for International Relations Studies-CEFIR, University of Liège)**

Analytical report, March 2020

### Plurilateral negotiations on e-commerce

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 negotiations to establish international common rules on electronic commerce. The negotiating rounds are chaired by Australia, Singapore and Japan and, recently, Indonesia and Cameroon have joined the e-commerce talks. So far, 28 text proposals have been prepared, six rounds of text-based negotiations have taken place and three more negotiating rounds are planned between February and May 2020.

The talks cover all e-commerce related issues, for both goods and services, going well beyond online shopping. The objective is to improve the consumer trust in the digital environment and to tackle issues, such as data flows, customs duties on electronic transmissions, market access in computer and telecommunication services, privacy and data localisation, software source code. Besides, given the persisting crisis of the WTO multilateral negotiating model, the e-commerce plurilateral talks are widely considered as key opportunity for strengthening the authority and credibility of the international organisation.



However, an agreement is unlikely in the near term in the current unpredictable economic environment based on strong trade confrontations between the US, China and the EU. Negotiations are arduous and concrete outcomes are not expected by the WTO's June 2020 Ministerial. 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. Noncontroversial issues like e-signatures, contracts and invoicing were already discussed, but substantive disagreements on several topics have arisen among participants.

First, the framework for privacy protection and consumer trust is a thorny concern between the US and the EU. The US argues that the EU privacy framework is too broad and unnecessarily limits cross-border data flows. According to Burcu Kilic, director of the Public Citizen Digital Rights Program, Australia, Japan and Canada - major players in the Comprehensive and Progressive Agreement on the Trans-Pacific Partnership - agree with the EU position on privacy, but, in the WTO talks, they tend to favor a more US-aligned position. Singapore and Brazil also align most closely with the US on privacy issues.

Second, China does not want the agreement to address restrictions about cross-border data flows or policies on data localisation, whereas provisions allowing data to flow freely across borders and banning data localisation policies are two key US priorities. Japan, Singapore and Brazil, in their communications, also call for a prohibition on data localisation as a requirement for doing business in a country.

Third, since 1998, WTO members have agreed not to impose customs duties on electronic transmissions, in conformity with the WTO Moratorium on Customs Duties on Electronic Transmissions. While the term "electronic transmissions" is not defined, it is commonly held to encompass anything from software, emails, and text messages to digital music, movies and video-grammes. The moratorium is not permanent. Every two years governments agree to extend the moratorium at the biennial WTO Ministerial Conference.



On the one hand, major economies participating in the e-commerce talks, like the US, the EU, Japan, Canada and Brazil, agree to making the moratorium permanent. On the other hand, the moratorium has been opposed by India, Indonesia and South Africa over questions of lost revenue for developing countries. According to a WTO communication from India and South Africa introduced in June 2019, “digital trade has acquired dimensions which were then unimaginable. The impact of the moratorium needs to be understood from the revenue point of view and, from a development perspective, we need to analyse how the moratorium is impacting the efforts of developing countries to industrialise digitally and otherwise”. According to the communication, the potential tariff revenue loss to developing countries is estimated at 10 billion USD. In addition, according to these countries the loss of revenue due to the moratorium “can’t be offset by other taxes because it’s very difficult to tax the super platforms”, pointing to Facebook in India, where the Californian company “pays abysmally low taxes to the Indian Government”. Note too that India and South Africa are not part of the ongoing e-commerce talks. Besides, for Indonesia, the moratorium should apply “only to the electronic transmissions and not to products or contents which are submitted electronically”.

It can be said that since the creation of the WTO in 1995, the e-commerce has grown exponentially and has become a major contributor to the global economy, accounting approximately for 29 trillion USD in trade transactions. However, there are no specific multilateral rules within the WTO governing this type of trade, while a large number of bilateral and regional free trade agreements contain specific chapters devoted to electronic commerce. These agreements include different kinds of norms and reservations regarding the treatment of culture and the capacity of governments to adopt and implement cultural policies applicable to the digital environment, such as promoting certain local contents in a context of electronic commerce of cultural digital products. As noted by V. Guèvremont and I. Otašević, “in the case of agreements that do not include a cultural exemption clause, this chapter (on electronic commerce) will have significant repercussions” on the ability of States to “develop and implement policies to protect and promote diversity of cultural expressions in the digital environment”.



Finally, it's worth mentioning that regarding the e-commerce negotiations, on 20 May 2019, the European Council adopted a negotiating mandate, which explicitly stressed “the European Union and its Member States shall maintain the possibility to preserve and develop their capacity to define and implement cultural and audiovisual policies for the purposes of preserving their cultural diversity. The European Union shall not agree to rules or commitments for audiovisual services”.

## African Continental Free Trade Area

In July 2019, the member states of the African Union launched the operational phase of the African Continental Free Trade Area (AfCFTA), entered into force on 30 May 2019. Fifty-four of the 55 African countries signed the agreement in order to constitute this new free trade area, having its headquarters in Accra, Ghana. Only Eritrea has not yet signed the agreement. However, among the 54 signatories, so far only 28 countries have ratified the agreement.

AfCFTA aims to create a single market for goods and services facilitated by the movement of people and capital in order to deepen the economic integration of the African continent. The agreement calls Parties to gradually eliminate tariff and non-tariff barriers to trade in goods and to liberalize trade in services, seeking to boost intra-African trade, which is currently stagnating at 15%, well below the internal exchanges of other continents. It should be noted that the AfCFTA is made up of highly asymmetrical economies, with three countries – Egypt, Nigeria and South Africa – representing 50% of Africa's cumulative GDP.

However, the entry into force of the agreement represents a symbolic launching of the AfCFTA, insofar as the agreement does not guarantee concrete actions on the part of the Parties and it contains minimal prescriptions for such a large-scale free-trade agreement. In this respect, Parties should define the industrial and economic sectors to liberalise or to protect and negotiations on preferential tariff concessions and rules of origin have not yet been completed. Furthermore, the agreement has not yet taken into account the crucial issue of the management of intellectual property rights. “There is still a long way to go”, said Egyptian President Abdel Fattah al-Sissi in July 2019.



In this regard, tough negotiations will continue with respect to the concretisation of the agreement and its implementation. In July 2019, Chiedu Osakwe, Nigeria's chief trade negotiator, stressed "the dismantling of customs duties will start in 2020. No country will liberalise everything", adding that the process should take several years.

Regarding the cultural sectors, the agreement establishing the AfCFTA reaffirms in its preamble the right of States Parties to regulate within their territories and the States Parties' flexibility "to achieve legitimate policy objectives in areas including (...) the promotion and protection of cultural diversity". However, the agreement does not contain other references to cultural sectors. In this respect, there are no explicit references to the Convention on the Diversity of Cultural Expressions adopted by UNESCO in 2005 and ratified by the majority of AfCFTA's participants. The agreement does not contain cultural clauses.

In addition, in February 2020, during the 33rd African Union (AU) Assembly, leaders from 12 African states from the five regions of the continent – such as South Africa, Egypt, Morocco, Nigeria, Congo, Democratic Republic of Congo - supported the call by Mali's President Ibrahim Boubacar Keïta in order to play an active role of leadership and advocacy for promoting the creative and cultural industries in Africa. A council in the AU has been established in order to commit to arts and culture promotion and to conceive a strategy for these industries, with a view to declare 2021 as the year of culture. Among other priorities, the leaders agreed to include the mobilisation of political and financial support of the member states for the African World Heritage Fund and the advocacy for the ratification of the Charter for the African Cultural Renaissance.

## Sources :

- “Analysts: U.S., world needs privacy standards for digital trade to move forward”, Inside US Trade, October 31, 2019.
- “WTO e-commerce still on fact-track, but outcomes not expected by ministerial”, Inside US Trade, October 11, 2019.
- “WTO e-commerce work program chair: US spurring data flows debate”, Inside US Trade, July 12, 2019.
- “India, South Africa: WTO e-commerce moratorium too costly for developing countries”, Inside US Trade, June 5, 2019.
- “Indonesia joins WTO e-commerce talks despite opposition to permanent moratorium”, Inside US Trade, December 13, 2019.
- International Chamber of Commerce, “WTO Moratorium on Customs Duties on Electronic Transmissions - A primer for business”, [Link](#)
- Council of the European Union, The Negotiating Directives for the Doha Development Agenda Regarding the Plurilateral Negotiations of Rules and Commitments on Electronic Commerce, Brussels, May 20, 2019, [Lien](#)
- WTO, Work programme on electronic commerce: the e-commerce moratorium and implications for developing countries, Communication from India and South Africa, WT/GC/W/774, June 4, 2019.
- Guèvremont Véronique et Otašević Ivana, Culture in treaties and agreements: implementing the 2005 Convention in bilateral and regional trade agreements. UNESCO, 2017, [Link](#)
- Zimbabwe Independent, “12 African countries commit to arts and culture promotion”, February 14, 2020, [Lien](#)
- Agreement establishing the African Continental Free Trade Area, [Link](#)
- African Business Magazine, As D-Day approaches, is Africa really ready for the AfCFTA?, February 4, 2020.
- Le Monde, La Zone de libre-échange africaine fait un petit pas en avant, February 11, 2020, [Link](#)

### PUBLICATION DIRECTOR

Gilbert Gagné, Researcher at CEIM and Director of the Research Group on Continental Integration (GRIC).

### AUTHOR

Antonios Vlassis, Lecturer and Researcher, Center for International Relations Studies (CEFIR)-University of Liège, CEIM member.

### Centre d'études sur l'intégration et la mondialisation (CEIM)

UQAM, 400, rue Sainte-Catherine Est, Pavillon Hubert-Aquin, bureau A-1560, Montréal (Québec) H2L 2C5 CANADA. Téléphone : 514 987-3000, poste 3910 / Email: [ceim@uqam.ca](mailto:ceim@uqam.ca) / Website: [www.ceim.uqam.ca](http://www.ceim.uqam.ca)

### International Federation of Coalitions for Cultural Diversity (IFCCD)

33 Milton street, office n° 500, Montréal (Québec), H2X 1V1, CANADA. Phone number: 514 277-27666 / Email: [coalition@cdc-ccd.org](mailto:coalition@cdc-ccd.org) / Website : [www.ficdc.org](http://www.ficdc.org)

The opinions expressed and arguments put forward in this analytical note are the sole responsibility of the editor and the Centre for the Study of Integration and Globalization and do not in any way commit or reflect those of the International Federation of Coalitions for Cultural Diversity.



**IFCCD**  
INTERNATIONAL FEDERATION OF COALITIONS  
FOR CULTURAL DIVERSITY