



## CIVIL SOCIETY DIALOGUE

# Meeting on WTO negotiations on e-commerce, investment facilitation and domestic regulation

**Date:** 15.12.2020, 10:00-12:00

**Location:** Webex meeting

### **Lead speakers:**

Head of Unit for Services and Digital Trade, DG TRADE, European Commission

Head of Unit for Investment and Intellectual Property, DG TRADE, European Commission

Lead Trade Negotiator –Services, DG TRADE, European Commission

### **Presentation of the state of play of the negotiations**

DG TRADE opened the meeting by welcoming participants and highlighting the importance of the three WTO initiatives on the E-commerce, the domestic regulation and the investment facilitation for keeping the international trade rules up to date and to prove the relevance of WTO in the rules based world trade order.

COM described the progress made so far in the WTO Joint Statement Initiative on **Services Domestic Regulation**. A group of 63 WTO Members are currently negotiating a text of a future reference paper with a set of domestic regulation disciplines which aim at mitigating the unintended trade restrictive effects of authorisation requirements and procedures. The reference paper will be incorporated in the participating Members' GATS Schedules of Specific Commitments as additional commitments. Members will apply these new commitments to all WTO Members based on the Most Favoured Nation Principle. COM explained that the work on the text is progressing well despite the difficulties of conducting negotiations through virtual means. So far, 57 Members have already tabled an indicative draft schedule of commitments. With both tracks (text and schedules) progressing well, the hope is that this negotiation could be successfully concluded at the latest by the next Ministerial Conference.

**Investment facilitation** negotiations kicked off this year by four informal meetings in virtual format before the summer and four negotiating rounds plus two intersessional meetings in the second half of the year. Now 106 participating WTO members negotiate on transparency and predictability of the FDI, streamlining and speeding up administrative

procedures, capacity building and technical assistance and related sustainable development issues. Market access, investment protection and ISDS are not part of the discussions.

Intense negotiation are expected in the first semester of 2021 focusing on the consolidation of the language and cleaning up the negotiating text. The target is to make significant progress in view of MC12 (date still not confirmed).

The EU's strong support for the WTO **E-commerce negotiations** is driven by the economic importance of digital trade, further strengthened in Covid-19 pandemic, and by the systemic reasons to support the WTO rule-making process.

There are now 86 official participants to these negotiations. The current situation which forced us to move to virtual meeting format has slowed down the pace of the negotiations but despite this, lot of progress has been made in the last few months. Work has focused on streamlining and consolidating the text. Most of the work is carried out in ten small groups of Members discussing text proposals on consumer protection, spam, e-signatures and electronic authentication, paperless trading, digital trade facilitation, source code, open government data, market access, customs duties on electronic transmissions and open internet access. Discussions in the small groups are complemented by one or two plenary sessions each month.

So far, the dynamics have been constructive. The intense work this year resulted in a consolidated document, which consists in a compilation of all text proposals after their streamlining. It was circulated among Members and discussed at the last plenary session on 10 December. The intensified small group work will continue next year but it is clear that negotiations on more sensitive issues, such as data flows and data localisation, will also start next year. The full conclusion of the negotiations by MC12 is however unlikely.

## **Discussion Highlights / Questions and Replies**

The **European Economic and Social Committee** raised the issue of investors' behavior in the context of sustainable development and emphasized the broader impact of e-commerce and the need take into consideration the compliance and enforcement of the labour conditions to keep the supply chains healthy and alive. EESC also emphasized the broad reach of e-commerce and the need take into consideration the compliance and enforcement of labour conditions to keep the supply chains healthy and alive.

**CSC Belgium** questioned the ability of the e-commerce negotiations to bridge the differences between China and the US and asked whether the question of the digital tax was also discussed in the WTO negotiations.

**Both ENDS** inquired about the EU position on transparency of the plurilateral negotiations in the WTO and whether the consolidated negotiating text on e-commerce would be published.

**The German Consumer Association** expressed support for the e-commerce negotiations and inquired about progress on source code. It also asked how ambitious the agreement on e-commerce would be given the fundamental divergences among Members.

The **International Trade Union Confederation** pointed out that digitalisation and e-commerce will lead to an increase of precarious work and will further consolidate the power of big tech companies over their workers. The EU should focus on a positive rules building agenda to address workers' rights.

**IFPI** inquired about the discussions on the validity and enforceability of the electronic contracts and whether the provisions on open internet access take account of the lawfulness of the content.

**The European Services Forum (ESF)** stressed the importance of all three Joint Statement Initiatives for the services industry. **ESF** asked if the negotiations on domestic regulation could be concluded earlier, i.e. before the 12th Ministerial Conference of the WTO, and why there are so few ASEAN Members supporting this initiative. ESF also advocated for the publication of the consolidated text on e-commerce and questioned whether recent Commission proposals in the digital sector might negatively affect the EU's negotiating position in the WTO.

**The European Centre for International Political Economy** asked about what legal form might the e-commerce agreement take and the possibility of it being an open plurilateral agreement.

**SpiritsEurope** noted that Covid-19 contributed to increase in e-commerce sales and was wondering whether this was reflected in the negotiations and could provide an extra incentive for its conclusion.

**The Commission** in replied that in the context of the specific disciplines discussed in the e-commerce negotiations (e.g. the validity of e-contracts) the direct link with sustainability and labour conditions are less obvious than e.g. in investment facilitation. While it is clear that this agreement would have an impact beyond the digital world, the WTO is not seen as the appropriate forum to address all labour-related aspects. The Commission explained that the EU text proposal on investment facilitation contained, among others, binding commitments for Members to promote and ensure the uptake of internationally recognized standards on CSR and RBC by investors.

The Commission underlined that there is a need for flexibility to bridge differences between Members so as to have an agreement with a high level of ambition and as many participants as possible. Digital tax is not discussed in WTO e-commerce negotiations, nor are most issues covered in the Commission's recent digital package for enhancing the Single Market. The EU has consistently argued that privacy protection should not be subject to trade disciplines.

The Commission also supported transparency in the negotiations, and underlined that the EU had always published its negotiating text proposals. At the same time, transparency also depends on whether other WTO Members do publish their own proposals and whether they could agree with the publication of the consolidated text. That is currently not the case, but the co-conveners published a short explanatory statement describing the process.

The discussions on source code are in their early stages and very little progress has been made so far. Overall, the EU aims to preserve policy space for AI/algorithms. As regards electronic contracts, this discipline is yet to be discussed but Members' proposals deal with validity as well as enforceability. Discussions on net neutrality have only recently started in a small group, hence progress has been limited.

As for the legal form of the outcome of the e-commerce negotiations, the EU would be in favour of an open plurilateral agreement applied on an MFN basis (as in the case of domestic regulation).

Concerning the negotiations on domestic regulation COM explained that it will depend on the progress made in the coming months what a realistic date could be for the conclusion

of the negotiations. COM confirmed that Thailand was the only ASEAN Member formally supporting the initiative and expressed its hope that other ASEAN Members will follow soon, especially since the recently concluded RCEP Agreement, to which ASEAN Members are parties, contains similar domestic regulation disciplines as the ones under negotiation in the Joint Statement Initiative.