

# The Future of e-Commerce Regulation: Implications for South Africa and Africa

## The View from Geneva and Implications for Africa

26<sup>th</sup> October 2016

Pretoria

*Jamie MacLeod*



United Nations  
Economic Commission for Africa



# Contents

- ▶ 1. E-Commerce at the WTO Now
- ▶ 2. The Digital Economy and the New Business Models
- ▶ 3. What are the Proponents of New Rules Asking for?
- ▶ 4. Could Africa Take Advantage of New E-Commerce Rules?
- ▶ 5. WTO's E-Commerce Work Programme
- ▶ 6. Nairobi Ministerial Declaration
- ▶ 7. Regional Integration and Intra-African Trade
- ▶ 8. Conclusions

# 1. E-Commerce at the WTO Now

- ▶ July 2016, seven new proposals submitted to WTO on e-Commerce. Suggestions that new rules adopted by Dec 2017 (next Ministerial)
- ▶ But may detract from priority ‘remaining DDA issues’
- ▶ Suggestions that e-commerce will be revolution that developing countries have been waiting for. Especially for MSMEs - therefore, should there be rules at WTO?
- ▶ But what kind of rules? How would they help developing countries? What are the challenges facing developing countries with e-commerce?

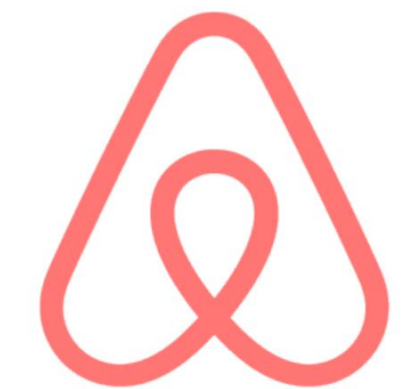
# 2. The Digital Economy and the New Business Models



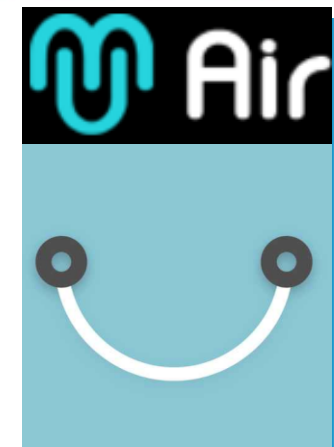
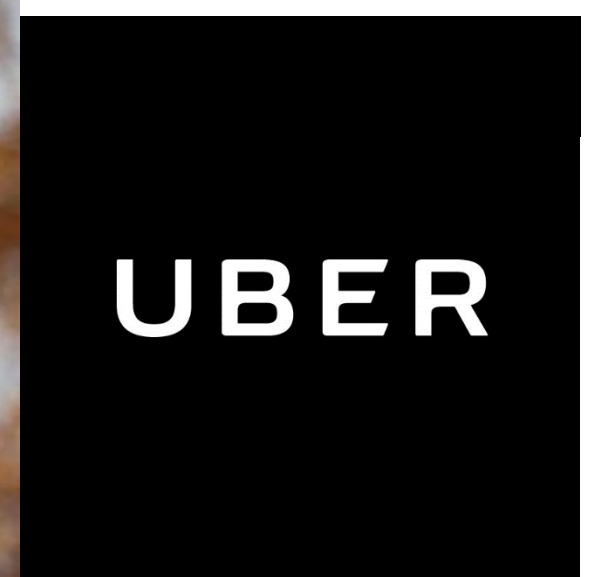
ARCADIA  
DATA



mPedigree



airbnb



# 3. What are the Proponents of New Rules Asking for?

This Section draws from proposed rules in US paper (JOB/GC/94) - same issues addressed in EU and Japan proposals

- i. No Customs Duties/ Non Discrimination
- ii. Enabling Cross-Border Data Flows
- iii. Promoting a Free and Open Internet
- iv. No Localisation Barriers
- v. Technology Issues
- vi. Safeguarding Network Competition

# i. No Customs Duties/ Non Discrimination: A new trade route?

## Proposed rules:

- ▶ ‘Prohibiting Digital Customs Duties’
- ▶ ‘Securing Basic Non-Discrimination Principles’

## Implications:

- ▶ No tariffs on electronically transmitted books, music, videos, software.
- ▶ But future possibilities i.e. NAMA tariff lines made duty-free through these rules.
- ▶ Disregarding Members’ GATT and GATS schedules and creating a parallel trade route whereby no constraints, tariffs, regulations can come in the way of imports into domestic markets.
- ▶ National treatment to all goods and services would mean domestic markets are opened. Implications for domestic goods and service providers

## ii. Enabling Cross-Border Data Flows

### Proposed rule:

- ▶ ‘Enabling Cross-Border Data Flows’: companies and consumers must be able to move data as they see fit.

### Implications:

- ▶ Data is the currency of the digital economy - those with access can do the analytics and customise advertising and sales, and have direct access to consumers and markets
- ▶ Some countries wish to have data from their citizens in local servers for political/security and economic reasons:
  - ▶ To ensure that they do not give away valuable data for free\May not want other countries to conduct surveillance of their citizens - privacy and security concerns

# iii. Promoting a Free and Open Internet

## Proposed rule:

- ▶ ‘A free and open Internet for all legitimate commercial purposes.’

## Implications:

- ▶ This targets governments which block certain websites for commercial or political reasons:

**Ethiopia**



- ▶ However, also covert manipulation can take place, eg in U.S., and companies make decisions that affect what we see or do not see.
- ▶ Is the discourse on a ‘free and open’ internet misleading? Does it allow some to exercise their ‘internet sovereignty’, according to their interests, but not other”?



## iv. No Localisation Barriers

### Proposed rule:

- ▶ “Companies and digital entrepreneurs relying on cloud computing and delivering Internet-based products and services should not need to build physical infrastructure and expensive data centres in every country they seek to serve.’

### Implications:

- ▶ U.S. wants that its companies can operate in a borderless single market where data can flow and consumers can be sold services with ease.
- ▶ No local/commercial presence: some developing countries require commercial presence of the supplier to ensure benefits to their country.
- ▶ Regulation issue: enforcing standards, licensing, qualification requirements if not located in country.

# v. Technology Issues (a) No Technology Transfers

## Proposed Rule:

- ▶ ‘Requirements that make market access contingent on forced transfers of technology inhibit the development of e-commerce and a flourishing digital economy. Trade rules may be developed to prohibit requirements on companies to transfer technology, production processes, or other proprietary information.’

## Implications:

- ▶ Sometimes countries allow for companies to enter their markets only when there is some transfer of technology - to help developing countries bridge the digital divide.
- ▶ This would inhibit tech transfer

# Technology Issues (b) Protecting critical source code

## Proposed Rule:

- ▶ ‘Innovators should not have to hand over their source code or proprietary algorithms to their competitors or a regulator that will then pass them along to a State-owned enterprise.’

## Implications:

- ▶ Trade secrets (incl. source code) not covered by TRIPS. This would be a TRIPS+ rule
- ▶ Locally based software industries can be started without high levels of capital investments (no need even for the latest computer systems). All this can be done if developing countries can access the source code with minimal restrictions.

# Technology Issues (c) Ensuring technology choice

## Proposed Rule:

- ▶ ‘Innovative companies should be able to utilize the technology that works best and suits their needs. Trade rules may play a role in ensuring technology choice by stipulating that companies are not required to purchase and utilize local technology, instead of technology of their own choosing.’

## Implications:

- ▶ Again this is about TRIPS+
- ▶ Disallowing local content requirements for “technology”

# vi. Safeguarding Network Competition

## Proposed Rule:

- ▶ ‘Enable digital suppliers to build networks in the markets they serve or access such facilities and services from incumbents - whether landing submarine cables or expanding data and voice networks - to better access consumers and businesses.’

## Implications:

- ▶ Some countries put in place conditions so that foreign network suppliers will have to provide network coverage in urban (more profitable) but also rural (less profitable) regions.

## 4. Could Africa take advantage of e-commerce rules?

- ▶ E-commerce hailed as an opportunity for developing countries and MSMEs - reduces costs traditionally involved in cross-border trade (infrastructure, insurance, storage space, etc)
- ▶ Celebrated African success stories: only in larger African countries
- ▶ But still a Digital Divide:
  - ▶ Africa only region with mobile internet penetrate <20%
  - ▶ Fixed broadband subscriptions <1% (more expensive, and slower than elsewhere)
  - ▶ Very limited cross-border e-commerce
  - ▶ Logistics problems



## 5. WTO's E-commerce Work Programme

- ▶ Mandate to ‘examine all trade-related issues relating to global e-commerce, taking into account the economic, financial, and development needs of developing countries’
- ▶ Scope of mandate not about negotiating on e-commerce, but simply “examination” or “discussions” on trade-related issues relating to e-commerce
- ▶ If Members want to negotiate new e-commerce rules, the current mandate of the Work Programme will need to be changed - there will need to be a decision taken by the WTO Membership

## 6. Nairobi Ministerial Declaration: Prioritise the Remaining DDA Issues

- ▶ Nairobi puts the ‘remaining Doha issues’ at the centre of the WTO’s negotiating agenda
- ▶ Para 31: ‘...there remains a strong commitment of all Members to advance negotiations on the *remaining* Doha issues’.
- ▶ Para 34: ‘While we concur that officials should prioritise work where results have not yet been achieved, some wish to identify and discuss other issues for negotiation; others do not. Any decision to launch negotiations multilaterally on such issues would need to be *agreed by all Members*’.



# 7. Regional Integration and Intra-African Trade

- ▶ Hugely important to African industrialisation: 60% of EAC exports to other EAC countries consist of manufactured products (50% to other African countries). But only 6% to of exports to the EU.
- ▶ Will continuation of moratorium on e-commerce customs duties undermine regional integration?
- ▶ Scenario whereby customers in Africa are able to access goods and services from outside the continent more quickly, easily and cheaply than from a local supplier?

# 8. Conclusions

## Challenges?

- ▶ Care should be taken that new issues, incl. e-commerce, do not divert progress with DDA priorities
- ▶ E-commerce as avenue for strengthening TRIPS+ restrictions and reinforcing dominance of developed countries in e-commerce
- ▶ Provide a liberalised ‘back door’ into developing country markets, both for services and goods
- ▶ Digital Divide: Africa currently behind RoW

## Opportunities?

- ▶ Easier for SMEs to access benefits of trade (higher SME concentration in Africa)
- ▶ Reduce barriers for trade (higher barriers in Africa)

# Conclusions (continued)

- ▶ Infant industry protection, industrial development, macro-economics, employment - reasons why developed and developing countries alike erect barriers for suppliers who may not be competitive on the world market.
- ▶ Reason why in the Doha negotiations, Membership has acknowledged the importance of tariffs for developmental reasons (hence why LDCs have not had to undertake tariff reductions.
- ▶ But these concerns are not replicated with electronically transmitted trade. - issue not huge today, but e-trade is expanding and decisions made today will be projected into the era 25 years from now.
- ▶ Internet is the trade route of the 21<sup>st</sup> century: how can we craft this so that developing countries can industrialise and catch up with technologies and development.

**Jamie MacLeod**

Trade Policy Fellow- African Trade Policy Centre  
(ATPC), UN Economic Commission for Africa

[JMacleod@uneca.org](mailto:JMacleod@uneca.org)

[www.uneca.org](http://www.uneca.org)