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Ministry for Foreign Affairs

Department for International Trade Policy and the EU
Single Market

Harnessing the opportunities of digital trade

Summary of proposals

- The growing importance of data confirms the need for modern and future-proof common standards and rules for digitally related trade at all levels.
- Digital trade chapters in bilateral trade agreements should be further strengthened and expanded, considering technological and other developments.
- Recent proposals concerning data flows and prohibitions of data localization requirements need to be ambitious and future-proof in order to promote digital trade..
- The EU should continue to proactively support plurilateral negotiations on e-commerce and strive for ambitious rules on a wide range of e-commerce related issues and a broad participation including from developing countries. Negotiations should also include markets access for goods (ITA).
- For successful e-commerce negotiations flexibility is needed from all parties, including the EU, also on complex issues such as data flows and data localization, to prevent EU isolation.
- The EU should make full use of its development cooperation toolbox to help bridge the digital divide between developing and developed countries.
- The digital internal market should be strengthened, for example through the Digital Services Act and measures based on thorough analysis and user perspectives. Digital internal market measures should be compatible with the EU's trade policy, including the removal of digital trade barriers.

Introduction

The great impact on the global economy of the rapidly evolving digital transformation is evident, as illustrated by the increased use of the internet by individuals, companies, governments and other actors as well as by the expansion of connected devices (IoT). The EU is the largest exporter of digitally enabled services and digitalisation and the data economy is therefore of paramount importance for EU competitiveness and job creation in the EU. Data has become a vital element in the value chains of many EU companies. EU businesses of all sizes and across all sectors need to access, use and transfer data without unnecessary restrictions. We agree with the Commission that the

COVID-19 pandemic has accelerated this process and underlined the importance of digital trade and its role in facilitating the functioning of global value chains. This is further underlined by the earmarking of 20% of the Recovery and Resilience Facility towards support of the digital transition. Trade rules can act as an essential supportive instrument to ensure a green and digital transformation. Against this background and given the intrinsic cross border feature of the data economy, modern and future-proof common standards and rules regarding digitally related trade is crucial at all levels, from the internal market to bilateral and global trade relations.

Bilateral trade agreements

EU trade policy is a powerful instrument in advancing the interest of the EU and its companies in digital trade and data flows. This policy has been developed around bilateral negotiations and through **the inclusion of digital trade rules in bilateral trade agreements**. Sweden supports the steps taken so far, including the strengthening of digitally relevant rules and the elaboration of a separate and horizontal digital trade chapter covering a broad range of issues from the facilitation of digital trade through e-signatures and e-trust services to consumer protection and spam. The growing importance of digital trade needs to be reflected as an increasing priority in our negotiations.

During recent years, important new rules have been introduced regarding the prohibition of forced transfer of source codes, addressing data flows and restricting data localization requirements. The EU should promote ambitious and future-proof rules that are adapted to the rapid technological development. They should reflect the offensive interest of the EU and its companies in order to tackle the rising trend of digital protectionism in third countries, while ensuring the protection of personal data and national security concerns. As further developed below, this means a need for flexibility by all negotiating partners, including the EU, regarding **data flows and data localization** in order to reach successful conclusion of ongoing negotiations. Sweden is also supportive of the inclusion of further rules which facilitate an enabling environment for digital trade, such as open government data and rules combatting digital performance requirements, including forced technology transfer and discriminatory technology requirements.

Plurilateral negotiations on e-commerce

There is also a strong need for **modern rules on e-commerce at a global level**. The multilateral rules system has not kept pace with the digital transformation and efforts to initiate multilateral negotiations have been blocked. Sweden has from the outset been a strong supporter of the ongoing **plurilateral negotiations on e-commerce**. They offer a unique opportunity to develop WTO rules to facilitate the operations and market access of businesses, including SMEs. Such rules will also increase the trust and choice of consumers in both developed and developing countries. The negotiations should strive for an ambitious outcome and be open to all interested WTO Members. We encourage the Commission to continue working proactively towards the

successful conclusion of these negotiations. The negotiated outcome will not only facilitate e-commerce but also be of strategic importance for the credibility of the WTO as a forum for global rulemaking.

The ongoing **negotiations cover a broad range of important and often complex issues** which cannot be commented on in detail here and some have been mentioned above concerning bilateral agreements. As a general remark, Sweden is supportive of EU proposals on the facilitation of e-commerce, including source code and on consumer protection. We should also be open to discuss and consider proposals from other negotiating parties, including on development-related issues. We would, however, like to comment on some specific issues of considerable offensive interest, specifically data flows and the removal of digital trade barriers as well as market access for our companies.

The EU should include rules against the increasing number of digital trade barriers while respecting personal data protection rules. EU companies need trade rules which secure the access to personal and non-personal data coming *into* the EU. EU internal transfer rules in the GDPR and in unilateral adequacy decisions concern data going *out of* the EU. **We should counter undue data flow restrictions and unjustified mandatory requirements on data localization.** This will enhance the global competitiveness, innovation and access to low cost of entry for EU companies, not least SMEs. It will also support economies of scale and prevent the dislocation of related investments and jobs to third countries. We therefore encourage the Commission to strive for an ambitious outcome on these issues. It will require flexibility from all parties, including the EU. There is a need for widening and future-proofing the prohibition of data localisation measures, preventing the possible abuse of the exception regarding personal data protection and applying flexibility in situations where negotiating parties do not recognise personal data protection as a fundamental right.

Another key offensive interest is the inclusion of **market access commitments** for both services and goods. Due to the possible challenges in defining e-commerce related services, we support the EU's approach to focus mainly on services which are most closely related to e-commerce, such as computer and telecom services. We also strongly support an active EU engagement for its proposal to include market access for goods through an adherence to the **Information Technology Agreements, ITA I and II**, and their zero tariffs on ICT products. A broader adherence to the agreements further strengthens the global facilitation of digital trade and supports an EU business sector of strategic importance for our future competitiveness. It is also important with a continued active EU engagement in support of a permanent or prolonged customs moratorium on electronic transmissions.

Development cooperation related to digital trade

Supporting increased engagement by developing countries and LDCs in the e-commerce negotiations is one aspect of the overall promotion of their participation in global trade and global rulemaking. For many developing countries, digital trade signifies considerable possibilities but also challenges, among them the digital divide. Developing countries' own commitments and actions are key in creating an enabling environment for e-commerce. At the same time, **international development cooperation** can play an important supportive and catalytic role in raising the digital capacity of these countries, and their participation in digital trade. Sweden is therefore a large donor of Aid for trade, many times contributing to the closing of the digital divide, including support through UNCTAD for e-trade readiness assessments of LDC's, the empowerment of women digital entrepreneurs and the measuring of e-commerce in developing countries. We encourage the EU Commission to make full use of the complete EU toolbox, including a close cooperation with DG DEVCO and DG CONNECT to help bridge the digital divide and ensure that developing countries feel confident in engaging and committing to digital trade.

Digital internal market

The development of the digital internal market will not only enhance trade within the EU but also strengthen its global competitiveness, including within technology development such as AI, and innovation. This, in turn, supports the business activities and third country trade of EU companies, not least SMEs. **The digital internal market** should therefore be strengthened. This can be done by encouraging the sharing of data, for instance, through clarifying the scope of statutory restrictions on data sharing justified by the protection of privacy, intellectual property rights or fair competition. The free flow and storage of data should continue to be a principle within the EU. The future Digital Services Act should create new opportunities for European businesses to grow, scale up and provide for an enabling framework for the Digital Services Market. All measures should be based on thorough analyses, taking into account a user perspective (citizens and companies). Such analyses should also include the digital divide aspect to ensure that the benefits of the digital transformation can become available to everyone.

It should also be underlined that reforms and initiatives on the internal market, including on cloud computing, should consider the international dimension and EU companies' continued access to data from outside of the EU. Such internal market measures must also be coherent with the EU's trade policy objectives and its positions in ongoing trade negotiations in order to facilitate data flows with trust and combat data localization requirements.