



## **U-turn by the U.S. Trade Representative to rein in the Big Tech Digital Trade Agenda**

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Negotiations amongst a subset of Members on a Joint Statement Initiative (JSI) on Electronic Commerce have taken place along the side lines of the World Trade Organization (WTO) since 2019. They were launched in response to the refusal by a majority of developing countries at the Eleventh WTO Ministerial Conference to consent to a multilateral mandate proposed by a handful of WTO Members for negotiations on electronic commerce. Very quickly, a range of proposals by some WTO Members for 'e-commerce rules' evolved into 'digital trade' rules in negotiations taking place outside of the WTO's legal framework, which included international Internet public policy issues that were addressed by other international organisations and instruments. These include the United Nations (UN) Guidelines for Consumer Protection, the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Signatures, UNCITRAL Model Law on Electronic Commerce, and the Unsolicited Communications Enforcement Network to curb Unsolicited Commercial Electronic Messages, or Spam.

The U.S. was a leading *demandeur* for a global digital trade agreement, including on proposals on free cross-border data flows, prohibition of national data localisation requirements and source code reviews, and non-discriminatory treatment of digital products. The recent decision by the U.S. Trade Representative to set aside these proposals to ensure sufficient "policy space" for the U.S. and others to assess their approaches on these matters is a welcomed development.

This apparent landmark shift in U.S. trade policy strengthens and validates the positions taken by governments in the Global South, notably the African Group in the WTO, who have, for the last seven years, advocated amongst other things for, the preservation of their right to regulate electronic commerce and ensure [policy space](#) for developing and least developed countries who want to develop their digital industries, a [thorough examination](#) by Member States under the WTO Work Programme on Electronic Commerce of the opportunities and risks associated with digital transformation and electronic commerce, and a [moratorium on new 'trade' rules](#) that would entrench existing digital and technological asymmetries, further marginalise poor economies and constrain the ability of governments to implement industrial policy and catch-up until the existing mandates under the Doha Work Programme are concluded.

To date, most developing countries have remained outside the JSI on Electronic Commerce and the decision by the U.S. Trade Representative to preserve the policy space for promoting competition and essential regulation demonstrates that after all these years, they were right to do so. There remain several provisions in the negotiating text of the JSI on Electronic Commerce that will be detrimental to the development of the domestic digital industries in developing countries.

Despite that the U.S. referred to decision is in the right direction, we remain concerned that provisions on free cross-border data flows, prohibition of national data localisation requirements and of source code reviews remain part of U.S. trade policy through existing bilateral trade agreements and other bilateral/regional engagements. We also note with concern that the U.S. Big Tech companies are currently engaged in strong lobbying in the

context of the negotiations of the Digital Trade Protocol in the African Continental Free Trade Area.

The growing discourse about the market dominance of Big Tech companies reveals their significant impact on workers, consumers, and enterprises in developing countries. These tech behemoths have not only displaced domestic digital players, but they have also used intensive lobbying to solidify their influence. By persuading governments, they have managed to secure their positions through binding trade agreements and domestic policymaking in several developing countries.

The South Centre continues to monitor the various ongoing negotiations and developments, and it remains hopeful that the U.S. Trade Representative's decision will trickle down to other negotiating processes and engagements to ensure full alignment with its declared intent to protect workers and consumers and counter the growing Big Tech abuses.