International Organisations Research Journal, 2024, vol. 19, no 4, pp. 23–39
Original Article
JEL: F13
doi:10.17323/1996-7845-2024-04-02
Online First

Key Trends in Negotiations and Agreements in the Digital Trade Area[1]

O. Biryukova

Olga Biryukova – PhD, Programme Academic Supervisor of "World Economy", Associate Professor, Associate Professor of the Department of World Economy, Senior Researcher of Center for Comprehensive European and International Studies, Senior Researcher of Laboratory of Responsible Business, HSE University; 17 Malaya Ordynka Ulitsa, Moscow, 119017, Russia; obiryukova@hse.ru; ORCID: https://orcid.org/0000-0002-4845-6897

Abstract

This article analyzes current changes related to the international regulation of digital trade.

In the context of technological transformation, the concept of digital trade is expanding. Under the influence of political decisions and the priorities of big companies, it includes an increasingly wider range of issues, which complicates the development of international rules.

Since 2000, the digital economy has taken an important place on the agenda of negotiations on free trade agreements. At the same time new types of arrangements have arisen – digital trade agreements, including provisions on e-commerce and data movement. Their compatibility with the rules of the World Trade Organization (WTO) in terms of preferential regimes raises objective doubts.

Key participants in international digital trade (the European Union (EU), the US, and China) have different approaches to the formation of international rules. Their positions on certain issues may be revised and brought closer together. In recent years, Singapore has been increasingly active in developing international agreements on the digital economy, striving to become a global hub in physical and digital trade.

Existing agreements of the WTO were designed before the rapid development of the Internet, so the conditions for conducting digital trade and the commitments of members in it are largely uncovered. Today, it is difficult to negotiate in a multilateral format at the organization. In this regard, the development of rules on e-commerce is taking place in a plurilateral format – the Joint Initiative.

The findings suggest that despite the stabilization of the text of the WTO Agreement on Electronic Commerce, the outcome of future of negotiations' outcome negotiations remains uncertain, both due to political disagreements and the crisis in the WTO.

Keywords: e-commerce, digital trade, digital economy, trade agreements

Acknowledgments: this work is an output of a research project "Transformation of the regulatory paradigm for international trade in terms of sanctions", implemented as part of the Research Program of the Faculty of World Economy and International Affairs at HSE University in 2024.

For citation: Biryukova O. (2024) Key Trends in Negotiations and Agreements in the Digital Trade Area. *International Organisations Research Journal*, vol. 19, no 4, pp. 23–39 (in English). doi:10.17323/1996-7845-2024-04-02

[1] This article was submitted on 26.05.2024.

Introduction

Digitalization is having a huge impact on international trade, changing the nature of cross-border economic relations. An increasing share of goods and services are ordered and delivered electronically, data transmission has become an important cross-border economic flow, and digital technologies are embedded in supply chains [UNCTAD, 2023].

Digitalization is driving the growing relationship between the development of services and economic growth. In 2022, the value of global exports of digitally delivered services was $3.82 trillion, representing 12% of total exports of goods and services. Between 2005 and 2022, digitally delivered services increased at a record average annual rate of 8%, outpacing the growth rate of merchandise exports (5%) [IMF, OECD, UNCTAD, WB and WTO, 2023].

A unified approach to the definition of digital trade has not yet been developed between countries [Jiang et al., 2022]. However, for statistical purposes, international economic organizations define digital trade as "all international trade that is digitally ordered and/or digitally delivered" [IMF, OECD, UNCTAD and WTO, 2023]. Until statistics on full-scale digital trade between countries are collected, one of the most representative approaches to measure it may be to assess cross-border transactions of ICT services. This category has been among the fastest growing sectors in recent decades [Biryukova, Bezhanishvili, 2017].

Digital trade as a dynamic and fast-growing area of the global economy is increasingly being regulated in international agreements. It poses a serious challenge to the territorial concept of states and their jurisdiction, because the Internet is not a physical subject of regulation [Wolfe, 2019]. Over the past twenty years, interstate agreements in digital trade have become one of the most active areas of international economic law.

The number of agreements regulating digital trade is growing. According to the TAPED (Trade Agreement Provisions on Electronic-commerce and Data) database of the University of Lucerne, at the beginning of 2023, there were 116 regional trade agreements regulating e-commerce and data movement worldwide. By 2024, there are 103 agreements in force in the Asia-Pacific region alone, covering e-commerce, with two agreements under negotiation (EU-Australia, EU-Philippines). The first trade agreement

to include e-commerce was the New Zealand-Singapore Free Trade Agreement signed in 2000. Between 2020 and 2022, 20 out of 23 trade agreements concluded included specific provisions on digital trade [UN ESCAP, 2024]. This clearly demonstrates the growing role of e-commerce regulation within existing preferential trade agreements.

A significant number of rules in such arrangements are non-binding. This demonstrates a willingness to include new issues to converge regulatory approaches and a desire to create a platform for cooperation. There has also been innovation in developing rules that cover e-commerce, data movement issues, and other aspects of the digital economy. Most agreements that contain chapters on e-commerce tend to deal with higher-income countries [González, Sorescu, Kaynak 2023].

This article conducts a comparative analysis of the US, EU, China, and Singapore models in agreements governing digital trade, and to assess the prospects and limitations of the development of digital trade law on the WTO platform.

Development of rules on e-commerce in the WTO

The WTO rulebook, created before the Internet became a key player in cross-border trade, contains few rules directly applicable to the digital economy (see Figure 1). Among the main ones are rules on trade in services and a moratorium on customs duties on electronic transmissions. Later governments have adapted obligations originally written for physical trade to online commerce. However, this approach to regulation is not optimal.

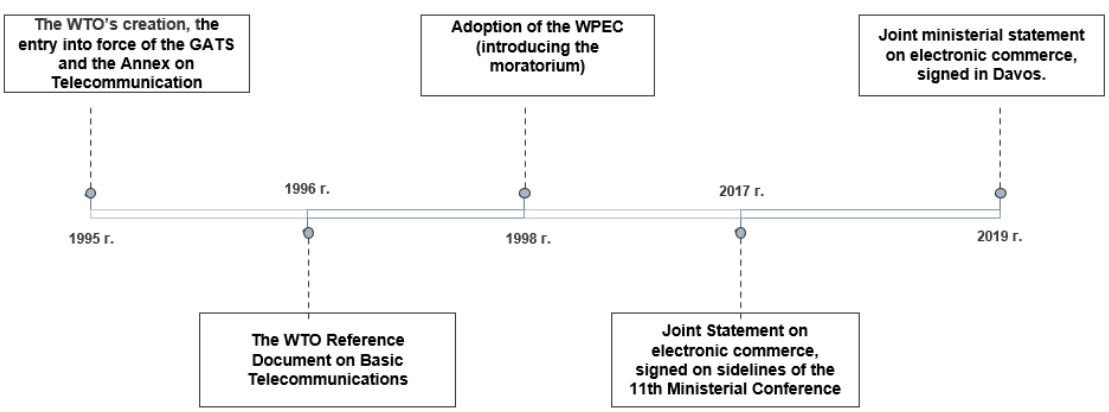

Fig. 1. Key milestones in the development of digital trade law in the WTO

Source: Compiled by the author

Many services provided over the Internet are covered by the General Agreement on

Trade in Services (GATS). An important feature of the GATS is its "technological neutrality". Since the GATS regulates trade in services and not the means of their delivery, services provided through electronic means are covered by it [Biryukova, Daniltsev, 2019].

The GATS may apply to digital trade in the following ways. First, the most-favoured-nation principle (Article II) requires non-discrimination between "like" services from different trading partners. Second, the national treatment principle (Article XVII) requires non-discrimination between domestic and "like" foreign services listed in countries' schedule of commitments. Third, domestic regulations (Article VI) require the reasonable, objective, and impartial administration of all measures of general application.

These principles do not contribute to the unification of different approaches of countries to the internal regulation of the digital economy.

A WTO member's digital technology policy that violates these principles can be justified through the mechanism of general exceptions under Article XIV of the GATS, including for the protection of confidentiality. That said, historically, members' commitments in trade in services have varied considerably in terms of the coverage of services sectors and the depth of liberalization. This means that market access, as well as the granting of national treatment, will be regulated by the WTO only in those service sectors of a country for which it has taken commitments under the organization.

In 1998, WTO members adopted the Work Program on Electronic Commerce (WPEC). For the purpose of its implementation, the term "e-commerce" was introduced, which refers to the production, distribution, marketing, sale or delivery of goods and services by electronic means [WTO, 1998].

An agreement was reached among all WTO members on a moratorium on non-collection of customs duties on electronic transmissions. WTO members could not agree on the definition and scope of the concept of "electronic transmission", which is still under discussion.

The moratorium has been extended at each WTO Ministerial Conference. In recent years, a number of WTO members have increasingly expressed doubts about its benefits for developing countries and the advisability of its extension. For example, India and South Africa note that with the development of digitalization, the share of online trade is

increasing, while traditional trade is falling [WTO, 2021]. Consequently, customs revenues from the substitution of physical goods with digitizable ones are decreasing, resulting in fiscal losses [Banga, 2022]. They are opposed by the majority of WTO members, believing that the moratorium leads to an overall increase in welfare. It is noted that the moratorium applies only to customs tariffs, and governments can tax digital transactions in other forms [Andrenelli and Lopez Gonzalez, 2023].

A special feature of WPEC is that the program does not contain an explicit negotiating mandate. This means that the formal launch of multilateral negotiations on e-commerce in the WTO can only be given by a consensus decision of all 166 members. This institutional vulnerability has been exploited by individual countries blocking multilateral negotiations on e-commerce. Their reluctance to participate in the development of new agreements may be due to both objective reasons (for example, the lack of basic digital infrastructure in the country) and the negotiating game being played (first reaching agreements on physical trade, and then moving on to "new issues").

As a result, countries that support new norms and rules in the field of digital trade were left with no choice but to launch discussions (de facto negotiations) in the format of a "joint initiative" [WTO, 2017, 2019]. Currently, 91 WTO members, accounting for over 90 percent of world trade, are participating in plurilateral negotiations on e-commerce to determine the rules for governing the global digital economy [Joint Initiative on E-commerce, n.d.].

From the very beginning of the plurilateral negotiations in the WTO, the participants encountered terminological difficulties – the level of the development of legislation in the digital economy among the members of the organization was extremely heterogeneous and was based on different approaches to definitions. As a result, a number of co-sponsors insisted on the term "*digital trade*" in the title of the future agreement, justifying this by coordinating the efforts of the OECD and other organizations to develop methodological approaches to assessing digital flows and Internet trade with the negotiations in the WTO. Another group noted the need for continuity of WTO rules and proposed using the term "*e-commerce*" which had been introduced into the organization's rulebook. Both groups argued in their defense that the regional agreements with their participation already use the terms "*digital trade*" or "*e-commerce*," which ultimately

neutralized this argument in the discussion. As a result, the term "e-commerce" won. An important argument was the reference to the 1996 *UNCITRAL Model Law on Electronic Commerce*.[1] However, both groups of members reached a mutual understanding on the priority of establishing common clear rules and principles for business to be implemented taking into account national legislations, and introducing definitions only if necessary in individual provisions of the agreement.

In the Joint Initiative on E-commerce, participants, including Russia, the EU, the US, and China, have so far managed to agree on provisions on relatively non-sensitive issues: the need for transparency in regulation, promoting digitalization in customs administration, and strengthening consumer protection in the digital space (see Table 1). Compromises were extremely difficult to find for issues that involve significant commercial interests, national economic security, and technological sovereignty (free movement of data, prohibition of restrictions on financial payments, access to ICT infrastructure, and the liberalization of digital services) [WTO, 2024]. Even where participants share common goals, however, there are difficulties in choosing wording. International rules in digital trade are important objects of competition between major players and represent a leverage that will determine the dominance of one regulatory approach.

In July 2024, the cosponsors of the Joint Initiative managed to stabilize the text (see Table 1). However, nine participants - Brazil, Colombia, El Salvador, Guatemala, Indonesia, Paraguay, Taiwan, Turkey, and the US - felt, for various reasons, that they could not support the text at that time.

If the proponents of the Joint Initiative on E-commerce are able to balance their interests and initial the text of the agreement, incorporating the new rules into WTO law will still require the consensus of all members or finding another institutional solution. At present, the need for additional "flexibilities" to expand the possibility of incorporating joint initiatives into the law of the organization is more acute than ever. If attempts to add new arrangements to the WTO package of agreements are not supported, it will lead to increased negotiating activity outside the organization and the subsequent fragmentation

[1] This document was translated into Russian as Model Law on **Electronic Trade**, which once again shows the country-specific application of "digital" concepts.

of trade rules.

Table 1: Key issues of the "stabilized text" of the Agreement on E-commerce being developed under the Joint Initiative

Main provisions	Regulated issues
A. SCOPE AND GENERAL PROVISIONS	Scope Definitions Relation to other Agreements
B. ENABLING ELECTRONIC COMMERCE	Electronic Transactions Framework, Electronic Authentication and Electronic Signature, Electronic Contracts, Electronic Invoicing, Electronic Payments Paperless Trading, Single Windows Data Exchange and System Interoperability.
C. OPENNESS AND ELECTRONIC COMMERCE	Customs Duties on Electronic Transmissions Open Government Data Access to and Use of the Internet for Electronic Commerce
D. TRUST AND ELECTRONIC COMMERCE	Online Consumer Protection Unsolicited Commercial Electronic Messages Personal Data Protection Cybersecurity
E. TRANSPARENCY, COOPERATION, AND DEVELOPMENT	Transparency, domestic regulation and cooperation Capacity building Provisions on special and differential treatment for developing country members and LDC members
F. TELECOMMUNICATIONS	Disciplines related to the regulatory environment for providing telecoms services
G. EXCEPTIONS	General Exceptions Security Exception Indigenous Peoples Prudential Measures Personal Data Protection Exception
H. INSTITUTIONAL ARRANGEMNETS AND FINAL PROVISIONS	Dispute Settlement Committee on Trade-Related Aspects of Electronic Commerce Provisions for Entry into Force and Implementation Provisions related to the Administration of the Agreement

Source: compiled by the author on the basis of the Agreement on Electronic Commerce. July 26, 2024. https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/ECOM/87.pdf&Open=True (accessed 4 October 2024)

It is worth remembering that even if the proponents of the Joint Initiative on E - commerce are able to balance their interests and initial the text of the agreement, the incorporation of new rules into WTO law will in any case require a consensus of all members or a search for another institutional solution. Currently, the need for additional "flexibilities" that expand the possibility of including joint initiatives in the organization's law is more acute than ever. Failure to support attempts to add negotiating results to the WTO's package of agreements will lead to increased negotiating activity outside the organisation, followed by fragmentation of trade rules.

Compatibility between WTO rules and new digital trade-related agreements

In the absence of universal multilateral rules on digital trade, a number of states have actively resorted to bilateral and regional agreements in this area. To date, three main models of such digital trade-related agreements:

- Free trade agreements (FTAs) with e-commerce provisions (e.g. Chapter 14 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership);

- Adding e-commerce provisions to existing free trade agreements (e.g. the Digital Economy Agreement between Australia and Singapore);

- Signing stand-alone digital trade agreements (e.g. the Digital Economy Partnership Agreement between Singapore, New Zealand and Chile).

While the first two models generally do not raise questions of compliance with the rules of the multilateral trading system, the format of digital agreements outside countries' commitments to trade in goods and services is less clear. [Soprana, 2021].

In 1947, the General Agreement on Tariffs and Trade (GATT) laid the foundation for a multilateral trading system based on the principle of non-discrimination. At the legal level, this principle is embodied in the reciprocal granting of most-favoured-nation (MFN) and national treatment by WTO members. This principle has been further reaffirmed in the development of the GATS. Given the existence at the time of the GATT of preferential trade agreements (mainly between colonies and metropolises) that could be perceived by third countries as discriminatory, the drafters of the GATT (and subsequently the GATS) provided for appropriate MFN exemptions for customs unions and free trade areas (Article XXIV of the GATT) and for economic integration

agreements (Article V of the GATS). However, such forms of preferential interaction under WTO law must meet certain conditions.

For example, GATT Article XXIV requires parties to a customs union or free trade area to eliminate duties and other trade-restrictive regulations on "all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories". The preamble to the Agreement on the Interpretation of Article XXIV suggests that the exclusion of a major sector of trade would not satisfy the substantially all trade requirement.

Although digital trade is now an important part of cross-border trade in goods and services, it has not yet reached its full potential. In this respect, meeting the "substantially all trade" requirement of, for example, the US-Japan Digital Trade Agreement, is controversial. The compliance of digital agreements with GATS requirements appears to be even more questionable.

Similar to the goods rules, trade in services requires that the economic integration agreement in accordance with Article V:1 (a) of the GATS has a significant sectoral coverage. Footnote 1 explains that this condition refers to the number of sectors, the volume of trade affected and the range of modes of supply. In order to fulfil this condition, agreements should not exclude any mode of supply in advance. However, services provided through digital trade clearly involve only mode 1 (cross-border supply). And while the realisation of trade in services through mode 2 (consumption abroad) can still be linked to digital trade, the other modes of supply (commercial presence and movement of natural persons) do not clearly fall within the parameters of digital trade. Thus, an agreement based on (at most) two modes of supply would presumably not fulfil the conditions of an existing FTA in services under the GATS. It is worth noting that no digital trade agreement has yet been notified to the WTO. [Burri et al., 2024].

Typically, the provisions in such agreements on the free cross-border transfer of information and the prohibition of data localisation requirements contain safeguards similar to those in the GATS general exceptions (Article XIV). This gives the parties the possibility of regulatory autonomy and a basis for justifying infringements. This reduces the impact of the convergence of national regulatory practices in the area of digital trade.

All three types of agreements are generally based on the same non-discrimination

principles as WTO rules and regulations: most-favoured-nation and national treatment. The main advantage of such agreements for developers is that they serve as good "guides" for regulatory approaches and standards in the digital economy. At the same time, digital trade agreements cannot prevent the process of fragmentation of digital trade regulation at the global level and, on the whole, are not always effective tools for opening foreign markets to digital services.

Patterns of country participation in digital trade-related agreements

The US approach

Digitalisation issues occupy an important place in US trade policy. This is due to the fact that the US remains to be the only state that can simultaneously control the global production chains of high-tech goods, has an impressive cyber potential and influences the formation of international legal regimes [Ramich, Piskunov, 2022]. US cloud services companies are global leaders and account for a solid share of US exports. At the same time, they maintain trade surpluses and provide tens of thousands of high-paying domestic jobs.

US trade policymakers and IT companies have been increasingly active in using the international digital trade regime as an appropriate arena for creating binding international rules.

It is noteworthy that these IT companies and their affiliates were key supporters of the Obama administration, which in turn supported the industry in every way possible. As a result, B. Obama gained the unofficial status of "the first tech president" [Kang, Eilperin, 2015]. Over the last decade, the political activities of US IT companies and their affiliates, such as lobbying and participation in electoral campaigns, have increased significantly, making them a powerful lobbying force in the US [Aggarwal, Kenney, 2023].

Since 2000, Washington has actively used trade agreements to advance its digital agenda [Elsig, Klotz, 2022]. A major result of this policy was the development of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) [USTR, 2014]. Although the US later withdrew from the agreement before it could be ratified with the arrival of the Trump administration, its provisions on e-commerce set *a certain standard* for subsequent trade agreements. Later, the US itself began to use a

similar set of provisions in its own agreements. These include the NAFTA agreement between the US, Canada and Mexico (US-Mexico-Canada Agreement, USMCA), which was updated in 2018, and the US-Japan Digital Trade Agreement, which was signed in 2019.

For the US, the main challenges addressed through trade policy instruments were removing barriers to cross-border data flows, ensuring the protection of intellectual property in the digital environment, holding social platforms minimally liable for unfair content, and facilitating access to foreign markets for US cybersecurity companies. [Gao, 2018 b].

At the same time, in the US model agreement, countries commit not to impose tariffs on electronic transmissions for an indefinite period of time, thereby making permanent the existing practice of a moratorium under the WTO's WPEC.

An important element of the US type of agreement is the presence of provisions aimed at removing government measures that major US technology companies consider to be an impediment to their business model, including the so-called “forced transfer” of software and source code.

With the expiration of the US Trade Promotion Authority in 2021 and the Biden administration's lukewarm stance on trade agreements (especially FTAs), Washington has become a less active player in shaping digital trade rules. Nevertheless, other governments continue to negotiate a wide range of digital commitments. These include, for example, the preferential trade agreements that the UK is negotiating post-Brexit.

October 2023 saw a significant change in the US approach to international digital trade rules. Washington withdrew its proposals on cross-border data flows, data localisation and source code in the WTO e-commerce negotiations and suspended their consideration in the Indo-Pacific Economic Framework for Prosperity (IPEF). An official statement from the Office of the Trade Representative (OTR) indicated that the US needed 'policy space' [USTR, 2023] for a domestic debate on how the country should approach digital trade issues.

In defence of this approach, US Trade Representative Katherine Tai[2] noted that it

[2] U.S. Trade Representative. Katherine Tai speaking at the Aspen Security Forum. 12.07.2023. https:// https://www.aspensecurityforum.org/dc-2023-videos

is necessary to first determine whether it is the private sector or government that will "decide or control how freely data can be transferred and when it can be restricted, where it should be stored, and when access to source code is required". The US would likely commit "political suicide" by continuing to push for international trade rules that prejudge the outcome of the ongoing debate over domestic policies, including the regulation of artificial intelligence (AI). The dominance of technology giants in the collection and transmission of data is not necessarily in the US public interest[3]. This sharp reversal in trade policy shows that the Biden administration is at the centre of an internal struggle over international digital trade rules. The change in Washington's position has led to sharp public accusations that the US is no longer interested in leading international digital trade policy and is in fact ceding the field to China [CSIS, 2024]. This contradicts the long-standing US position in favour of free data flows since the Clinton administration, as reaffirmed in the 2022 Declaration on the Future of the Internet.

USTR's actions support two broader goals of the Biden administration. The first is to reinforce the principle of the sovereign right to pursue independent trade policy, and in fact to reinforce the tendency to interpret loosely the existing national security provisions of the WTO agreements. Issues related to cross-border data flows are at the heart of the administration's security and economic policy agenda. Second is the administration's suppression of large technology companies that use trade policy tools to address domestic competition concerns.

The EU's approach

The EU's approach to participating in digital trade-related agreements has evolved considerably. Early FTAs with Chile in 2002 and South Korea in 2009 included provisions on e-commerce (usually in the context of regulating trade in services), but these were general, limited in scope and aimed at cooperation. The EU, which has been particularly insistent on data protection, has also sought commitments from its FTA partners to ensure compatibility with international data protection standards [Fahey, 2022].

[3] U.S. Trade Representative *Katherine Tai* speaking during a panel at the *Brussels Conference* on *Antitrust.* 31.01.2024. https://www.bruxconference2024.com/event/f79d717d-15c4-485a-a60b-4c718e9490b0/websitePage:1ef19af9-1890-4d4e-926b-205f01c8f0bc

The 2016 EU-Canada Comprehensive Economic and Trade Agreement (CETA) already contained a separate chapter on e-commerce. However, apart from the prohibition of customs duties on electronic transmissions, the agreement did not contain any substantive provisions, although it did include a number of more lenient rules. These included provisions to ensure transparency and predictability of domestic regulatory frameworks, interoperability, and to promote innovation and competition in e-commerce, thereby encouraging its use by small and medium-sized enterprises. CETA also includes a clause allowing the parties to adopt or maintain laws, regulations or administrative measures to protect the personal data of users engaged in e-commerce, taking into account international data protection standards. There are no rules on data and data flows themselves in the agreement.

The adoption of the General Data Protection Regulation by Brussels in 2018 prioritised privacy policy over data flows, restricting the transfer of personal data outside the association, except to certain countries defined by the EU as providing adequate data protection. The General Regulation brought significant changes to the implementation of privacy protection for companies that use personal data intensively [Tikkinen-Piri et al., 2018], which could not help but affect the content of international agreements involving the EU. This has also led to friction with the US, as EU courts have repeatedly issued rulings restricting data flows between the two economies due to privacy concerns [Judgment of the Court, 2020]. To resolve these tensions, the EU-US Data Protection Framework Agreement was adopted in 2023.

As a result, in the negotiations on the Joint Initiative on Electronic Commerce at the WTO, as well as in its trade agreements, the EU maintains a specific model of recognition and protection of privacy as a fundamental right. The EU also reserves the right to renegotiate agreements if their implementation would adversely affect privacy conditions in terms of the movement of data flows. This EU approach was also reflected in the post-Brexit Trade and Cooperation Agreement with the UK.

In recent years, the EU has used different formats of digital trade-related agreements. For example, separate “digital partnerships” have been signed with Japan (May 2022), South Korea (November 2022) and Singapore (December 2022), which can serve as a model for cooperation on digital issues with other countries [Schweitzer et al.,

2024]. In 2023, it has been announced that the EU and Singapore will start negotiations on a digital trade agreement.

The digital partnership model is becoming a more practical approach to digital trade than the commitments in traditional EU trade agreements. It covers a wide range of important issues, from e-commerce to data management. It also creates coordination mechanisms with partner countries on issues such as semiconductors, 5G networks, high-performance computing, quantum technologies, AI, digital connectivity and distributed ledger technologies. It is important to note, however, that the commitments under these partnerships are based on soft law and are not binding on the signatories.

The Chinese approach

Another major player in international trade, China, while maintaining data localisation requirements, adheres to the principles of digital sovereignty, although it has wisely used the gains from trade with the outside world [Aaronson, Leblond, 2018]. As part of its international diplomacy, China actively defends the thesis that trade liberalisation should not be equated with deregulation, and that cybersecurity is a matter of protecting sovereignty, not a means of restricting foreign investors. At the same time, Beijing is interested in removing barriers to access foreign markets, but does not favour the free movement of data (Abendin, Duan, 2021). Its priority is not so much ICT services as the liberalisation of cross-border financial payments and the opening up of transport and logistics routes for trade in goods [Gao, 2018a].

Beijing is taking a balanced approach and does not rule out different formats of agreements, as demonstrated by trade agreements with chapters on digital trade with South Korea (2015), Australia (2015), the Eurasian Economic Union (2018), Singapore (2019), Mauritius (2019) and Cambodia (2020). The signing of the Regional Comprehensive Economic Partnership or RCEP (2020) and the renewal of the FTA with New Zealand (2021) also confirm this.

Remarkably, it is the RCEP that follows the American model in terms of e-commerce regulation. The agreement contains the same set of provisions, albeit with different levels of exemptions from the rules for the participating countries. For example, the RCEP sets out the countries' approaches to certain aspects of e-commerce: the development of paperless commerce, the recognition of electronic authentication, the

protection of consumer rights and the fight against spam. With regard to the levying of duties on electronic transactions, the RCEP stipulates that participants will act in accordance with WTO decisions on this issue (in particular in the context of the RPEC), but it also specifies that participants may apply taxes, duties and other charges to such transactions.

With regard to requirements for the use or location of data storage and processing equipment for commercial use on the territory of a RCEP member, as well as cross-border data flows, the countries-participants to the agreement retain the freedom to regulate. Only the non-application of localisation requirements as a condition for the activity of legal entities registered in foreign countries - participants of the RCEP - is established. At the same time, numerous clauses are introduced that allow the parties to apply exceptions for reasons of national security. It is separately underlined that the dispute settlement mechanism contained in the agreement does not apply to all e-commerce provisions.

In general, China's digital expansion strategy relies less on international institutions and regional trade agreements and prefers the format of bilateral cooperation or large strategic projects ('Belt and Road'). This strategy is often supported by development aid mechanisms.

Singapore as a new architect of the next generation of digital trade-related agreements

More recent agreements addressing digital trade issues have largely maintained continuity. Chile and New Zealand in the Digital Economy Partnership Agreement and Australia and Singapore in the Digital Economy Agreement, as parties to the CPTPP, have even extended the scope of the latter. Regulatory issues such as electronic authentication, electronic invoicing, electronic payments, electronic versions, standards and conformity assessment, AI, security in the digital space, competition in digital markets and inclusiveness have been included as new issues in the agreements.

The most common innovative provisions on digital trade are found in agreements involving Singapore. For example, in the relevant agreements between Singapore and Australia, the UK, New Zealand and Korea, it is possible to identify approaches that differ from the US CPTPP model, which makes it possible to isolate such agreements as a separate Singaporean model.

It is characterised by an emphasis on promoting regulatory cooperation, technical

interoperability between digital systems and the establishment of international standards for digital technologies [Jones et al., 2024].

Many of the digital trade provisions in the US-led agreements are hard law obligations, while many of the new provisions in the Singapore-led agreements are framed as soft law.

Singapore sees digital tools as a new source of economic growth [Kanaev, Fedorenko, 2024]. It seeks to create global regulatory rules rather than international digital trade agreements to improve its bilateral trade relations. On the one hand, Singapore is building on existing US regulatory approaches to digital trade. On the other, it is reviewing them and, with some success, proposing new strategies for businesses to enable themselves and their allies to benefit from digitalisation. In this way, Singapore is increasingly positioning itself not only as an international hub for traditional trade, but also as a digital centre in the global economy. By shaping approaches and creating rules in areas of the digital economy where there are gaps and regulatory uncertainty, and by pursuing parallel policies to promote digital interconnectivity, Singapore is claiming to be a global bridge between the different regulatory regimes of the digital superpowers - the US, the EU and China.

Conclusion

Digitalization has had a profound impact on trade, which is reflected in international trade law. The countries participating in plurilateral negotiations have stabilized the text of the Joint Initiative on E-commerce, but the provisions still need to be agreed upon before it can be finalized. Although the WTO as a forum for negotiations and development of trade rules and regulations remains an important venue for addressing digital trade issues, it is unlikely that the organization will be able to achieve a legally binding agreement in the near future. The issues of incorporating the results of plurilateral negotiations without multilateral consensus require reform of the organization.

FTAs have begun to act as a regulatory mechanism, serve as incubators for testing innovative norms, and over time will form unique models for regulating the digital economy.

American trade policy is undergoing a profound change in the area of data flows.

Washington is no longer pushing an aggressive digital trade agenda based on the strengths of US Big Tech; its international digital trade policy is taking a back seat to domestic considerations related to competition and AI policy.

The EU has more international agreements covering digital trade than the US or China. In addition, the EU uses various formats of cooperation with partner countries through FTAs, digital trade agreements, digital partnerships, and trade and cooperation councils.

A more balanced view of international data flows, with clear rules and requirements for data movement across borders, could become a widely accepted international norm. This brings the US position closer to the EU approach, for which privacy is a fundamental right and the ability to regulate it should not be a matter of trade.

A new wave of agreements involving Singapore include key elements of the US-style agreements. However, the latest agreements cover a broader range of issues, including new commitments on digital identity, e-invoicing and e-payments, the governance of AI and new digital technologies.

With the increasing role of digitalization, there is every reason to believe that future FTAs and digital trade agreements will focus further on various aspects of the digital economy, going beyond trade commitments.

By their nature, digital trade agreements are preferential, so their uncoordinated expansion could lead to the formation of blocs. Parties involved will need to seek the interoperability between such agreements to reduce the risk of the fragmentation of digital trade regulation.

Список источников (References)

Aaronson S.A., Leblond P. (2018) Another Digital Divide: The Rise of Data Realms and its Implications for the WTO. *Journal of International Economic Law*, vol. 21, no 2, pp. 245–272. doi: 10.1093/jiel/jgy019

Abendin S., Duan P. (2021) Global E-Commerce Talks at the WTO: Positions on Selected Issues of the United States, European Union, China, and Japan. *World Trade Review*, vol. 20, no 5, pp. 707–724. doi:10.1017/S1474745621000094

Aggarwal V.K., Kenney M.A.T. (2023) Middle Power Economic Statecraft in a World of Geoeconomic Competition. *Great Power Competition and Middle Power Strategies. The Political Economy of the Asia Pacific* (V.K. Aggarwal, M.A.T. Kenney (eds.)). Springer, Cham. doi:10.1007/978-3-031-38024-2_1

Andrenelli A., Lopez Gonzalez J. (2023) *Understanding the potential scope, definition and impact of the WTO e-commerce Moratorium.* OECD Trade Policy Papers, no 275, OECD Publishing, Paris. doi:10.1787/59ceace9-en

Aspen Strategy Group (2023) U.S. Trade Representative. Katherine Tai speaking at the Aspen Security Forum. 12.07.2023. Available at: https:// https://www.aspensecurityforum.org/dc-2023-videos (accessed 29 October 2024).

Banga R. (2022) WTO Moratorium on Customs Duties on Electronic Transmissions: How much tariff revenue have developing countries lost? *South Centre Research Paper 157.* Available at: https://www.southcentre.int/wp-content/uploads/2022/06/RP157_WTO-Moratorium-on-Customs-Duties-on-Electronic-Transmissions_EN.pdf (accessed 29 October 2024).

Biryukova O., Daniltsev A. (2019) When Cooperation Fails: the Global Governance of Digital Trade. *International Organisations Research Journal*, vol. 14, no 1, pp. 7–20. doi: 10.17323/1996-7845-2019-01-01

BiryukovaO.V.,Bezhanishvili A.V.(2017)Sovremennyemetodyocenkimezhdunarodnojtorgovliuslugami[Modern methods of assessing international trade in services]. *Mezhdunarodnye processy [International trends]*, vol. 1, no 1, pp. 126–142. Available at: http://old2.intertrends.ru/rubrics/fiksiruem-tendentsiyu/journals/vyzovy-izmeneniy/articles/sovremennye-metody-otsenki-mezhdunarodnoy-torgovli-uslugami (accessed 29 October 2024) (in Russian).

Burri M., Vásquez Callo-Müller M., Kugler K. (2024) The Evolution of Digital Trade Law: Insights from TAPED. *World Trade Review*, vol. 23, no 2, pp. 190–207. doi:10.1017/S1474745623000472.

Court of Justice of the European Union (CURIA) (2020) Judgment of the Court (Grand Chamber) of July 16, Data Protection Commissioner v. Facebook Ireland Limited and Maximillian Schrems. Available at: https://curia.europa.eu/juris/liste.jsf?nat=or&mat=or&pcs=Oor&j ur=C%2CT%2CF&num=C-311%252F18 (accessed 29 October 2024).

Denamiel T., Rajic T., Reinsch W A., Lewis J.A., Brock J. (2024) Beyond Economics: How U.S. Policies Can Undermine National Security Goals. Center for Strategic and International Studies (CSIS).

Elsig M., Klotz S. (2022) Initiator conditions and the diffusion of digital trade-related provisions in PTAs. *Empirical and Theoretical Research in International Relations*, vol. 48, no 2, pp. 292–308. doi:10.1080/03050629.2022.2004137.

Fahey E. (2022) *The EU as a global digital actor: institutionalising global data protection, trade, and cybersecurity*. Bloomsbury Publishing, p. 264.

Gao H. (2018a) Digital or Trade? The Contrasting Approaches of China and US to Digital Trade. *Journal of International Economic Law*, vol. 21, no 2, pp. 297–321. doi:10.1093/jiel/jgy015

Gao H. (2018b) Regulation of Digital Trade in US Free Trade Agreements: From Trade Regulation to Digital Regulation. *Legal Issues of Economic Integration*, vol. 45, no 1, pp. 47–70. Available at: https://ink.library.smu.edu.sg/sol_research/2553 (accessed 29 October 2024).

González J.L., Sorescu S., Kaynak P. (2023) Of Bytes and Trade: Quantifying the Impact of Digitalisation on Trade, OECD Trade Policy Papers 273; OECD, *Key Issues in Digital Trade*, OECD Global Forum on Trade 2023. Available at: https://www.oecd.org/en/publications/of-bytes-and-trade-quantifying-the-impact-of-digitalisation-on-trade_11889f2a-en.html (accessed 29 October 2024).

IMF, OECD, UNCTAD and WTO (2023) *Handbook on Measuring Digital Trade*. Available at: https://www.oecd.org/sdd/its/handbook-on-measuring-digital-trade.htm (accessed 29 October 2024).

IMF, OECD, UNCTAD, WB and WTO (2023) *Digital Trade for Development*. Available at: https://unctad.org/system/files/official-document/dtd2023_e.pdf (accessed 29 October 2024).

Jiang L., Liu S., Zhang G. (2022) Digital trade barriers and export performance: Evidence from China. *Southern Economic Journal*, vol. 88, no 4, pp. 1401–1430. doi:10.1002/soej.12572

Jones E., Kira B., Tavengerwei R. (2024) Norm Entrepreneurship in Digital Trade: The Singapore-led Wave of Digital Trade Agreements. *World Trade Review*, vol. 23, no 2, pp. 208–241. doi:10.1017/S1474745624000089

Jose R., Kaukab R.S. (2024) WTO Joint Initiative on E-Commerce State of Play: Past, present, and future, July. Available at: https://www.iisd.org/system/files/2024-07/wto-joint-initiative-e-commerce-state-of-play.pdf (accessed 20 October 2024).

Kanaev E., Fedorenko D. (2024) Singapore's Economic Development and Digital Transboundary Initiatives of the ASEAN Economic Community: An Instrumental Perspective. *Contemporary World Economy*, vol. 2, no 1, pp. 83–104. doi:10.17323/2949-5776-2024-2-1-83-104

Kang C., Eilperin J. (2015) Why Silicon Valley is the New Revolving door for Obama Staffers. *The Washington Post*. Available at: https://www.washingtonpost.com/business/economy/as-obama-nears-close-of-his-tenure-commitment-to-silicon-valley-is-clear/2015/02/27/3bee8088-bc8e-11e4-bdfa-b8e8f594e6ee_story.html (accessed 1 November 2024).

Ramich M.S., Piskunov D.A. (2022) The securitization of cyberspace: From rulemaking to establishing legal regimes. *Vestnik RUDN. International Relations*, vol. 22, no 2, pp. 238–255. Available at: https://doi.org/10.22363/2313-0660-2022-22-2-238-255

Schweitzer F.J., Saccomanno I., Saika N.N. (2024) The Rise of Artificial Intelligence, Big Data, and the Next Generation of International Rules Governing Cross-Border Data Flows and Digital Trade – Part II. *The Global Trade Law Journal*, vol. 1, no 3, May – June 2024, Part 2. Available at: https://www.whitecase.com/insight-our-thinking/rise-artificial-intelligence-big-data-next-generation-international-rules (accessed 29 October 2024).

Soprana M. (2021) The Digital Economy Partnership Agreement (DEPA): Assessing the Significance of the New Trade Agreement on the Block. *Trade, Law and Development*, vol. 13, no 1, pp. 143–169. Available at: https://heinonline.org/HOL/LandingPage?handle=hein.journals/traladpt13&div=10&id=&page= (accessed 1 November 2024).

Tikkinen-Piri C., Rohunen A., Markkula J. (2018) EU General Data Protection Regulation: Changes and Implications for Personal Data Collecting Companies. *Computer Law & Security Review*, vol. 34, no 1, pp. 134–153. doi: 10.1016/j.clsr.2017.05.015

United Nations Conference on Trade and Development (UNCTAD) (2023) *World Investment Report 2023*. Available at: https://unctad.org/publication/world-investment-report-2023 (accessed 4 November 2024).

United Nations Economic and Social Commission for Asia and the Pacific (UN ESCAP (2024) *Asia-Pacific Trade and Investment Agreement Database* – APTIAD. Available at: https://www.unescap.org/content/aptiad (accessed 4 November 2024).

United States Trade Representative **(**USTR) (2014) Trans-Pacific Partnership: Summary of U.S. Objectives. Available at: https://ustr.gov/tpp/Summary-of-US-objectives (accessed 29 October 2024).

United States Trade Representative **(**USTR) (2023) USTR Statement on WTO E-Commerce Negotiations. 23.10. 2023. Available at: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/october/ustr-statement-wto-e-commerce-negotiations (accessed 29 October 2024).

Wolfe R. (2019) Learning about Digital Trade: Privacy and E-Commerce in CETA and TPP. *World Trade Review*, vol. 18, no S1, pp. S63–S84. Available at: doi:10.1017/S1474745618000435

World Trade Organization (WTO) (n.d.) Joint Initiative on E-Commerce Available at: https://www.wto.org/english/tratop_e/ecom_e/joint_statement_e.htm (accessed 10 August 2024).

World Trade Organization (WTO) (1998) Work Programme on Electronic Commerce, WTO Doc. WT/L/274 (30 September 1998). Available at: https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/L/274.pdf&Open=True (accessed 1 November 2024).

World Trade Organization(WTO)(2017) Joint Statementon Electronic Commerce, WTODoc. WT/MIN(17)/60 (13 December 2017). Available at: https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN17/60.pdf&Open=True (accessed 1 November 2024).

World Trade Organization (WTO) (2019) Joint Initiative on E-Commerce, WTO Doc. WT/L/1056 (25 January 2019). Available at: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&query=@Symbol=%22WT/L/1056%22%20OR%20@Symbol=%22WT/L/1056/*%22&Language=English&Context=ScriptedSearches&languageUIChanged=true (accessed 1 November 2024).

World Trade Organization (WTO) (2021) Global Electronic Commerce for Inclusive Development. Communication circulated at the request of the delegations of India and South Africa, WTO Doc. WT/COMTD/W/264 (9 October 2021). Available at: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?FullTextHash=1&MetaCollection=WTO&SymbolList=%22WT/COMTD/W/264%22&languageUIChanged=true# (accessed 1 November 2024).

World Trade Organization (WTO) (2024) Agreement on Electronic Commerce, WTO Doc, 26 July. Available at: https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/ECOM/87.pdf&Open=True (accessed 1 November 2024).