

# **E-COMMERCE AND THE WTO**

## **A DEVELOPMENTAL AGENDA?**

**Jamie Macleod**



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## ABSTRACT

The rise of e-commerce presents both challenges and opportunities, leading to calls for multilateral trading rules at the WTO. Pressure at and in the run-up to the 11th WTO Ministerial Conference (MC11) will be aimed at producing a mandate for negotiations on rules for e-commerce. Emphasis will be placed on providing scope for the negotiation of relatively inoffensive new rules, such as those related to increased transparency and facilitative measures (eg, e-signatures and e-authorisation). These rules will not pose a significant threat to African and other developing countries, nor are they particularly in the offensive negotiating interests of these countries. Data suggests that it is the developed countries, as well as several in Asia, that are currently best poised to take advantage of a more facilitative environment for international e-commerce, although micro, small and medium enterprises would also benefit from the opportunities that such an expansion of e-commerce would provide. Certain countries will have an eye on eventually introducing more controversial rules, such as restrictions to cross-border data flows and data localisation requirements. Should negotiators wish to preserve this policy space for digital protectionism, they must appreciate that this allows their trading partners the same scope. They also need to consider the potential economic costs associated with data localisation and restrictions on cross-border data flows. It is therefore recommended that negotiators from African and other developing countries take a precautionary approach to rules on e-commerce at MC11. Even the more controversial rules concern largely unused policy space for policy tools that may nevertheless be ineffective and costly. As such, there may be some value in trading off concessions in e-commerce for interests elsewhere, especially in terms of the less controversial e-commerce proposals or Doha Development Agenda issues. Furthermore, there is scope for the digital economy to take a bigger role in both the national and regional development policies of developing countries. Regional strategies to support cross-border and intra-regional e-commerce are recommended, such as providing provisions on the alignment of e-transaction laws; streamlining consumer protection policies; harmonising data privacy and cybercrime policies; and creating platforms for cooperation in competition policy and the taxation of cross-border e-commerce enterprises.

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## AUTHOR

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## INTRODUCTION

To take the WTO definition, e-commerce is the ‘production, distribution, marketing, sale or delivery of goods and services by electronic means’.<sup>1</sup> This includes platforms such as [eBay](#), [OLX](#) in Kenya, [ZoomTanzania](#) or [Jumia](#) in Nigeria that enable the online sale of goods. It also includes goods delivered electronically, such as e-books ordered through [Amazon](#) or music streamed via [iTunes](#). Services can also be sold and delivered electronically: firms in India, Jamaica and the Philippines have captured a share of global markets for remote professional services that range from traditional back-office services to tutoring.<sup>2</sup>

E-commerce consists not just of transactions over the Internet but also of those via traditional telephony. In Niger, for instance, e-commerce includes a mobile service that offers agricultural price information to farmers via SMS.<sup>3</sup> In addition, it extends

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- 1 Second WTO Ministerial Conference, ‘Declaration on Electronic Commerce’: WT/MIN(98)/DEC/2, adopted in Geneva on 20 May 1998.
  - 2 UNCTAD (UN Conference on Trade and Development), *Information Economy Report 2015: Unlocking the Potential of E-commerce for Developing Countries*. Geneva: UN Publications, 2015.
  - 3 Aker J & I Mbiti, ‘Mobile phones and economic development in Africa’, *Journal of Economic Perspectives*, 24, 3, 2017, pp. 207–31.

beyond the private sector by enabling the provision of e-government services. For instance, the Nairobi water utility's online consumer feedback enables it to better respond to consumer issues.<sup>4</sup> Tax e-filing and e-procurement improve government efficiency and reduce scope for corruption, and single window customs systems facilitate customs clearance for traders.

E-commerce has established a considerable footprint. Globally, business-to-business e-commerce transactions are estimated to be worth over \$15 trillion annually and business-to-customer transactions a further \$1 trillion – collectively about the size of the US economy.<sup>5</sup> It is also a rapidly growing sector in Africa. KPMG estimates African e-commerce to be growing at an annual rate of 40%,<sup>6</sup> while the GSMA identifies 314 active tech hubs in 93 cities across 42 African countries.<sup>7</sup>

This presents both business opportunities and policy challenges. The new business models of e-commerce embody much automation, threatening to hollow out lower- and mid-level jobs; feature network effects that are leading to market concentration and reduced competition; and can circumvent regulation, causing problems for regulated competitors such as taxis and hotels.

These opportunities and challenges are collectively part of the digital industrial revolution, which is changing the pathways to industrialisation used by countries

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### The route to industrial development is changing and rules at the WTO will have important implications for how countries regulate these changes

in the past.<sup>8</sup> The route to industrial development is changing and rules at the WTO – the subject of this paper – will have important implications for how countries regulate these changes.

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4 World Bank, News & Broadcast, 'Citizen feedback drives performance improvements in Kenya's water and sanitation services', 2013, <http://go.worldbank.org/3JB6Q1RCN3>, accessed 25 October 2017.

5 ITC (International Trade Centre), 'International E-Commerce in Africa: The Way Forward', ITC Technical Paper. Geneva: ITC, 2015.

6 *Business Day*, 'Online shopping edging up, but sub-Saharan Africans still don't trust e-commerce', 20 December 2016, <https://www.businesslive.co.za/bd/business-and-economy/2016-12-20-online-shopping-edging-up-but-sub-saharan-africans-still-dont-trust-e-commerce/>, accessed 29 November 2017.

7 GSMA, 'A few figures on tech hubs in Africa', 2016, [https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2016/08/Tech-Hubs-in-Africa\\_Infographic.pdf](https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2016/08/Tech-Hubs-in-Africa_Infographic.pdf), accessed 25 October 2017.

8 Rodrik, D, 'An African growth miracle?', *Journal of African Economies*, 2016, pp. 1–18.



Addressing these issues, this paper outlines the current e-commerce agenda at the WTO, provides an overview of new proposals, identifies the economic incentives behind these proposals, and explains the probable outcomes at the upcoming 11<sup>th</sup> WTO Ministerial Conference (MC11) in Buenos Aires in December 2017. It then provides an assessment of how these rules could interact with development.

## E-COMMERCE AND THE WTO

### CURRENT AGENDA

The current agenda on e-commerce at the WTO derives from the 1998 Declaration on Global Electronic Commerce<sup>9</sup> by the WTO General Council, which established a *Work Programme on Electronic Commerce*.<sup>10</sup>

The Work Programme is mandated ‘to examine all trade-related issues relating to global electronic commerce, taking into account the economic, financial, and development needs of developing countries’.<sup>11</sup> This allows for ‘discussions’ on issues of e-commerce, but does not provide a dedicated platform for binding negotiations. If WTO members want to negotiate new e-commerce rules, they will have to agree to change the current mandate of the Work Programme. As stated in the 2015 Nairobi Ministerial Declaration, ‘Any decision to launch negotiations multilaterally on such issues would need to be agreed [to] by all Members.’<sup>12</sup>

In July 2016 the debate on e-commerce intensified, with the US putting forward suggestions for new WTO rules to liberalise e-commerce.<sup>13</sup> Similar suggestions were then advanced by a group of countries led by Canada and the EU (Canada and EU *et al.*),<sup>14</sup> and by Japan.<sup>15</sup>

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9 Second WTO Ministerial Conference, *op. cit.*

10 WTO, *Work Programme on Electronic Commerce*, WT/L/274, adopted by the General Council in Geneva on 25 September 1998.

11 *Ibid.*

12 Tenth WTO Ministerial Conference, ‘Nairobi Ministerial Declaration’: WT/MIN(15)/DEC, adopted in Nairobi on 19 December 2015.

13 WTO Non-Paper from the United States, *Work Programme on Electronic Commerce*: JOB/GC/94, dated 1 July 2016.

14 These countries are Canada, Chile, Colombia, Côte d’Ivoire, EU member states, the Republic of Korea, Mexico, Montenegro, Paraguay, Singapore and Turkey. See WTO Communication from Canada, Chile, Colombia, Cote d’Ivoire, the European Union, the Republic of Korea, Mexico, Paraguay and Singapore. See WTO *Work Programme on Electronic Commerce*: JOB/GC/97, dated 13 July 2016.

15 WTO Non-Paper from Japan, *Work Programme on Electronic Commerce*: JOB/GC/100, dated 12 July 2016.

The following year saw WTO communications and non-papers provided by Brazil;<sup>16</sup> Mexico, Indonesia, the Republic of Korea, Turkey and Australia (MIKTA);<sup>17</sup> a group of countries led by Singapore (Singapore *et al.*);<sup>18</sup> China and Pakistan;<sup>19</sup> Argentina, Brazil and Paraguay;<sup>20</sup> the Association of Southeast Asian Nations (ASEAN)<sup>21</sup> and Taiwan.<sup>22</sup> These expressed less interest in e-commerce rules on openness and liberalisation, and instead focused on enhanced transparency, introducing e-commerce topics on trade policy reviews and facilitating measures such as e-signatures, e-authentication and paperless trading.

Finally, since July 2017 several countries have circulated communications envisaging how e-commerce should be taken forward in the WTO in preparation for MC11. These include Japan,<sup>23</sup> the Russian Federation,<sup>24</sup> Singapore *et al.*<sup>25</sup> and the Africa Group.<sup>26</sup> These new positions step back from the most controversial proposals for new rules to try to chart a more consensual way forward.

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- 16 WTO Non-Paper from Brazil, *Work Programme on Electronic Commerce*: JOB/GC/98, dated 20 July 2016; WTO Non-Paper from Brazil, *Work Programme on Electronic Commerce*: JOB/GC/113, dated 12 December 2016.
  - 17 WTO Non-Paper from Brazil, *Work Programme on Electronic Commerce*: JOB/GC/99, dated 22 July 2016.
  - 18 Colombia, Costa Rica, Hong Kong, China, Israel, Malaysia, Mexico, Nigeria, Pakistan, Panama, Qatar, Seychelles, Singapore and Turkey. See WTO Non-Paper from Colombia, Costa Rica, Hong Kong, China, Israel, Malaysia, Mexico, Nigeria, Qatar and Singapore, *Work Programme on Electronic Commerce*: JOB/GC/101, dated 22 July 2016; WTO Non-Paper from Brunei Darussalam, Colombia, Costa Rica, Hong Kong, China, Israel, Malaysia, Mexico, Nigeria, Pakistan, Panama, Qatar, Seychelles, Singapore and Turkey, *Work Programme on Electronic Commerce*: JOB/GC/117, dated 14 February 2017.
  - 19 WTO Non-Paper from the People's Republic of China and Pakistan, *Work Programme on Electronic Commerce*: JOB/GC/110, dated 16 November 2016.
  - 20 WTO Non-Paper from Argentina, Brazil and Paraguay, *Work Programme on Electronic Commerce*: JOB/GC/115, dated 21 December 2016.
  - 21 WTO Communication from Singapore on behalf of the ASEAN members (Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam), *Work Programme on Electronic Commerce*: JOB/GC/126.
  - 22 WTO Non-Paper from the Separate Customs Territory of Taiwan, Penghu Kinmen and Matsu, *Work Programme on Electronic Commerce*: JOB/GC/128, dated 30 June 2017; WTO Non-Paper from the Separate Customs Territory of Taiwan, Penghu Kinmen and Matsu, *Work Programme on Electronic Commerce*: JOB/GC/129, dated 30 June 2017.
  - 23 WTO Non-Paper from Japan, *Work Programme on Electronic Commerce*: JOB/GC/130, dated 11 July 2017.
  - 24 WTO Communication from the Russian Federation, *Work Programme on Electronic Commerce*: JOB/GC/131, dated 13 July 2017.
  - 25 Australia, Brunei Darussalam, Canada, Colombia, Hong Kong, Republic of Korea, Malaysia, Republic of Moldova, Myanmar, New Zealand, Nigeria Qatar and Singapore. See WTO Communication from Australia, Canada, Colombia, Qatar and Singapore, *Work Programme on Electronic Commerce*: JOB/GC/132, dated 13 July 2017.
  - 26 WTO Communication from the Africa Group, *Work Programme on Electronic Commerce*: JOB/GC/133, dated 20 July 2017.

## OVERVIEW OF POSITIONS AND KEY ISSUES

Annex A provides a matrix of WTO member positions on e-commerce as of September 2017, taken from the above-mentioned communications and non-papers. Presented here are the key issues of contention and the relevant country positions.

The US, Canada and EU *et al.*, and Japan positions align in favour of binding rules on several of the most contentious issues. These rules were developed in the Trans-Pacific Partnership (TPP) negotiations – between the US, Japan and 10 other Pacific Rim countries – and in the Transatlantic Trade and Investment Partnership (TTIP) negotiations – between the US and EU. However, they are also variants of what was being considered by the 23 WTO members negotiating the Trade in Services Agreement (TiSA).<sup>27</sup> The most controversial of these rules are on data access and intellectual property, as detailed in Table 1.

**TABLE 1 SYNOPSIS OF THE SDGs AND RELATED G20 ACTIVITY**

**Disciplines  
ensuring  
cross-border  
data flows**

Data is an increasingly important raw material for digital businesses. Google, Facebook, Alibaba and Amazon all use data collected from users to refine and improve their products. This makes these platforms naturally more convenient for users and, as such, can have a market-concentrating effect, as competitors without access to such data cannot produce as competitive products. This data is also used to more effectively advertise and monetise their products.

The proposed rule would aim to prohibit restrictions on the flow of this data. Depending on the exact formulation of such a rule, this could include preventing laws that require permission or consent to be given by users for the transfer of their data, laws that require copies of data to be stored locally, laws that require local processing, or outright bans on such transfers.<sup>a</sup>

The proponents of this rule are keen to ensure that their companies can access and process the data of citizens in other countries without hindrance, as well as make use of foreign companies to provide services for data processing, should they so choose. They assert that restrictions on data transfers needlessly increase compliance costs for cross-border e-commerce businesses.

Countries against this proposal want the scope to restrict flows of their citizens' data for reasons of data security and government surveillance, or to try to force foreign companies to set up data centres or processing operations locally for economic reasons.

27 The 23 countries negotiating the Trade in Services Agreement (TiSA) are Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the EU, Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Turkey and the US.

<b>Disciplines with respect to localisation</b>	<p>An increasing number of countries, such as Vietnam, demand that investors build local data servers to store the data of their citizens and other physical data infrastructure. This overlaps closely with the above issue of cross-border access to data: countries may want data held in local servers for perceived arguments of data security, government surveillance or economic reasons, while counter-arguments pose that this increases compliance costs for businesses.</p> <p>Localisation disciplines may, however, be crafted to expand beyond data centres to include all forms of localisation, such as requirements for local presence and local content.</p>
<b>Prohibiting requirements on the transfer of or access to software source code, as a condition of market access</b>	<p>Some countries allow access to their markets on the condition of technology transfer, meaning that investors are required to make technology available to local administrations or companies. This rule would prohibit such requirements for the transfer of 'technology, production processes or other proprietary information'.</p> <p>The related US position explicitly highlights forced transfers of source code as one of these issues. Source codes are the basic instructions written into digital software and are as such important trade secrets for e-commerce businesses and firms in the digital economy. The proposal is likely driven by the concern of US investors in China, who must submit their source code to Chinese authorities and reportedly find issue with ensuring that this source code is not then passed on to competitors.<sup>b</sup></p>

- a For example, the Korea Personal Information Protection Act targets data leaving the country and requires companies to obtain consent from 'data subjects' (ie, the individuals associated with the particular datasets) prior to exporting that data, as well as details about who receives the data, the purpose, the period for which the data will be retained, and the specific personal information provided.
- b US-China Business Council, 'Best practices: Intellectual property protection in China', <https://www.uschina.org/reports/best-practices-intellectual-property-protection-china>, accessed 18 October 2017.

Source: Compiled by author

The US, Canada and EU *et al.*, and Japan positions also include several moderately controversial proposals on liberalising the goods and services necessary for e-commerce, extending non-discrimination principles to e-commerce, securing an 'open and free Internet', and ensuring access to communications and data networks.

**TABLE 2 MODERATELY CONTROVERSIAL E-COMMERCE PROPOSALS**

<b>Improve liberalisation commitments on services and goods necessary for e-commerce</b>	This approach is similar to that of the 1996 Information Technology Agreement (ITA) and ITA II – to eliminate tariffs and allow service access to help support the growth of e-commerce. This would include liberalisation commitments on relevant information and communications technology (ICT) goods and services.
<b>Non-discrimination principles</b>	This would extend WTO Most-Favoured Nation (MFN) treatment to new areas of e-commerce – for instance, it could include requiring MFN treatment in access to data.
<b>Free and open Internet</b>	Certain countries control their Internet space, usually for reasons of national and political security. For instance, the 'Great Firewall of China' filters the Chinese Internet to affect what can be viewed by its citizens – effectively blocking certain websites – while other countries have been known to 'shut down' the Internet during elections or to suppress the mobilisation of public protesters. This rule prohibits the use of such Internet controls. The biggest target of such a proposal is the large and highly filtered Chinese Internet.
<b>Ensure access to and use of communications networks</b>	This provision aims to open up the telecommunications services and equipment market, from which foreign developers are restricted in several countries. For instance, China's basic telecommunications services allow 49% foreign ownership, but in practice remain state-owned without foreign participation. <sup>a</sup> Other countries, including Brazil and Indonesia, impose local content requirements on developers of telecommunications infrastructure.

<sup>a</sup> Ferracane M & H Lee-Makiyama, 'China's Technology Protectionism and Its Non-Negotiable Rationales', Trade Working Paper. Brussels: ECIPE (European Centre for International Political Economy), 2017.

Source: Compiled by author

The last group of proposals are less controversial and concern cooperation in creating a more facilitative environment for e-commerce. They are variously shared, and proposed, by a broader group of both developed and developing countries, including Brazil, the MIKTA group of countries, Singapore *et al.*, China and Pakistan, Argentina, Paraguay, ASEAN and Taiwan, as well as the US, Canada and EU *et al.*, and Japan. These measures can be perceived as easing the ability of e-commerce companies to operate in a country's market.



**TABLE 3 LESS CONTROVERSIAL PROPOSALS**

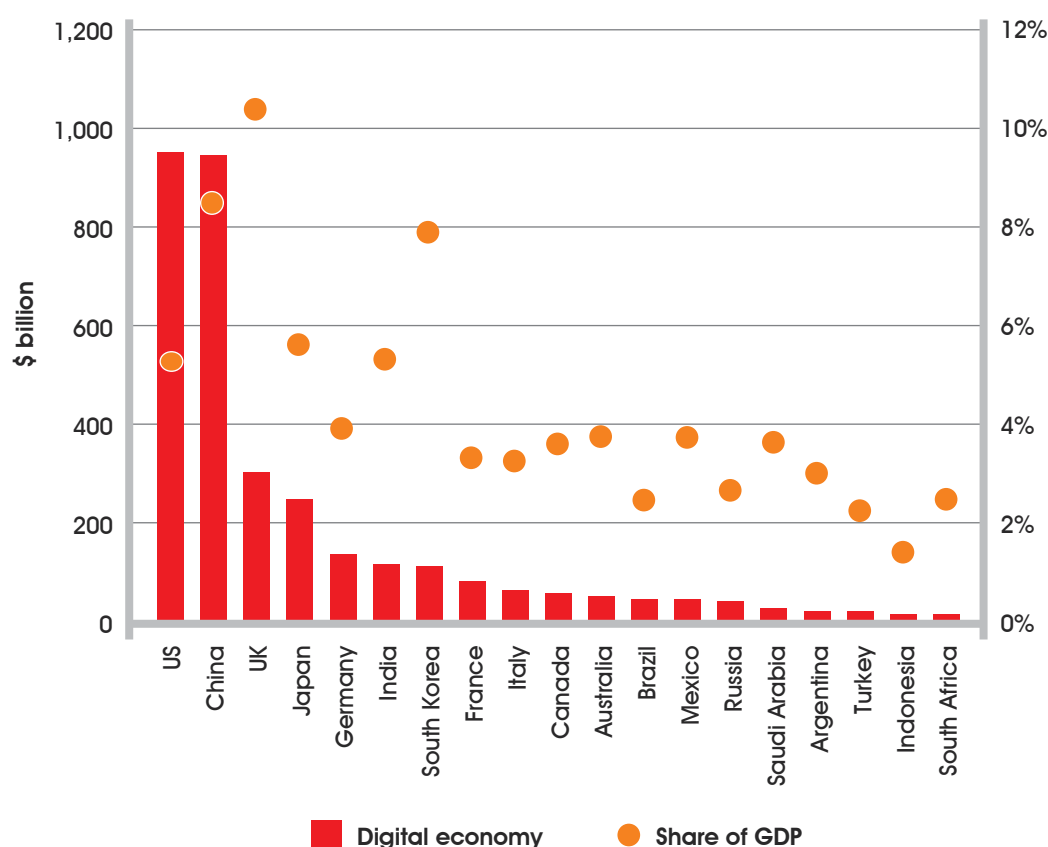
<b>Transparency in e-commerce-related measures</b>	This would require the publication of laws, regulations and administrative measures that affect cross-border e-commerce. The stricter Canada and EU <i>et al.</i> version of this proposal requires letting other WTO members comment on draft measures before their implementation.
<b>Consumer confidence enhancing measures</b>	These include proposed regulatory frameworks for consumer protection, data privacy, cyber security and unsolicited communications (spam) that help consumers feel safe when shopping online. The Brazil proposal goes beyond this to propose a mechanism for the treatment of complaints and dispute resolution in these areas.
<b>Trade-facilitating measures/building on the TFA to support e-commerce</b>	<p>These include measures on supporting e-payments; ensuring the validity of e-signatures and e-authentication for electronic transactions; supporting paperless trading; and preserving market-driven standardisation and interoperability.</p> <p>Other proposals include clarifying policies on tax for returned goods (China), enabling data exchange between e-commerce platforms and single windows (China), and using simpler customs clearance measures on low-value shipments and packages of the type traded in e-commerce transactions (ASEAN and Singapore <i>et al.</i>)</p> <p>The Canada and EU <i>et al.</i> position also includes e-procurement to allow for non-established companies to participate in government procurement procedures electronically.</p>
<b>Aid for Trade and technical assistance with e-commerce</b>	This includes targeting technical assistance towards infrastructure and technical gaps to enable e-commerce. This could include assistance with connectivity issues (eg, access to broadband), and it is suggested in the China/Pakistan proposal that this be undertaken within the framework of Aid for Trade.
<b>Enhanced transparency in the multilateral trading system with e-commerce</b>	Similar to the aforementioned transparency proposals, but with a particular focus on the multilateral trading system, these include measures such as a greater emphasis on e-commerce in trade policy reviews, the inclusion of digital issues in WTO monitoring reports on protectionism, and the inclusion of metrics and insights on digital trade in the regular work of WTO committees.

Source: Compiled by author

## OFFENSIVE NEGOTIATING INTERESTS

The economics of e-commerce can help inform the negotiating interests behind the proposals for rules. The US has the world's largest Internet economy – defined as online retailing, sales of Internet-related devices, information technology and telecommunications investment, and Internet-related government spending – at just under \$1 trillion, according to estimates from the BCG combined with World Bank World Development Indicators data.<sup>28</sup>

FIGURE 1 SIZE OF DIGITAL ECONOMY & SHARE OF TOTAL GDP, BY COUNTRY, 2015



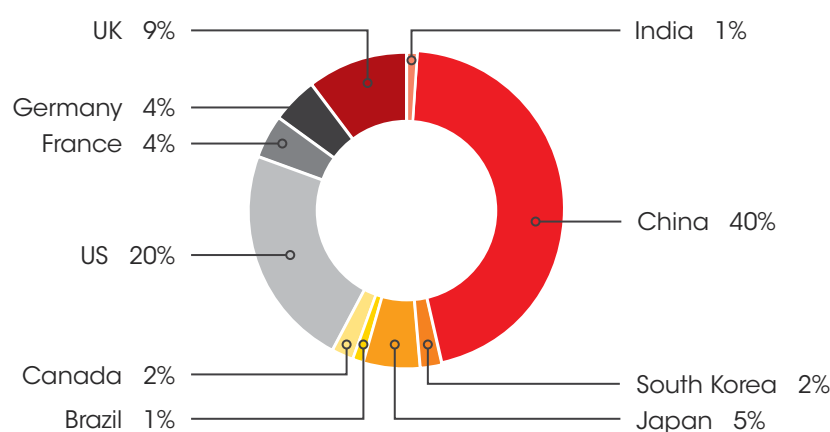
Source: Author's calculations based on World Bank, World Development Indicators, 2017; TechUK, 'UK's digital economy is world leading in terms of proportion of GDP', 2015, <https://www.techuk.org/insights/news/item/4075-uk-s-digital-economy-is-world-leading-in-terms-of-proportion-of-gdp>, accessed 29 November 2017

28 Author's calculations based on World Bank, World Development Indicators, 2017; TechUK, 'UK's digital economy is world leading in terms of proportion of GDP', 2015, <https://www.techuk.org/insights/news/item/4075-uk-s-digital-economy-is-world-leading-in-terms-of-proportion-of-gdp>, accessed 29 November 2017.

This is closely followed by China, and thereafter the UK, Japan, Germany and India. As a share of gross domestic product (GDP), the Internet economy is most important for the economy of the UK, followed by China, South Korea and Japan. Indeed, all of these countries have been prominent in the development of e-commerce proposals.

Although the US has the largest Internet economy – and is home to the headquarters of many of the world’s most valuable digital businesses in terms of market capitalisation – it remains relatively domestically oriented. China is the most important economy for cross-border e-commerce, defined as goods purchased online from merchants located in other countries and jurisdictions. It is estimated to have accounted for 40% of the global share of cross-border e-commerce sales in 2015.<sup>29</sup> However, China also has a tightly controlled domestic Internet and as such is a proponent of rules to facilitate e-commerce while an opponent of those that prohibit controls on data.

**FIGURE 2 SHARE IN CROSS-BORDER E-COMMERCE SALES OF GOODS, BY MAJOR ECONOMIES, 2015**



Source: Banga R, 'Rising Product Digitisation and Losing Trade Competitiveness', Centre for WTO Studies Working Paper, 39. New Delhi: Centre for WTO Studies, 2017

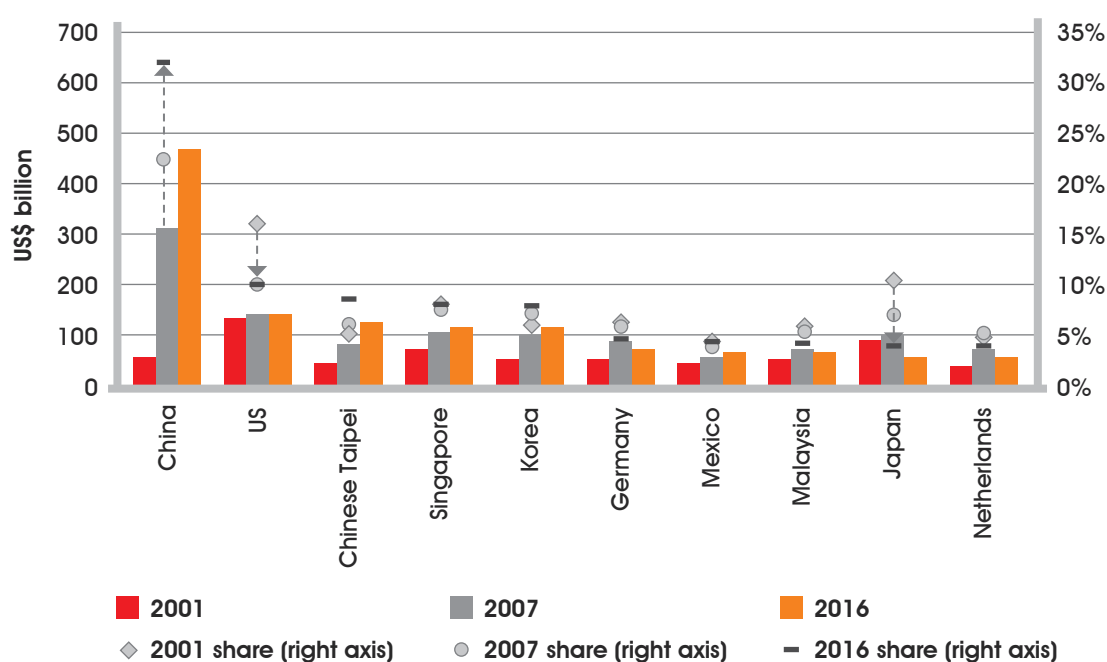
Developed and Asian countries, and in particular China, have best integrated into and taken advantage of the opportunity for cross-border e-commerce sales of goods. Similar results are found by the UN Conference on Trade and Development, based on data from the Universal Postal Union: developed countries account for 63% of the share of world exports of small packets, parcels and packages associated with e-commerce transactions, while a further 33% is accounted for by Asia and

29 Banga R, 'Rising Product Digitisation and Losing Trade Competitiveness', Centre for WTO Studies Working Paper, 39. New Delhi: Centre for WTO Studies, 2017.

Oceania.<sup>30</sup> Africa accounts for only 1.1%, Latin America and the Caribbean 1.7%, and transition economies 1.3%. This is even smaller than the share of traditional world trade accounted for by these developing regions.

Countries that export ICT goods and services necessary to support e-commerce also have much to gain from the growth of e-commerce. They would gain indirectly from an expansion of the e-commerce sector, as well as directly in one of the proposals calling for the liberalisation of such supportive inputs. The Organisation for Economic Co-operation and Development's Digital Economy Outlook 2017 estimates the top global exporter of ICT goods to be China, followed by the US, Chinese Taipei and Singapore.<sup>31</sup> Ireland, India, the Netherlands and the US are found to be the most important exporters of ICT services. Again it is developed and Asian countries that are most integrated into this area of world trade.

**FIGURE 3 TOP 10 GLOBAL EXPORTERS OF ICT GOODS**

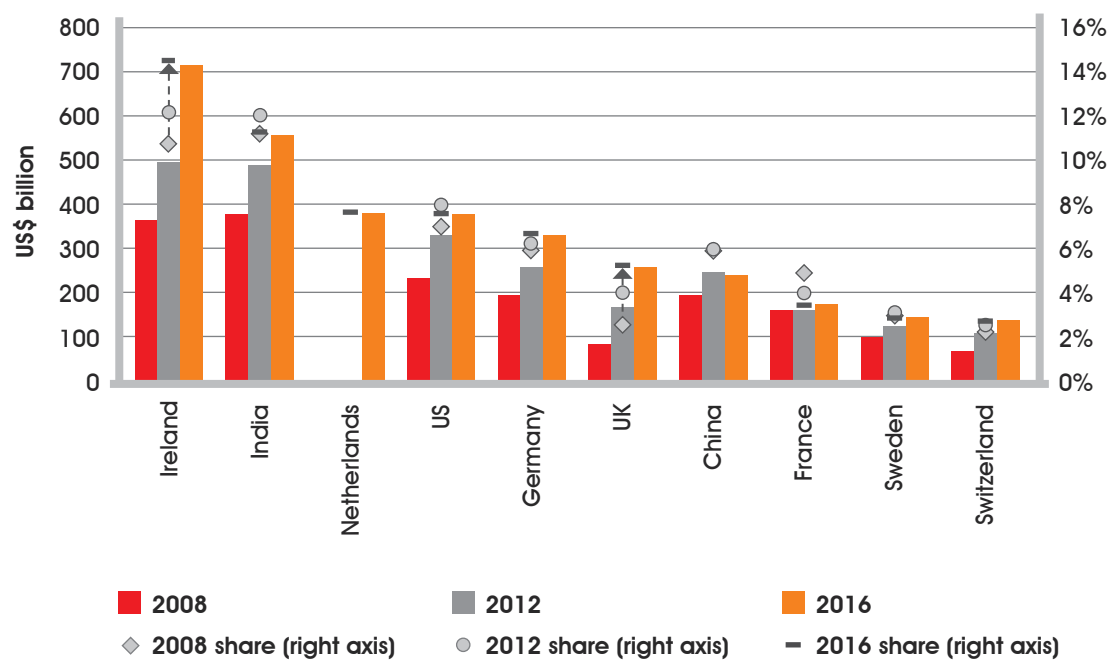


Source: OECD (Organisation for Economic Co-operation and Development), *OECD Digital Economy Outlook 2017*. Paris: OECD Publishing, 2017

30 UNCTAD, *Information Economy Report 2015: Unlocking the Potential of E-commerce for Developing Countries*. Geneva: UN Publications, 2015.

31 OECD (Organisation for Economic Co-operation and Development), *OECD Digital Economy Outlook 2017*. Paris: OECD Publishing, 2017.

**FIGURE 4 TOP 10 EXPORTERS OF ICT SERVICES, INCLUDING TELECOMMUNICATIONS, AND COMPUTER AND INFORMATION SERVICES**



Source: OECD, *OECD Digital Economy Outlook 2017*. Paris: OECD Publishing, 2017

In terms of cross-border e-commerce sales, as well as the goods and services needed to support e-commerce, African and other developing countries do not have as strong exporting interests. However, they can gain from access to imported services and ICT goods, which can in turn benefit their economies. The main exporting interests in rules that support e-commerce are from developed and Asian countries.

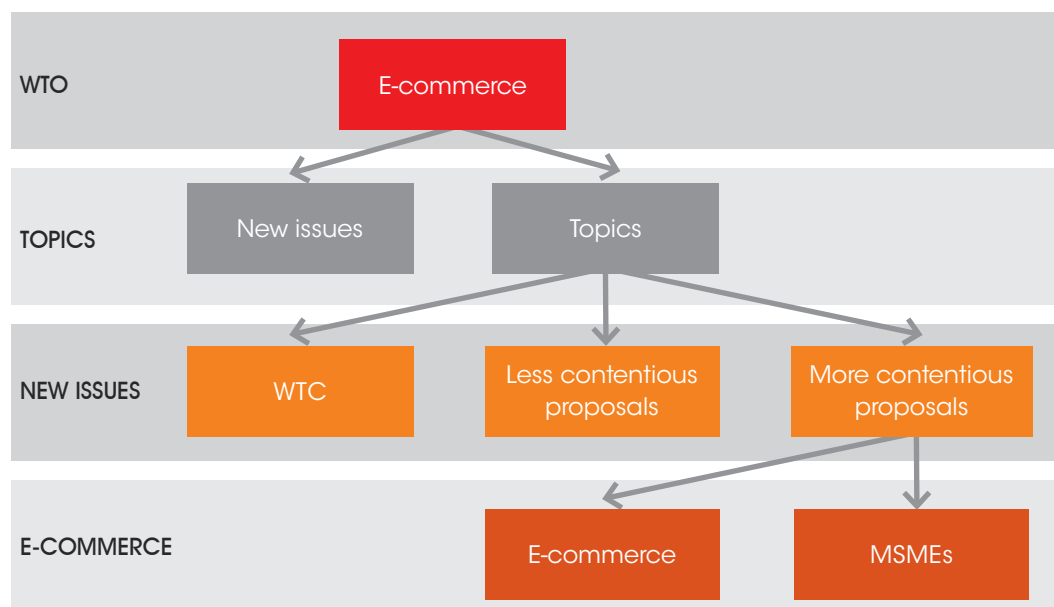
## LIKELY TRAJECTORY/OUTCOMES

To frame the likely outcomes on e-commerce negotiations, it is convenient to consider a game theory decision tree outlining how e-commerce fits into the broader negotiations at the WTO, and what the trade-offs are at each level.

### *Topics for negotiations: DDA vs new issues*

The existing Doha Development Agenda (DDA) issues – including domestic support, cotton, fisheries subsidies, and special and differential treatment – are



**FIGURE 5** DECISION TREE FOR E-COMMERCE AT MC11

Source: Compiled by author

the biggest priorities for most developing and African countries. These topics have the potential to substantially improve trading terms for these countries,<sup>32</sup> but have largely stalled as areas of negotiation. Only limited progress is expected at MC11 as well: in Nairobi in 2015, trade ministers even failed to agree on keeping the DDA negotiations going.<sup>33</sup>

Several members are therefore pushing for movement on new issues at MC11 to legitimise the WTO platform. They see ‘an agreement on e-commerce ... [as] necessary to signal the WTO’s continued relevance’.<sup>34</sup> Nevertheless, various developing countries view this focus as a distraction from DDA priorities.

32 Antoine B, Mevel S & D Orden, ‘More or less ambition in the Doha Round: Winners and losers from trade liberalization with a development perspective’, *The World Economy*, 30, 8, 2007, pp. 1253–1280.

33 WTO, ‘Members secure “historic” Nairobi package for Africa and the world’, 19 December 2015, [https://www.wto.org/english/news\\_e/news15\\_e/mc10\\_19dec15\\_e.htm](https://www.wto.org/english/news_e/news15_e/mc10_19dec15_e.htm), accessed 25 October 2017.

34 WTO, ‘Members discuss development dimension of e-commerce at Goods Council’, 6 April 2017, [https://www.wto.org/english/news\\_e/news17\\_e/good\\_13apr17\\_e.htm](https://www.wto.org/english/news_e/news17_e/good_13apr17_e.htm), accessed 25 October 2017.

***New issues: e-commerce, investment facilitation, MSMEs and alternative forums***

E-commerce is not the only new issue arising as a potential topic at MC11. Proposals for investment facilitation, submitted by Russia, Brazil and China, seek to require more stringent transparency requirements for the licensing of investments. Proposals for micro, small and medium enterprises (MSMEs) seek to strengthen intellectual property rights for entrepreneurs, start-ups, businesses, researchers and investors. Other proposals have been floated for domestic regulation of services and trade facilitation in services. Although progress in other new issues could ‘signal the WTO’s continued relevance’,<sup>35</sup> e-commerce has nevertheless been the focus of energy – and communications – in Geneva since 2016.

There are two negotiating risks in not considering e-commerce as a new issue at the WTO. Firstly, African and other developing countries would lose the opportunity to mould the negotiations to achieve their interests in e-commerce. Such countries could push for the e-commerce proposals that are best aligned with their interests. This might include e-commerce-related Aid for Trade or trade facilitation, for instance. However, it should be recognised that the influence of African and developing countries at the WTO is limited, as evidenced by their lack of success in DDA issues.

Secondly, negotiations on various e-commerce disciplines could instead migrate to a plurilateral or mega-regional forum in which African and other developing countries do not have a voice. This was originally the case with the TPP – prior to the withdrawal of the US, the TTIP – and the plurilateral TiSA, both of which negotiated a variety of rules on e-commerce similar to those being proposed at the WTO. The risk, and indeed often the intention, of such negotiations is that they establish norms for the eventual multilateralisation of e-commerce rules.<sup>36</sup> For instance, as noted by the EU, ‘TiSA is intended to be a forerunner of a multilateral agreement on services that would be folded into the WTO once critical mass is reached’.<sup>37</sup>

***E-commerce: proposals, approaches and a missing US perspective***

Proposals for e-commerce include both the controversial, such as those on data localisation and technology transfers, and the less controversial, such as trade facilitation and transparency in e-commerce regulation.

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35 *Ibid.*

36 Melendez-Ortiz R, ‘The impact of mega-regionals: Discriminatory and multilateralizing potential of TPP and TTIP provisions’, in *Mega-regional Trade Agreements: Game-Changers or Costly Distractions for the World Trading System?*. Geneva: WEF, 2014; Draper P, Lacey S & Y Ramkolowan, ‘Megaregional trade agreements: Implications for the African, Caribbean, and Pacific countries’, ECIPE Occasional Paper, 2. Brussels: ECIPE, 2014.

37 European Commission, ‘Trade in Services Agreement (TiSA) factsheet’, 2016, [http://trade.ec.europa.eu/doclib/docs/2016/september/tradoc\\_154971.doc.pdf](http://trade.ec.europa.eu/doclib/docs/2016/september/tradoc_154971.doc.pdf), accessed 25 October 2017.

The latest approach taken by proponents of rules on e-commerce has been to focus on changing the current e-commerce work programme mandate, in order to move beyond ‘discussions’ to rule-making targeting the less controversial issues. In the 6 April meeting of the WTO Council for Trade in Goods, several members emphasised that ‘trade facilitation and transparency in e-commerce regulation could be a good start for negotiations’.<sup>38</sup>

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**The latest approach taken by proponents of rules on e-commerce has been to focus on changing the current e-commerce work programme mandate, in order to move beyond ‘discussions’ to rule-making targeting the less controversial issues**

Russia, for instance, see as a deliverable of MC11 establishing a working group on e-commerce. This would reportedly advance discussions on terminology, identify the coverage and gaps in WTO agreements relating to e-commerce, and undertake the ‘preparation of recommendations’ for multilateral regulatory rules at MC12.<sup>39</sup> This is aligned with the new positions of Japan<sup>40</sup> and Singapore *et al.*,<sup>41</sup> which have also moved on from expecting new rules at MC11 to merely opening up the procedural pathway towards eventual rules.

Japan’s most recent proposal is that WTO members evaluate the current scope for e-commerce rules within existing WTO bodies over the year following MC11, before deciding whether to initiate negotiations. However, Japan frames the evaluation over an ‘illustrative list’ of issues, which strongly suggests that the existing WTO bodies do not provide sufficient scope for e-commerce rules.

The July proposal by Australia, Canada, Colombia, Qatar and Singapore calls for an outcome at MC11 to ‘give clear direction for future work in e-commerce’ with an ‘updated framework/process through which future work could be undertaken’.<sup>42</sup> Again, this change in mandate would open up the procedural pathway towards new e-commerce rules.

Meanwhile, the Canada and EU *et al.* approach has changed from directly posing the question in their August 2016 communication on e-commerce, ‘Are there elements that could be pursued as outcomes for the 11<sup>th</sup> Ministerial Conference?’, to instead calling for a ‘mapping’ of e-commerce-related elements of trade policy and ‘focused

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38 WTO, 6 April 2017, *op. cit.*

39 WTO, Communication from the Russian Federation, 13 July 2017, *op. cit.*

40 WTO, 11 July 2017, *op. cit.*

41 WTO, Communication from Australia, Canada, Colombia, Qatar and Singapore, 13 July 2017, *op. cit.*

42 *Ibid.*

technical discussions’ on e-commerce in the existing relevant councils in their July 2017 communication.

The [South Centre](#) argues that such approaches, which would change the mandate for e-commerce at the WTO, would be a ‘slippery slope’ to more controversial rules. Members ‘won’t be able to close the door for e-commerce once it’s open’.<sup>43</sup> Changing the mandate of the *work programme on electronic commerce* would certainly provide scope for eventual rules on e-commerce, although the recent history of progress in the DDA suggests that even this may not lead to either a timely agreement or an agreement that includes the most controversial rules feared by some countries.

An important missing perspective is that of the US, which has not expressed itself on the issue of e-commerce since its change of administration in January 2017. The US was previously pushing for the most controversial new rules. As home to most of the world’s leading digital businesses, it has an appreciable interest in liberalising e-commerce markets internationally. However, the new administration is expressly less-WTO friendly: President Donald Trump’s ‘[2017 Trade Policy Agenda](#)’, published in March 2017, perceives the WTO as interfering with ‘American sovereignty over matters of trade policy’. It outlines an increasing shift towards the US’ engaging bilaterally in matters of trade while threatening to defy what it might perceive as ‘unfair’ WTO rulings.<sup>44</sup> It remains unclear how the US will approach MC11 given the broader changes in US trade policy. A US less committed to e-commerce in the WTO would reduce the pressure behind the most controversial e-commerce rules at MC11.

## E-COMMERCE AND THE DEVELOPMENTAL AGENDA: MAIN ISSUES OF CONTENTION AND DEBATE

### DIGITAL PROTECTIONISM

E-commerce does not have traditional market access barriers such as tariffs or quantitative limits on the volume of imports – although the goods imported through e-commerce continue to face tariffs and other barriers at a country’s border. Targeted digital protectionism – if it is decided upon – must rely on non-tariff barriers.

For instance, requiring data to be stored locally means foreign e-commerce businesses must either set up their own data centres or rent those of local providers before catering to a country’s market. Requiring permission for cross-border data transfers makes it more difficult and costly for foreign e-commerce businesses to operate in a market. Restrictions on the openness of the Internet – including the banning of certain websites – can exclude e-commerce firms from domestic markets.

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43 Telephonic interview, Aileen Kwa, Coordinator, Trade for Development Programme, South Centre, 6 September 2017.

44 USTR (US Trade Representative), ‘The President’s 2017 Trade Policy Agenda’, March 2017.

Other barriers, such as limited facilitative infrastructure or supportive regulation, make it difficult for e-commerce to develop. Arguments for digital protectionism usually include the following:

- **Protecting infant industries:** Industries in their earliest stages of development require nurturing, at least for some time, until they become efficient enough to compete effectively at a global level. If restrictions are placed on the ability of domestic consumers to import goods and services from companies located abroad, domestic firms might have time to develop into globally viable producers.<sup>45</sup> Although successful in some instances, consumers face higher prices and inferior quality goods and services in the meantime, while there is the risk that nurtured businesses may never sufficiently mature or may lock in their protection through rent seeking.
- **Encouraging local presence:** Restrictions can in some instances be used to force foreign companies to establish a local presence in a country. For instance, requiring data to be stored and processed locally can lead companies to set up local data centres and processing facilities. However, the related costs may make certain markets unattractive, while the benefits to employment and local businesses may be minimal.
- **Preventing e-commerce from opening up other sectors to competition:** E-commerce is increasingly entering traditional economic sectors (eg, new business models enable the electronic sale and delivery of education, healthcare and financial services, as well as the electronic delivery of goods such as books and media). Countries may wish to protect against the threat that e-commerce effectively opens up other sectors to competition. However, doing so will prevent consumers from benefiting from new and competitive business models in these new sectors.
- **Following the China model:** China has a highly protected Internet with localisation requirements and limitations to cross-border data flows. It is also highly filtered and censored.<sup>46</sup> Chinese businesses used this shelter to clone and adapt the business models of international competitors before advancing towards the cutting edge of e-commerce.<sup>47</sup> China is now home to several of the world's largest e-commerce businesses, including Alibaba, Baidu, WeChat and Tencent, and accounts for 40% of all cross-border e-commerce sales of goods, according to some estimates.<sup>48</sup> Nevertheless, the Chinese model is considerably less replicable in small markets that do not offer such economies of scale. It may present a misleading example to small and fragmented African markets.

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45 Van Hoose D (ed.), *E-commerce Economics: Critical Concepts in Economics, Auctions, Intellectual Property and Trade*. London: Routledge, 2014.

46 Ferracane M & H Lee-Makiyama, *op. cit.*

47 *The Economist*, 'Three kingdoms, two empires: China's Internet giants go global', 20 April 2017, <https://www.economist.com/news/business/21721203-tencent-leading-acquisition-spree-alibaba-close-second-chinas-internet-giants-go>, accessed 27 November 2017.

48 Banga R, *op. cit.*



It is also a model driven primarily by security and political interests rather than protectionist industrial policy

In the absence of tariffs, impediments to e-commerce can be used for digital protectionism. As with traditional forms of protectionism, this is not without cost or controversy. While negotiators may wish to preserve policy space for such methods of digital protectionism, they should appreciate that this allows their trading partners the same scope.

## CONTROL OF DATA: THE 'RAW MATERIAL' OF THE DIGITAL ERA

Economic arguments for controlling the storage, processing or transfer of data are often based on the notion that data is a valuable raw material that should be strategically managed, similar to other such materials.

The common analogy is that of data being the 'oil of the digital era'.<sup>49</sup> Indeed, there are many similarities: data is of increasing value and its owners are dominant in their markets, as were the oil giants of the early 1900s. Data gives businesses such as Google, Amazon and Alibaba a competitive advantage that allows them to outcompete their rivals.

However, this can also be misleading: unlike oil, data is non-rivalrous – it can be used by different companies at the same time. It is reusable for varying purposes and, rather than finite, is predicted to double every 24 months.<sup>50</sup> It is also produced by consumers (often incidentally), not extracted from a pre-existing source and remains difficult to exchange between companies.

Adhering too closely to such an analogy without appreciating the particularities of data can lead to inappropriate policies while missing worthwhile alternatives. For instance, keeping data local does keep it within a country, but does not make it any more accessible to the locally competing businesses of that country – it remains on the servers of the businesses that have collected it and is collected only when the right products exist to entice users.

Instead, policies such as mandatory data sharing can make data available to local competitors. Such policies currently suffer from difficulties with ensuring data privacy and will need new technologies or legal inventions to address this issue. Nevertheless, one such example is the EU's new General Data Protection Regulation,

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49 *The Economist*, 'Regulating the Internet giants: The world's most valuable resource is no longer oil, but data', 6 May 2017, <https://www.economist.com/news/leaders/21721656-data-economy-demands-new-approach-antitrust-rules-worlds-most-valuable-resource>, accessed 27 November 2017.

50 Institut Montaigne, 'Big Data et objets connectés: Faire de la France un champion de la révolution numérique', Report, April 2015.

which will apply from May 2018 and which requires online services to make it easy for customers to transfer their information to other providers and even competitors.<sup>51</sup>

Data localisation rules and restrictions on cross-border data transfers are likely to be more effective in forcing foreign companies to set up data centres and analytics to process that data locally, or in raising the cost of business sufficiently so as to render that market unattractive for foreign e-commerce investors.

As with traditional forms of protectionism, this is not without its costs. ECIPE estimates the policy of data localisation to have substantial negative effects on the GDP of Brazil (-0.8%), the EU (-1.1%), India (-0.8%), Indonesia (-0.7%) and the Republic of Korea (-1.1%), with even stronger negative implications for investments and welfare.<sup>52</sup> Such rules increase the complexity of doing business, with companies having to deal with different regulations in different countries, and lower efficiency owing to the expense of setting up multiple data centres.<sup>53</sup> This can make some – particularly small developing markets – economically unattractive. For instance, Kaplan and Rowshankish argue that this ‘slow[s] the expansion of financial services in developing countries’.<sup>54</sup>

While data localisation may require businesses to set up data centres locally, or to rent such facilities from local companies, this is unlikely to substantially boost

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**While data localisation may require businesses to set up data centres locally, or to rent such facilities from local companies, this is unlikely to substantially boost employment**

employment. Such centres are highly automated, requiring a limited number of technical staff: Apple’s \$1 billion data centre in North Carolina created just 50 full-time jobs.<sup>55</sup>

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51 *The Economist*, 6 May 2017, *op. cit.*

52 Bauer M *et al.*, ‘The Costs of Data Localisation: Friendly Fire on Economic Recovery’, ECIPE Occasional Paper, 3, Brussels: ECIPE, 2014.

53 Kaplan JM & K Rowshankish, ‘Addressing the Impact of Data Localization Regulation in Financial Services’, Global Commission on Internet Governance Paper, 14, 2015, <https://www.cigionline.org/publications/addressing-impact-data-location-regulation-financial-services>, accessed 27 November 2017.

54 *Ibid.*

55 Rosenwald M, ‘Cloud centres bring high-tech flash but not many jobs to beaten-down towns’, The Washington Post, 24 November 2011, [https://www.washingtonpost.com/business/economy/cloud-centers-bring-high-tech-flash-but-not-many-jobs-to-beaten-down-towns/2011/11/08/gIQAaccTQtN\\_story.html?utm\\_term=.f2c93afa86d2](https://www.washingtonpost.com/business/economy/cloud-centers-bring-high-tech-flash-but-not-many-jobs-to-beaten-down-towns/2011/11/08/gIQAaccTQtN_story.html?utm_term=.f2c93afa86d2), accessed 25 October 2017.

The importance of data poses challenges that will need to be grappled with not just in Africa but also in the developed world as data increases in value, as digitisation reduces the time and cost to gather and analyse it, and as the digital economy risks being concentrated in the hands of a relatively small number of international digital businesses. However, the available evidence suggests that policies such as data localisation and restrictions on cross-border data flows may be ineffective and costly. The economic implications of these policies for developing countries need to be better understood.

## E-COMMERCE THREATS AND OPPORTUNITIES FOR MSMEs

MSMEs are particularly important to the economies of African and other developing countries. Indeed, in African economies MSMEs are estimated to account for more than 80% of output and jobs.<sup>56</sup> MSMEs may face threats from the rise of e-commerce, as digital businesses engage in anticompetitive behaviour to unfairly outcompete traditional businesses and MSMEs.

Amazon – which accounts for half of all online expenditure in the US – is now replacing traditional US retailers and using its market dominance to outcompete smaller rivals across the increasing range of additional business areas in which it operates.<sup>57</sup> Amazon, Alibaba and similar e-commerce platforms can be both intermediaries, providing an online marketplace, and direct competitors in these marketplaces with their own products. This leads to anticompetitive threats because of their ‘platform power’ – the large volumes of data they collect allow them to understand and, in some cases, influence the markets for which they provide platforms.

Khan, who evaluates Amazon as a case study, argues not against e-commerce platforms but for their better governance – either through reformed competition laws or by regulating them like traditional natural monopolies.<sup>58</sup> The argument is that e-commerce platforms require new approaches to competition policy that account for the business models of the digital era.

E-commerce platforms can also offer many opportunities for MSMEs. MSMEs can use e-commerce platforms to gain an online presence to market their goods and services to potential buyers.<sup>59</sup> Some of these platforms provide a full range of facilitative

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56 *World Finance*, ‘SME growth key to Africa’s future, says African Guarantee Fund’, 18 November 2014, <https://www.worldfinance.com/banking/sme-growth-key-to-africas-future-says-african-guarantee-fund>, accessed 18 November 2017.

57 LaVecchia O & S Mitchell, ‘Amazon’s Stranglehold: How the Company’s Tightening Grip Is Stifling Competition, Eroding Jobs, and Threatening Communities’, Institute for Local Self-Reliance, 2016, [https://ilsr.org/wp-content/uploads/2016/11/ILSR\\_AmazonReport\\_final.pdf](https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf), accessed 19 October 2017.

58 Khan L, ‘Amazon’s antitrust paradox’, *The Yale Law Journal*, 126, 2017, pp. 710–894.

59 Sandberg K & K Hakansson, ‘Barriers to adapt e-commerce by rural microenterprises in Sweden: A case study’, *International Journal of Knowledge and Research in Management and E-commerce*, 4, 1, 2014, pp. 1–7.

services – payment processing, customer services, shipping, return processing and delivery.<sup>60</sup> The services such marketplaces provide, including simplified logistics and payments, are often appreciated by MSMEs that cannot otherwise afford such provisions themselves.

Beyond goods, professional service platforms such as [Freelancer.com](#) and [Elance.com](#) connect professionals in developing countries to freelance opportunities around the world. Others, such as [MercadoLibre](#) – the largest online marketplace in Latin America – help foster intra-regional trade by connecting buyers and sellers in this region, and providing online payment services for the MSMEs in this region that do not have bank accounts.<sup>61</sup>

At the heart of the benefits of e-commerce for MSMEs is a reduction in information costs. It reduces the cost of acquiring the information that enables transactions between parties that would not have otherwise known about each other. In contrast, larger businesses rely on brand awareness and reputation. For instance, [AirBnB](#)

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### At the heart of the benefits of e-commerce for MSMEs is a reduction in information costs

and [eBay](#) overcome trust and information problems for MSMEs through feedback and rating systems, and by offering escrow and dispute resolution mechanisms.<sup>62</sup> Although the reduction in information costs benefits all sellers, it is particularly to the benefit of MSMEs that cannot rely on the trust of a known brand or invest in connecting with remote buyers.

The reduction in information costs is especially valuable in connecting suppliers with purchases across borders. For instance, firms in Chile, Jordan, Peru and South Africa can market and sell their products to foreign markets through eBay and other e-commerce platforms.<sup>63</sup>

Nevertheless, in many developing countries MSMEs still face challenges in utilising e-commerce. They can lack the skills necessary to identify their e-commerce needs and potential benefits, and how to engage in it.<sup>64</sup> International platforms also often only accept vendors from a limited number of countries, usually excluding most developing countries. Amazon allows the registration of sellers in 23 countries – the

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60 UNCTAD, 2015, *op. cit.*

61 World Bank, *World Development Report 2016: Digital Dividends*. Washington, DC: World Bank Group, 2016

62 *Ibid.*

63 *Ibid.*

64 UNCTAD, 2015, *op. cit.*

only developing country of which is India – and eBay in only 21 countries.<sup>65</sup> Payment solutions can also be challenging, with most options requiring sellers to have bank accounts. However, other options are becoming increasingly available, such as payment receipt by mobile money.

On balance, e-commerce is likely to be to the benefit of MSMEs. Threats posed by e-commerce giants can most appropriately be addressed by new approaches to competition policy, such as regulating e-commerce platforms as natural monopolies. Trade rules that foster the expansion of e-commerce could help MSMEs use e-commerce platforms as a means of facilitating exports.

## RECOMMENDATIONS

### IMPLICATIONS AND RECOMMENDATIONS FOR MC11

Pressure at and in the run-up to MC11 will concentrate on providing a mandate for negotiations to begin on e-commerce rules. Emphasis will be placed on providing scope for the negotiation of relatively inoffensive new rules, such as those related to increased transparency and facilitative measures such as e-signatures and e-authorisation.

These relatively less controversial rules will not pose a significant threat to African and other developing countries, nor are they particularly in the offensive negotiating interests of these countries. It is developed countries – as well as several in the Asia region – that are currently best poised to take advantage of a more facilitative environment for international e-commerce, although MSMEs across the world would also benefit from the opportunities provided by such an expansion of e-commerce.

The WTO succeeds when negotiating members trade off their interests for mutually beneficial outcomes. In the strategic calculus for e-commerce, it is recommended that African and other developing countries weigh up potential concessions in e-commerce with any offsetting interests in DDA issues and any particular interests in e-commerce such as capacity building and Aid for Trade, as well as risks (including that discussions on e-commerce might instead migrate to plurilateral forums in which African and other developing countries have no say).

Certain countries will have an eye on eventually introducing more controversial rules, of the sort being negotiated in the TPP, and to some extent also the TTIP and TiSA. These include prohibitions on localisation requirements, prohibitions on restrictions to cross-border data flows, and stronger e-commerce-related intellectual property protections.

Such rules would prohibit the use of regulations employed by only a few African and developing countries, but have little immediate effect on most. As with the less

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<sup>65</sup> *Ibid.*



controversial rules, most African and developing countries will have little offensive negotiating interest in such proposals.

Not having rules on these more controversial issues in no way prevents African and other developing countries from being able to foster a conducive environment for the expansion of e-commerce in their economies. Indeed, as with the current regime, most of these countries continue to refrain from using such policy tools.

The risk here is largely only to policy space. What negotiators may remain cautious about is the speed with which the digital economy is growing and the uncertainty over how it may evolve, and so they may prefer to retain scope for such tools in the future. Nevertheless, should negotiators wish to preserve policy space for such methods of digital protectionism, they must appreciate that this allows their trading partners the same scope. They also need to consider the potential economic costs associated with data localisation and restrictions on cross-border data flows.

It is therefore recommended that negotiators from African and other developing countries take a precautionary approach to rules on e-commerce at MC11. These countries have little offensive negotiating interest in these rules, but the cost of these rules is similarly small with even the more controversial rules concerning largely unused policy space for policy tools, which may nevertheless be ineffective and costly. As such, there may also be some value in trading off concessions in e-commerce for interests elsewhere, especially in terms of the less controversial e-commerce proposals or DDA issues.

### IMPLICATIONS AND RECOMMENDATIONS FOR DEVELOPING COUNTRIES

The above-mentioned recommendation is not without appreciation of the growing importance of e-commerce as a tool for development. If the anticompetitive threats of big data and new e-commerce business models can be sufficiently managed through new approaches to competition policy and data protection regulation, e-commerce will provide many developmental benefits.

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**It is therefore recommended that negotiators from African and other developing countries take a precautionary approach to rules on e-commerce at MC11**

E-commerce is of particular benefit to MSMEs, and most enterprises in developing countries are MSMEs. It can help them connect with purchasers abroad for cross-border orders and provide the supportive services necessary to facilitate their exports, including simplified payments and logistics. It can be a tool for boosting intra-regional trade, as demonstrated by MercadoLibre in Latin America. It is also to the benefit of consumer welfare, providing new options for the delivery of traditional goods and services as well as government provisions.

There is scope for the digital economy to take a bigger role in both the national and regional development policies of developing countries. Successes in Asia highlight such possibilities: ASEAN has fostered regional cooperation over issues of trade facilitation, infrastructure gaps, access to payment solutions and online security with a Coordinating Committee on E-Commerce. This fosters a facilitative environment for the development of e-commerce.

It is recommended that African and other developing countries adopt similar strategies to support sustainable cross-border and intra-regional e-commerce. These can include regional provisions on the alignment of e-transaction laws, the streamlining of consumer protection policies, the harmonisation of digital competition policies, and the streamlining of data privacy and cybercrime policies; as well as cooperation platforms, such as ensuring the adequate taxation of cross-border e-commerce enterprises. For Africa, the second phase of the Continental Free Trade Area negotiations provides the ideal platform for investigating these issues.

ANNEX A											
A: MATRIX OF POSITIONS ON E-COMMERCE											
		Canada & EU et al. (JOB/GC/97 and JOB/GC/116)	US (JOB/GC/94)	Brazil (JOB/GC/98 and JOB/GC/113)	MIKTA (JOB/GC/99)	Japan (JOB/GC/100)	Singapore et al. (JOB/GC/101)	China and Pakistan (JOB/GC/110)	Argentina, Brazil and Paraguay (JOB/GC/115)	ASEAN (JOB/GC/126)	Taiwan (JOB/GC/128 and JOB/GC/129)
REGULATORY FRAMEWORKS											
Enhanced transparency	Publication of measures and of draft measures relating to e-commerce; opportunity to comment on those measures	Y	Y			Y		Y			Y
Consumer confidence enhancing measures	Regulatory framework for consumer protection	Y		Y	Y	Y	Y	Y (‘exchange of information on related laws’)			
	Regulatory framework for privacy	Y	Y (IP protections for encryption innovations)	Y	Y						
	Regulatory framework for cyber security and measures against cyber crime	Y				Y	Y				
	Regulation of unsolicited communications	Y				Y					
Trade facilitating measures	Open networks/ access to and use of the Internet	Y	Y	Y (incl. network neutrality)							
	Addressing licensing and authorisation procedures	Y	Y			Y		Y (‘exchange of information on policies’)		Y	

Trade facilitating measures	Addressing electronic payments: setting out regulatory frameworks to support e-payments and ensuring a competitive market for payment services	Y	Y			Y	Y	Y (‘exchange of information’)		Y	
	Access to and use of communications networks	Y	Y (prohibit requirements to use local communications technology)								
	Safeguarding network competition: enable digital suppliers to either build networks in markets they serve or access such facilities and services from incumbents		Y								
	WTO Telecommunication reference paper	Y			Y						
	Trade-related aspects of intellectual property rights	Y	Y (bar forced technology transfers)	N (TRIPS exemptions in physical format should be extended to the digital environment; unimpeded access to digital technology)		Y (prohibit cyber theft of trade secrets)					
	Recognition of e-signatures/ authentication	Y								Y	

Trade facilitating measures	Addressing e-procurement/ e-auctions: enable non-established companies to participate in government procurement procedures through the Internet	Y									
	Technical standards: interoperability and recognition	Y	Y			Y					
	Recognising conformity assessment procedures for information and communications technology		Y								
OPEN MARKETS											
Liberalisation commitments	Improved commitments on services necessary to support e-commerce (such as telecommunications, computer services and delivery)	Y	Y (existing commitments should continue to apply as markets develop)	N (liberalisation of services relevant to e-commerce should be made within existing GATS framework)	Y						
	Services classification issues: to clarify sectoral coverage of services commitments	Y									
	Tariffs elimination for goods necessary for e-commerce (such as through the Information Technology Agreement, or ITA)	Y									
	Prohibition against customs duties on electronic transmissions	Y	Y	Y			Y				

Measures ensuring openness	Disciplines ensuring cross-border data flows	Y	Y	N (should be covered by existing GATS commitments)	Y	Y					
	Disciplining data localisation requirements	Y	Y		Y	Y					
	Prohibiting requirements on the transfer of or access to source code of software, as a condition of market access	Y	Y	N (prevent unwarranted limitations to the transfer of technology)		Y					
	Securing basic non-discrimination principles		Y			Y					
INITIATIVES FACILITATING THE DEVELOPMENT OF E-COMMERCE											
Building on the Trade Facilitation Agreement to support e-commerce, including paperless trading, single windows, simplified customs procedures and reduced administrative barriers	Y	Y			Y	Y	Y	Y		Y	Y
Aid for Trade/ technical assistance to develop e-commerce capacity	Y						Y	Y			
Regulatory cooperation among members and/or regulatory authorities	Y					Y					
ENHANCED TRANSPARENCY OF THE MULTILATERAL TRADING SYSTEM											
Greater focus on e-commerce during trade policy reviews	Y							Y			Y
DG Monitoring Report on protectionism could include a digital focus	Y										
Exchange of information through e-commerce agenda items of the regular WTO committees	Y				Y			Y			

Notes: Y indicates support or similarities in position, N indicates explicit disagreement

