

<p>Masters of Digital 2020</p> <p>A Digitally Transformed European Society</p>	<p>Musées royaux des Beaux-Arts de Belgique (Auditorium)</p> <p>Place du Musée, 1000 Bruxelles</p> <p>6 February, 11:00 – 11:30am</p>
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Scene Setter

You are the keynote speaker at the Masters of Digital 2020 event. After your speech there will be a short ‘fireside’ chat with DIGITALEUROPE Director-General (seated with hand-held microphone/head-set).

This “Masters of Digital 2020” event will gather circa 400+ executive representatives from private and public sector and from 35 countries, and has become the “Davos of digital policy and economy”. It is organised by DIGITALEUROPE which is the voice of high-tech/digital industries, ranging across various manufacturing (telecom equipment/5G, computers, printers, TVs, etc.) and services (cloud, software, etc.) sectors. Its wide membership covers 71 corporate members of various origins (EU: Nokia, Ericsson, Siemens, Bosch, Philipps, SAP; US: Apple, Facebook, Cisco, HP, Intel, etc.; Japan: Panasonic, Kyocera, Hitachi; Korea: LG, Samsung; China: Huawei) and 40 national trade associations from EU Member States and the wider Europe.

While DIGITALEUROPE is actively monitoring all trade related issues for its members, its diverse membership does not always allow it to take clear positions on the numerous sensitive trade issues surrounding the technology sector, whether US-China, 5G, US restriction on Huawei, or other issues. Therefore, its contributions are often limited to technical inputs on issues of general concern for its business community, such as cybersecurity or export control related legislation in China. It has submitted specific comments on China’s new draft Export Control Law or the draft Encryption Law – the latter of which has now entered into force (with comments not taken into account.) Certain BusinessEurope members (Nokia, Ericsson) have also shown interest in the ongoing EU WTO case against India on excessive tariffs on telecom/ICT products.

Participants will certainly be interested to hear your views on:

- The new EU trade policy priorities
- EU policy on digital trade
- The latest state of play as regards on WTO e-commerce negotiations
- EU trade policy and 5G

On **5G** please note that there are two separate issues of key importance for DigitalEurope: 1) EU market access for Digital Europe members Nokia and Ericsson to China and third countries, while tackling trade distortions in the sector, and 2) the EU 5G security framework. Concerning 5G market access, we suggest you underline our key messages that the EU expects reciprocal, fair and open market access to third countries (both in terms of tendering, as well as access to standardization bodies or research programs) – with Huawei’s presence as DigitalEurope member, we expect that this message will be a strong signal to Beijing, considering the sharply deteriorating situation of EU players in the Chinese market (50% in 3G, 25% in early 4G, now around 12-15%, with 5G first results showing an even bleaker picture – with up to 92.5% of Phase 0 installations going to Huawei). It is important to highlight the need for the EU’s strategic autonomy and digital sovereignty in this key sector, where EU players have been the incumbents and continue to provide the most up-to-date technology.

Art. 4.1 (b)

First key messages

On trade policy's new priorities

- The international environment in which EU trade policy operates has been the object of dramatic changes in recent years. Trade policy is now used by major players, and especially by the US and China in their rivalry for technological supremacy, as an instrument to achieve geopolitical objectives.
- The rules based international trading system is a collateral victim of this evolution.
- In addition, some general mega trends such as digitalisation and rapid technological advances, climate change, demographic shifts and an increasingly multi-polar world are also having a profound impact. Trade policy is more and more solicited to contribute to these other goals and challenges.
- All this calls for the EU to adapt to this new environment and for the Commission to become a truly geopolitical actor as President von der Leyen announced in her political guidelines.
- As announced in my mission letter Trade will therefore need to focus on the following new priorities

1) Preserving a stable, predictable and rules-based international trading environment. Importance of trade as a tool in uncertain times to push for rules

- a. WTO reform: status quo is not an option
- b. Current crisis has deeper roots/multiple sources but a lot is linked to underlying concern that the system is not adapted to deal with forms of state-capitalism that lead to very significant distortions in trade and affect the rights and balances of the WTO agreement.
- c. While we appreciate if the US and China find ways to de-escalate their trade tensions (which are benefiting no one), our goal is to convince both to strive for a more structural, rules-based solution within the WTO.
- d. For the Appellate Body: Interim arrangements for AB/multi party approach (now supported by 17 WTO members), but not to confuse with goal of reforming the system (incl. with the US). Enforcement regulation to deal with current deadlock.

2) Managing our key relationships (bilaterally)

- US: Need to continue positive engagement/political re-set and to manage our divergences.
- China: Communication in March this year: More differentiated and nuanced relationship. Preference here as well for bilaterally agreed solutions: CAI (but China will need to show more ambition to ensure it is worth signing for EU) and rules on subsidies, tech transfer. But if no agreement, will need to look

how to secure the EU's interests and undistorted competition on our market through our own measures.

- Diversification of our trading relationships. Very successful recently (Canada, Japan, Singapore, Vietnam, Mercosur...)
 - not to the detriment of multilateral system but building blocks for future rules (and support for WTO reform)
 - Ready to consider new agreements where beneficial
- Maximising the potential of existing relationships: focus on implementation and enforcement, role of CTEO.

3) Contributing to other policy fields and overarching topics issues that matter for Europe

- A geopolitical Commission: much more integrated approach, enhancing effectiveness of our policies and increasing leverage – Green Deal, EU fit for Digital age and promoting our values and standards globally.
- Climate: need to see where trade policy instruments can further enhance our climate policy (e.g. facilitating green trade and production and including Paris Agreement commitments in our FTAs, for the future even explicitly as essential element); And where trade instruments are needed to ensure the effectiveness of

our climate goals (prism through which we look at Carbon Border Adjustment mechanism)

- **Sustainable development more generally** – trade policy, and in particular our trade agreements are a vehicle to promote and enforce international standards – not only on environment but also on labour, human rights and other issues like anti-corruption, gender etc.)
- Similar nexus between trade and any future **industrial policy**.
- **Trade and technology/security**: increasingly interlinked. Difficult for the EU but it is changing (FDI screening, reform of dual use...)

4) **Level Playing Field**: Promoting our standards and protecting EU companies and workers from unfair competition

- Leverage our Single Market – it encompasses more than 500 million people with a nominal GDP of over 17 trillion EUR
 - Fly the flag for open, rules-based fair trade, counter protectionism
 - Be more assertive in defending our interests
- (Continue) Making effective use of TDIs
- Update of the Enforcement Regulation

- Advancing with the IPI (International Procurement Instrument)
- Reflecting on possible new instruments to address the distortive effects of foreign subsidies in the internal market (for investments but also procurement). (White Book in March)
- Focus on enforcement and creation of CTEO (Chief Trade Enforcement Officer)

On the EU digital trade policy

- The **global e-commerce market** was worth **\$29 trillion in 2017** and continues to grow at a fast pace, with around **1.3 billion people already doing some shopping online**. The EU is the world's largest exporter of services and is therefore in a strong position to benefit from the opportunities of digital trade.
- **Modern trade is to a very high extent enabled by digital technologies**. For example, banks rely heavily on the international transfer of data, agricultural commodity traders use e-signatures to conclude international purchases and European manufacturers can track the performance of their machines across the planet thanks to electronic data transfers.
- Software-related services depending on data transfers represent an increasing share of European companies' revenues, and this trend is set to continue. The "Internet of Things" is all about

capturing the opportunities created by combining sensors and internet-enabled devices, large datasets, and high performing computing capabilities. In this digital revolution, data is key.

- **Digital trade is therefore a priority** for a variety of European industries. However, looking beyond Europe, digital trade is increasingly seen as a key priority cutting **across all sectors and geographies**.
- At the same time, in recent years, we can observe an **increasingly alarming trend of digital protectionism**. Certain governments impose obligations on companies to store and process personal and industrial data in their territory, keep computing facilities there, or simply prohibit or make cross-border data transfers extremely difficult. Some governments ask foreign companies to provide access to their source code, as a condition of being granted a licence and then pass it on to the local competitors.
- These **protectionist measures impose significant costs on businesses** involved in cross-border trade, which can be detrimental, in particular for SMEs. For example, EU businesses have to duplicate or multiply their data processing or storage facilities, which does not only entail high costs but is disruptive to a number of business models. They usually hit foreign-owned business, while hardly affecting domestic ones.

- Therefore, the **EU – but also other WTO Members - have an interest** in shaping the global rules on digital trade, including **through bilateral trade agreements and in the World Trade Organisation.**
- In our bilateral agreements, we are proposing an **ambitious Digital Trade title** suited to respond to the challenges of the digital economy.
- We have recently agreed it with Mexico and are now negotiating similarly **ambitious provisions with Australia, New Zealand, Chile, Indonesia and Tunisia.**
- The Digital Trade title the EU proposes in bilateral negotiations aims **to remove unjustified barriers; bring legal certainty** for companies; **ensure a secure online environment** for consumers and, more generally, **non-discrimination** between online and offline business activities.
- In terms of **specific provisions**, the EU proposes ambitious rules to prohibit mandatory source code disclosure; facilitate online transactions such as electronic trust services, electronic contracts, disciplines on unsolicited communications (i.e. spam), and ensure consumer protection in the online environment to build consumer confidence in the digital economy.
- In addition, the EU proposes **a straightforward prohibition** of all measures requiring the **localisation of data** or servers in the

territory of another country. This is the biggest trade barrier to the free flow of data and a very serious concern for the EU.

- At the same time, importantly, our approach to data flows ensures that trade agreements allow countries to cater for an important policy area, which is the protection of personal data and privacy. Protecting personal data is a condition for stable, secure and competitive global commercial flows.
- The EU's proposed Digital Trade title is **as ambitious as**, or in some aspects even more ambitious than, those found in recent FTAs concluded by our **most advanced trading partners**, including the USA and Japan.
- For instance, **going beyond Japanese and USA practices**, the EU proposes that Parties commit to treating online and offline services equally in licensing procedures, accepting e-trust services (which include a range of modern digital services, such as e-signatures, encryption services and digital time stamp services) and introducing ambitious rules on consumer protection and spam.

On WTO e-commerce negotiations

- The **EU attaches great importance to the WTO negotiations on e-commerce** and has been **very actively involved** in the discussions from their start. We dearly need a successful outcome of the talks for **strategic reasons**. Digital trade has

become **central for the economic development of our countries** and its importance is increasing in an exponential manner. **Digital competitiveness is becoming vital** for the sustainability of our economic development.

- Moreover, a successful conclusion of these negotiations will be the **best response we can bring to the current crisis of the WTO's negotiating function**. It will be key to demonstrate that plurilateral processes hold the biggest promise of revitalising our global rule setting ability.
- We have already made substantive progress in the negotiations. The EU is highly appreciative of both the very efficient steering of the negotiations by Australia and its co-conveners, Japan and Singapore, and of the continued positive engagement by the participating Members.
- Hence, during a dedicated Ministerial meeting held in Davos two weeks ago, **the EU called on WTO Members to continue their active and constructive engagement in the negotiations**. The EU stands ready to contribute to the collective effort, which will be required for this negotiation to succeed.
- The EU also **calls on industry to actively engage in this process**. Businesses have a key role to play in keeping policy-makers informed of the latest developments, challenges and needs of industry. The **voice of industry will be fundamental** in reaching out to governments to highlight the importance of these

negotiations and help them bridge the gaps between positions and reach agreement on global rules.

- The EU supports strengthening our efforts towards presenting a consolidated and streamlined text at MC12. Together with a positive progress report, this would constitute a good basis for the next step in the negotiations.
- Finally, let me stress that the EU remains a firm believer in the value of anchoring any future agreement on e-commerce in the WTO framework, for the benefit of both developing and developed countries.

On 5G

- **5G is a key sector which will define the technological sovereignty of the EU.**
- Internally, we have an open market. Everybody who complies with the rules can access it. We have rules in place which address these issues. We have EU procurement rules in place, and we have the investment screening legislation to protect European interests.
- Externally, the EU is also following very closely the 5G commercial tendering process worldwide, notably in China, where Phase 0 results were disappointing for EU vendors.
- In the spirit of reciprocal openness and good cooperation in telecom networks, the EU expects that commitments of fair and

open market access are effectively implemented in all stages of the process, in a way that reflects the competitive strength of EU companies. The ongoing Phase 1 of the commercial tendering will be a major test of openness.

- **NB: EU toolbox concerning 5G security will be published on 29 January. A reference could be added.**

Second key messages (defensive points)

What does the EU Digital Trade Title include?

- The EU has an ambitious approach to digital trade in trade agreements, which responds to the challenges of the digital economy. A few concrete examples:
 - Prohibition of mandatory source code disclosure/transfer - contains a general prohibition for Parties to ask for the transfer of a source code of software, unless through measures necessary to achieve legitimate public policy objectives. The industry confirmed that the EU rules are much better for them than the CPTPP model.
 - Online consumer trust - transparent and effective consumer protection rules in the online environment to build consumer confidence and trust as well as cooperation between competent authorities in charge of consumer protection.
 - Unsolicited commercial electronic messages – it clarifies that the consumers must be able to opt-out from spam if they wish so. Consumers must give their consent to receive such messages; spam must be clearly identifiable etc.
 - The conclusion of contracts by electronic means confirms the legal validity and effect of electronic contracts. The US includes a similar provision in its FTAs.
 - Electronic authentication and electronic trust services - it confirms the validity of electronic signatures, time stamps, electronic registered delivery and eliminates barriers for companies from determining the method of authentication used for their electronic transaction. Other trading partners (like the US) usually focus only on e-signatures.

What does the EU proposal in the WTO e-commerce negotiations include?

- The EU has proposed horizontal rules relating to e-commerce/digital trade, rules applying to telecommunication services and market access requests.
- The EU proposal is to negotiate MFN-based disciplines, which would be attached to the individual schedules of Members under existing WTO agreements. This ultimately means that existing definitions under GATS

and GATT as well as scope, exceptions and the WTO dispute settlement would apply.

- The EU has proposed:
 - a set of WTO disciplines aimed to facilitate on-line transactions (legal guarantees on acceptance of e-contracts and e-signatures).
 - rules aiming to enhance consumer trust in on-line environment
 - a permanent ban on customs duties on electronic transmissions (digital cross-border transmission of e.g. videos, music, software)
 - a ban on mandatory software source code transfer
 - a provision on cross-border transfer of data (with a focus on banning all known forced data localisation requirements) while at the same time ensuring protection of personal data
 - a best endeavour provision suggesting that Members should ensure that consumers and businesses can access and use the internet under fair and non-discriminatory conditions in order to carry out their activities.
 - a revision of the WTO Reference Paper on Telecommunications Services (e.g. to cover the internet)
 - detailed market access requests on computer and telecommunication services and a request that all participating Members commit to the Information Technology Agreement and its product expansion (ITA & ITA2).

What is the EU position on data flows?

- The EU attaches great importance to addressing protectionist measures related to data flows and data localisation. We are very concerned about the increasingly alarming trend of new obligations that force companies, for example, to store and process personal and industrial data in a given country.
- WTO negotiations on e-commerce provide us with a unique opportunity to tackle these challenges at the global level and we look forward to working with other Members to develop a language that could be acceptable to as many participating Members as possible.
- In this respect, the EU has tabled a text proposal that aims to facilitate data flows and ban all forms of data localisation requirements (by far the most common protectionist barrier when it comes to data flows). Our proposed text also ensures that Members retain the right to safeguard the protection of personal data and privacy, which are fundamental rights in the EU.

- It is clear that data flows/data protection will be one of the most sensitive and difficult issues in these negotiations, which are likely to require some time. Nevertheless, the EU wants these issues to be part of the package in these negotiations.

Do you envisage adding rules on AI or blockchain to the EU Digital Trade Title or the EU proposal in the e-commerce negotiations?

- We cooperate with our technology and digital experts on a daily basis (TRADE works closely with CNECT). Of course, we need to think about whether and how any such new development needs to (or can) be translated into trade rules.
- For example, there could be developments on international standards relating to artificial intelligence or blockchain. We would not consider adding such rules in trade agreements mainly as these areas mostly focus on technical standards that fall outside the more general scope of trade liberalisation.
- Moreover, due to their highly technical and fast pace nature, such areas are likely to evolve under a time-frame that is shorter than the life of a trade agreement. If we included such provisions in a trade agreement we would risk jeopardising the "future-proof" approach that we seek to maintain.

The WTO Moratorium on customs duties on electronic transmissions

- The EU remains strongly attached to the continuous application of the WTO Moratorium on customs duties on electronic transmissions. Our preferred approach would be to render the Moratorium permanent. This would bring the benefit of certainty and predictability to businesses and consumers.
- There is significant support by Members for taking a decision at the General Council in December to extend the Moratorium until MC12. The EU and BR have asked for an extension until MC13, but this does not seem feasible at this stage in the light of the continuous opposition by India and South Africa.

5G

Various references or formulations in the report on EU coordinated risk assessment on 5G cybersecurity seems to point to China- at least implicitly- as a major source of threat for 5G networks. Why is this not expressed more explicitly? Are Member States afraid of potential geopolitical consequences?

The Report deliberately does not contain any references- explicit or implicit- to individual countries or suppliers., It follows an objective approach and identifies

a number of strategic risks, which will help define appropriate mitigation measures.

The report highlights the importance of individual suppliers' risk profiles. Based on the criteria mentioned in the report, some of the key suppliers, who have a strong presence in the EU market, may be considered 'risky suppliers' in the future, does this not mean that they should be excluded upfront?

The Report identifies a number of key risks and security challenges. In certain circumstances, Member States have found that these risks may be related to the characteristics of individual suppliers, coupled with their particular role and involvement in 5G networks. The toolbox of mitigation measures to be developed by the end of the year will aim to address all identified risks and risk factors. There are several ways, in which this may be done. This work will be completed by the end of the year.

Several numbers evaluating the potential cost of excluding Huawei from EU networks have been recently put forward. How will potential economic impacts of the toolbox be taken into account?

As underlined in the Recommendation, the toolbox should consist of appropriate, effective and proportionate possible risk management measures. Member States are well placed to ensure that the economic dimension is appropriately taken into account in this work. In addition, BEREC- the body bringing together EU telecoms regulators- will also provide input for the toolbox.

On 16 May, [United States President Donald Trump signed an executive order escalating his administration's campaign against Chinese telecoms giant Huawei, raising.](#) Do you feel pressured to follow suit in banning the company from their 5G and other networks?

The European Union has regular policy dialogues in place with the United States on cybersecurity and information security.

During this type of dialogue, we are discussing the increasing need for global coordination and cooperation, in order to safeguard an open, stable and secure cyberspace.

For this reason, the European Commission is setting in place a number of policy and legislative measures and procedures to safeguard the integrity of 5G networks.

It is up to each Member State to evaluate and assess the risks connected to every proposal ensuring the national, but also European security.

We encourage everyone to take these security concerns seriously.

What about consumers who are concerned their phones will no longer work?

For the time being, it is not clear what impact Google's decision to stop providing updates to Huawei phones operating with Android software would have on European consumers.

In general, Huawei, like all companies operating in Europe, has to ensure compliance with EU consumer legislation. This relates in particular to the EU directive on sales of goods and guarantees and the unfair commercial practices directive. Traders need to ensure that a product sold remains operational during a reasonable period of time.

These questions will be raised to the attention of consumer authorities and product safety authorities.

Background

The WTO started working on electronic commerce back in 1998, when it established a dedicated Work Programme. After failing to advance multilateral rulemaking in the area for many years, 82 WTO Members are now engaged in plurilateral negotiations on e-commerce (further to a Joint Statement adopted by Ministers on 25 January 2019 in Davos).

Negotiations are taking place among a broad and diverse group of Members, including the EU, US, China, Japan, Brazil, Russia, Nigeria, Saudi Arabia and Laos. Since the start of negotiations on 6 March, Benin, Saudi Arabia, Kenya, Cote d'Ivoire, Indonesia and Cameroon have officially joined the talks, bringing the number of participants up to 82. The negotiations are chaired by Australia, with Japan and Singapore acting as co-conveners.

A first series of detailed discussions took place from May to July 2019. A second round of text-based negotiations started in September based on a streamlined text prepared by the Chairs, with the aim of eliminating repetitions and minor differences between the various proposals. There were also rounds in October and in November.

There is a wide range of issues on the table i.a. in the areas of trade facilitation, cross-border data flows, consumer protection, the facilitation of electronic transactions, the protection of computer source code and market access both in goods and services. Participating Members continue to put new submissions on the table.

The discussions so far have remained constructive and largely non-political with active engagement by the EU, CN, US, JP, BR, RU, several ASEAN, African and Latin American countries, but divergent positions are appearing on some sensitive issues, thus making progress more difficult in some areas (such as data flows and privacy).

Members have not yet decided on the possible flexibilities or on the legal form of the future outcome of the negotiations.

Among the co-conveners, Australia takes the lead in organising the negotiations, with great success so far. The EU has excellent cooperation with the Chairs. The co-conveners plan three more rounds in February, March and April 2020. The objective is to present a detailed progress report and a consolidated negotiating text at MC12.