There is an old African adage ‘When the elephants fight, the grass suffers.’

This adage rings true in the current robust negotiations at the WTO’s E Commerce treaty negotiations. The treaty is one of the most contested since the Doha Development round at the turn of the century. What’s at stake is the very structure of national, regional and local economies. For E commerce is not merely about web based on line commerce. It affects the very structure of national economies such as taxation, trade, labour, agriculture, innovation, data ownership, local value chains and the potential negative impact on millions of small and medium enterprises.

In an age where Amazon.com and Alibaba’s global value chains and Google, Facebook’s ad tech algorithm social media models’ daily transactional values are larger that of many middle income countries, it is natural that the digital economy powerhouses have major implications for local development, trade and consumer policy. Another way to think of it is the paradigm of ‘Data Is the new Oil’ logic. At the dawn of the new millennium in 2000, the top 10 most valuable companies were in the oil and engineering sectors (i.e. Exxon, GE, ABB etc). Fast forward to 2018 - the top ten largest corporations in the planet are tech titans (Apple, Google, Microsoft, Amazon, etc) whose ‘stock in trade is data and symbolic value, with market capitalisation at trillions, with their services affecting every area of social, economic, political and cultural life - and most importantly choices.

Unpacking the plurilateral phenomenon, architecture and issues

In this milieu the phenomena of plurilateralism has emerged as a useful concept in international trade and multilateralism. Essentially it is an emerging approach/trade strategy frequently being used by developing nations in large multilateral fora such at WTO to agree to some agreements and opt out/delay on others.

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1 [www.wto.int](http://www.wto.int). E Commerce treaty being negotiated in July 2019, WTO.
2 [https://medium.com/@adeolaadesina/data-is-the-new-oil-2947ed8804f6](https://medium.com/@adeolaadesina/data-is-the-new-oil-2947ed8804f6)
The rise of plurilateralism constitutes an opportunity but also a challenge for the WTO's the multilateral trade regime and individual countries. Plurilateral agreements were conceived to help to modernise trade rules, to reach new liberalisation commitments and thereby reinvigorate the WTO and increase legitimacy. At the same time, plurilateral agreements they can risk side-lining developing countries. Sadly, they have been used as a tool by Developed nations who have sought to sidestep opposition from developing countries through these agreements. The unintended consequence has been to politically fragment the WTO, creating a two-tier membership and weakening the WTO's 'input' legitimacy. (Robert Basedow,2019). Basedow of London School of Economics argues that, unlike in multilateral trade rounds, only a subset of likeminded WTO members negotiates and agrees in plurilateral agreements on rules and commitments. He contends that hesitant members can use the tactic to stay on the side-lines—thus not bound by plurilateral agreements, but may join later. Plurilateral agreements are typically of narrow sectorial focus, and they do form part of formal WTO law and are subject to the WTO's dispute settlement procedures. But the very system of the WTO Dispute Settlement Procedure is in dispute and institutional disarray, as is evident in the current WTO E commerce plurilateral talks and the reform agenda of the Appellate body at this years WTO conference in Buenos Aires will make lasting recommendations on its status and future.

For instance, India is a WTO signatory and yet is considering to opt out of the plurilateral WTO E Commerce talks to protect its 'data sovereignty' and local industry and value chains. Finally, those nations pursuing nationalist plurilateral paths, they risk the possibility of developed world industrialised nations using a ‘carrot and stick’ approach regarding technical assistance vis a vis market access. They find that push and pull factors in the form of technical assistance, policy dialogues and post-accession conditionality allowed the new member states to gradually ‘normalise’ and to limit differentiation. This argument is taken further by Rashmi Banga, senior economist at UNCTAD.

“If countries like China and India and continents like Africa decide to own their data and locally process it, the advanced countries will lose out on the bulk of data generated in the world and consequently on its competitive advantage of processing data and building digital software and technologies. This is why the developed world is under tremendous pressure to move quickly and bind the hands of the developing world in agreements which will never allow them to own and process their own data.”

4 Robert Boselow of London School of Economics LSE has written extensively on plurilateralism agreements at the WTO and compares them to the EU accession process of differentiated access to markets.

5 www.justnetcolation.org/list

Unpacking the WTO E Commerce Treaty. Plurilateral pathways for Africa and Developing South By Ashraf Patel, digital economy associate, IGD, South Africa pg. 2
Given the global economic structure and phenomenon of ‘Easternisation’ – whereby global political-trade-investment shifts from the north to the east and south, thus providing new policy space for the developing South to better navigate and negotiate complex trade and investment agreements. The current trade wars between US-China - EU on multiple goods and services tariffs is another sign of an increasingly dysfunctional and litigious model of WTO, signifying further weaknesses of the current multi-lateral order, and paradoxically giving better negotiating power for developing nations.

Current support for the WTO E Commerce currently stands at 76 nations and growing, with the broad support by the global economic power Troika (US-EU-China) but each with varying perspectives based on their national economic-ideological priorities. The recent UNCTAD E Commerce week in April 2019 also highlighted key concerns. According to UNCTAD “a winner-takes-all dynamics are typical in platform-based economies, where network effects can generate major benefits to first movers. Whoever controls the platform also controls the distribution channel, giving the dominant platform (and data) owner considerable market power.”

Let us take a look at the varying perspectives:

**USA:** The US model of ‘free markets’ and unfettered, borderless trade is their historical and current position, not surprisingly given tech giants Amazon is the leading e commerce global value chain and its ownership of hundreds of millions of global customer datasets, all valuable for its business model. Microsoft, Apple, Google, Facebook, Netflix and Uber moulded in Silicon Valley’s venture capitalism business model is built on the monetization of personal data ‘ad tech’ of global customers, and hence borderless trade - and fundamentally unregulated data markets. Boosted by the President Donald Trump’s 2017 largest federal tax breaks in US corporate history, these firms are scouring the planet for more markets, more datasets, and of course minimal taxation.

**China:** Since it joined the WTO, China’s entry into the WTO in 1996 was a key milestone. Its state led development planning economic model has reaped the most remarkable massive benefits in international trade in the past two decades, being the ‘factory of the world’, earning trillions in trade surplus, pushing its national GDP on par with the US and EU. By achieving its UN Millennium Development Goals (MDG’s), it is now concentrating on investing in innovation systems and successful national industrial policy models, and support for an unique ‘national digital ecosystem’, propelling national tech champions (Alibaba, Tencent, Huawei etc) who are now global Multinational Corporations MNC’s. China is the on track for Industrialized nation

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6 [www.unctad.org](http://www.unctad.org)
status, and it is creatively leveraging this state led model as an example of success, presenting both opportunities and challenges for the Global South.

**EU:** The EU model is essentially a social market approach with strong consumer trust legislation. This is borne out of the EU wide GDPR data policy, and its experience with strong competition regulation. The EU Competition commission which is world renowned for many cases and rulings/fines against US tech giants in the EU jurisdiction⁷. Its approach generally embraces the power of the market and big business – in line with EC Commission support for strong innovation frameworks/champions, but also preserving cultural heritage for audio-visual, fair competition in jurisdictions, modest data localisation, IPR protection, e-signatures etc, within a solid strong consumer data protection framework and aligned to the social clauses of the EU Charter. It seemingly is endorsing a hybrid model of updated Special and Differential Treatment SDT within GATS, and more intensive capacity support for Technical Facilitation Agreements (TFA’s) for LDC’s in an effort to preserve some semblance of ‘developmental aid support’.

**Developing South - India, Kenya, South Africa, Mexico etc:** The Developing South members – many of whom are part of the original G 77 group (now G 90) that successfully negotiated at the WTO on special and differential treatments, are concerned at the pace and even relevance of the E Commerce negotiations. Led by India and other nations, the position is one of caution – and deep concern at key elements especially data localization vis a vis national industries, ‘high tech e commerce standards’ as trade barriers, need for protection of millions of local SMME’s, small scale farmers, national tech champions, and agriculture value chains, so vital for a huge markets. Their approach is couched in broader Global South discourse with echoes of the G77 alliance that has success at the WTO Seattle Round in 1999. However, with a rapidly globalized digital economy, and varying interests even within the Global South, coupled with soft power of ‘developmental aid’ that many LDC nations face, this position, while morally strong, is under pressure.

**Japan-Brazil-Singapore alliance** an interesting alliance is that of Japan, Brazil and Singapore. Given their strong regional economies of significance, and global players in key sectors, these nations have adopted large parts of the WTO E comm treaty in their national interests, and in agreement with the US on non data prohibition, but are pushing more exceptions in order to protect their national markets and trade advantages. Brazil and Japan’s powerful mega agri export industries have vested interests in global e commerce to expand their regional and global value chain footprint values. Singapore presumably seeks to grow its tech hub e commerce

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⁷ The EU Competitions commission fined Google $ 5.2 billion in June 2018 on a landmark case. [www.ec.eu](http://www.ec.eu)

Unpacking the WTO E Commerce Treaty. Plurilateral pathways for Africa and Developing South By Ashraf Patel, digital economy associate, IGD, South Africa pg. 4
status, hence their respective broad support for the current WTO E commerce treaty negotiations.

What are the core issues for the Developing South and Africa?

Development must be at the centre of the WTO work program and special and differential treatment (S&DT) must be preserved in order to allow developing countries the space to formulate their domestic trade policies in a way that would allow them to reduce poverty, industrialise and integrate meaningfully into the global trading system. The reform of the WTO will be doomed to failure if it fails to put development at the centre and continues to ignore the needs of developing countries on S&DT. There are many challenges in this complex moment of weakening multilateralism. Firstly, the current WTO e Commerce treaty negotiations debate is taking place against the backdrop of the stalled and unresolved Doha Development round. The original core contested issues -the Special and Differential Treatment (SDR) subsidies, exceptions, level at which nations classified as developed or developing, the agreement on agriculture etc, remain deadlocked. Predicated on these are is the new Digital economy and E Commerce treaty with its myriad of complex issues and value chain complexities.

Furthermore, many observers argue that the very ‘institutional architecture’ of the WTO, particularly its dispute resolution mechanisms are ineffective, with cases taking years to resolve, and many trade issues are now informally discussed at the G20, with no binding commitments.

On top of this already contested foundation, and in context of the rapid pace of the global digital economy, is a set of ‘new generation issues’ with regards to digital trade and WTO’s E commerce treaty is being negotiated. These include: a) Cross border data flows and data localization; b) Consumer rights and c) local and global value chains; d) digital tax e) consumer trust and f) labour and communities. Many developing South proponents prefer that the UNCTAD processes on e Commerce is more developmental and inclusive and requires a louder voice in global trade negotiations.

Although there is a broad consensus that these are matters for negotiations, the varying perspectives/ disagreements amongst the Troika and many in the developing South are huge. For developing South nations and smaller island states, the implications impact directly on national and local level development. Many smaller nations and especially lower developing nations (LDC’s) will simply be swept aside by the digital economy tsunami. Most nation state don’t have the capacity, digital infrastructure, skills base, and lack effective policy and regulatory systems to participate equitably in the digital economy. And even if they do, they simply will be incorporated and ‘sucked into’ this mega global algorithmic digital corporate dominated marketplace that will appropriate their goods and services and labour value extraction in a race to the bottom – with very low margins for smaller producers, thus perpetuating the age old problem of trade and underdevelopment that was the hallmark of the
trade talks decades ago. The digital corporate asymmetrical power of tech titans simply overwhelms smaller nation states, which means that this is a real ‘catch 22’ for smaller developing nations.

Navigating complexities of Special and Differentiation Status within WTO multilateral agenda

In a special session ‘Reclaiming Development at the WTO, Dr Richard Kozul-Wright, Director of the UNCTAD Division on Globalisation and Development Strategies cogently argues that the history and reasons for the emergence of special and differential treatment provisions in the trade negotiations, and examines various development indicators in order to assess whether the developing world has evolved to the extent that a change in this basic principle of the multilateral trading system is required. He argues that the economic and social gaps between developed and developing countries remain significant despite the gains in some countries over the last quarter century. Policy challenges of the 21st century facing all parts of the developing world, including those triggered by the growing digital divide and environmental degradation, are mounting just as the commitment of advanced economies to international development cooperation is waning. He concludes that development goes much beyond trade and includes multiple economic, social and environmental challenges and their interaction, the consequences of which can only be fully assessed by countries themselves who should, consequently, be allowed to self-declare their development status.

By examining the economic gaps that continue to divide developed from developing countries, the paper argues that these remain significant despite the gains in some countries over the past 25 years. An interesting observation the paper makes is the fact that some gaps have closed (and some widened) more than others does not provide the basis for removing the designation "developing" as a useful way of examining the persistent gaps, biases and asymmetries in the global economy and the daunting policy challenges those countries are facing in the 21st century. Finally, aggregating these trends into a single composite measure of development is, accordingly to Dr Richard impossible since development is a multi-dimensional challenge, including economic, social and environmental areas, as also noted in the 2030 Agenda for Sustainable Development.

Is an African Digital industrialisation path possible?

According to UNECA, rising labour costs in advanced countries, and in many emerging Asian economies, in particular, China, offer opportunities for labour-abundant Africa to diversify into the export of low value manufactures and services and integrate into global value chains. Yet most African countries are failing to capitalise on the opportunities to industrialise.

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8 UNCTAD Research Paper titled "From Development to Differentiation: Just how much has the world changed?" Dr Richard Kozul-Wright, 2019
The story of Africa is one of de-industrialisation overall, with the share of manufacturing in GDP hovering around 10% for most countries while falling in some (Banga and te Velde, 2018). The contrast with East Asia, which is often cited as a development model for Africa, could not be starker. Manufacturing value added in East Asia and developing Asia is much higher than in Africa. According to Harvard University’s Dani Rodrik, the rapid transition move into services – often skipping manufacturing sector is leading to unbalanced structural transformation. For instance mass usage of mobile communications and apps can create an illusion of tech modernisation, but without a solid manufacturing and industrial base – which is the heartbeat of job creation, it can deepen existing inequalities. Moreover, industrial activities and manufacturing value added in Africa are generally concentrated in the North African region and in South Africa. For the rest of Sub Saharan Africa (SSA), the traditional industries – agriculture and mining- are still trapped in unequal global trading system and unstable commodity cycles. Many nations would need to add value through beneficiation of minerals and create some semblance of an modern industrial base that can add value to global value chains, and thus create wealth. For instance South Africa’s National System of Innovation (NSI) and R&D strategy is a good example of funding innovation and providing companies with innovation support packages to improve competitiveness and development.10

Note: Data for Middle East & North Africa and North America are of 2016. The rest are data of 2017. Source: World Development Indicators, World Bank, 2019

The digitalised economy is shaping the landscape for development opportunities around the world. In order to achieve the Africa 2063 Agenda and the worldwide Sustainable Development Goals (SDGs) on expanding employment, decreasing inequality, and eradicating poverty, millions of new jobs must be created. In many economies, MSMEs play a critical role in the economy, providing 50 to 80 percent of employment and at least 40 percent of GDP. Empowering MSMEs in global trade should therefore boost job creation and promote more inclusive economic growth. In recent years, much attention has been placed on helping MSMEs participate in trade through access to global value chains. In a recent Policy brief for the G20, African think tanks and researchers argue the current global economy, characterised by a huge digital divide and dominance of MNCs in global value chains, appropriate and strategic industrial policies by African countries are needed to reap the benefits of digital economy for structural transformation and to ensure that the transformative impact of technology is directed towards the SDGs.

They argue that the framework should include elements such as financial and technical co-operation, technology transfer and flexible approaches to intellectual property that balance incentives for innovation with the ability to build new innovations the need to make sure that access to such innovations is as broad as possible. Due to the limited digital capacity in most African countries, regional digital strategies focusing on building digital infrastructure including digital skills; data infrastructure and cloud computing infrastructure should be established to allow countries to increase digitization in their manufacturing sectors.11

The UNECA argues in favour of using digitisation to reduce non-tariff barriers to trade (NTBs) should boost intra-African trade in manufactures, especially in the context of the African Continental Free Trade Area (AfCFTA). They argue that Reducing non-tariff trade costs in this way may be key to ensuring the full implementation of the AfCFTA, which is itself expected to have significant positive impacts on the continent’s industrialization (ECA, African Union and African Development Bank, 2017). Relaying on non-controversial areas such as capacity building etc, they opted for a ‘middle ground safe approach’ of calling for digital trade facilitation should help to boost intra-African trade and Africa’s industrialization in the context of the AfCFTA. 12

Key Questions for African policy makers in the Developing South

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11 The T 20 policy briefs on ICT and Industrialisation to be discussed at G20, Japan in July 2019.
However, core fundamental questions need to be posed by African policy makers and stakeholders. But does linking with foreign tech companies hold the answer? Or would a focus on supporting domestic MSMEs create more decent jobs? *Digital industrialization* holds a more likely promise for closing the digital divide, expanding manufacturing, increasing competitiveness, and fomenting structural transformation. Promising pathways for fomenting jobs and development in developing countries using our own resources include South-South digital cooperation for development.

The exploitation of workers is another factor naturally arising from the desire of organisations to save costs through digitisation. Many people in developing countries and Africa are at a disadvantage in terms of their wage: as “low-cost, low-capability buyers” they become price takers without bargaining power. This phenomenon is also referred to as electronic/online sweatshops or the race to the bottom. The situation is exacerbated by the fact that most online platforms manage to fall outside the scope of local labour legislation or protection laws (Lehdonvirta, 2016)

Specific examples of and models of potential best practices in creating decent jobs, expanding MSMEs and fomenting development through eCommerce and digitalization will be examined.

- How can Africa and other developing countries close the digital divide, boost manufacturing, increase competitiveness and foment structural transformation in ruthlessly competitive global environment?
- Should least developing nations and Africa de-link from the current WTO e Commerce trade talks? instead it should create alternative co-operative peer production marketplaces? If so, what would the nature of the model be?
- What would the status of the GATS agreement and its ‘policy development space and exceptions’ be if the WTO E Commerce treaty be signed?
- What are the pros and cons of aligning with trade power blocs, such as the U.S.-based companies, European companies, or China? Should LDC’s even play any role at all in these contested world views on commerce and trade?
- How would WTO E-commerce negotiations affect MSMEs and job creation and digital taxes? Can developing countries unite to defend their interests in protecting policy space for development in international fora in which rules are being discussed on these issues?
- What would the impact of WTO E Commerce treaty be on Agriculture and particularly the fate of millions of small scale farmers in the developing South. Should there be an updated charter/addendum in the WTO agreement on agriculture?
• What are the frameworks of digital industrialisation for development within the context of Africa’s 2019 CFTA agreement? What are some of the specific, effective policies through which developing countries can promote MSMEs and foment jobs through digital industrialization?

• Finally what is the role of blocs such as BRICS, IBSA and G 77 in creating a more solid south south platform for international trade development and solidarity, if at all?

As a delegate at the recent WTO E Commerce negotiations put it ‘If you not at the table, you will be on the menu.’

This suggests that very stark choices confront developing nations on their participation, or lack of it in these WTO negotiations.