UNIVERSITÄT BERN

nccr trade regulation
swiss national centre of competence in research

the WTO as a global internet governance actor

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situating the WTO in the GIG landscape

- certainly on the GIG institutional map
- but delineated competences / discourses
- less contestation
- impact of the WTO rules on actual IG processes

- the unlikely but influential GIG actor?

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the WTO: basic tenets

- established in 1995; origins in the Bretton-Woods system and the GATT 1947
- 159 members
- regulates trade in goods and services, IP protection, as well as discrete fields, such as agriculture
- further reaching rules based on the principles of non-discrimination
- seeks opening of markets and sets limits to protectionism
- the ‘jewel in the crown’: the dispute settlement mechanism

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IG relevant rules

- **the Information Technology Agreement (ITA):**
  - covers 97% of trade in IT products; zero tariffs
- **GATS rules for telecommunication services:**
  - further reaching commitments
  - *Annex on Telecommunications* and the *Reference Paper*: liberal regime for telecommunication networks and telecom services; competition-like rules
- **GATS rules for computer and related services:**
  - further reaching commitments; low barriers to trade and market access
- **case law evolution**

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WTO and digital trade: failed adaptation?

- **the *WTO E-Commerce Programme*: great forward oriented thinking >> no action**
- **no agreement even on basic issues, such as that the WTO rules apply to trade online**
- **let alone more complex matters, such as classification:** goods *vs.* services; telecom *vs.* audiovisual *vs.* computer-related services
- **some compensation through the case-law**
- **venue shopping triggered**

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venue shopping (i)

- direct or indirect solutions found in preferential trade agreements (PTAs)
- 11 US PTAs since 2002; spillovers of templates for e-commerce provisions in non-US PTAs
- emergence of specific trade regime tailored to digital products and services

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venue shopping (ii)

- **trade in services chapters**
  - negative list approach
  - dropping local presence requirements
  - dropping MFN exemptions
  - strengthened transparency
  - domestic regulation
- **e-commerce cooperation pledges + 'deep' digital trade rules**
  (data and consumer protection; paperless trading; digital signatures)

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venue shopping (iii)

- **IP chapters with ever increasing IG relevance**
  - evolution of the templates to include more digital copyright issues, such as rules on the limitations on liability of ISPs or online piracy prevention (e.g. KORUSFTA)
  - increased level of IP protection and enforcement in cyberspace – export of US domestic standards
  - TRIPS➔WIPO Internet Treaties➔DMCA➔PTAs + (ACTA/SOPA/PIPA type of rules)

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summing up (i)

- **overall trends discernible**
  - PTAs address the unresolved e-commerce issues under the GATS: digital IP bias; IP chapters copy high domestic standards of protection
  - digital trade not so much about market access but about interfacing domestic regimes, so as to provide interoperability and some certainty
  - **anticipating the grand new trade deals (TTIP and TPP)**
  - **value of international economic law (if not through the WTO) increased for GIG**

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summing up (ii)

- **recent trends**
  - new IG related barriers to trade (localization requirements, domestic privacy and IP rules)
  - **digital trade as trigger for WTO reform:**
  - Trade in Services Agreement (TISA)
  - ITA II
  - US-EU common principles for e-commerce
- **trade venues as GIG: less political controversies; bargaining across sectors; asymmetrical power deals**

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