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?
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
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
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
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
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)
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)
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
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