



Faculty of Law

CONFERENCE

Big Data and Global Trade Law

16 AND 17 NOVEMBER 2018

UNIVERSITY OF LUCERNE, FROHBURGSTRASSE 3, LUCERNE

ROOM 4.B55



Big Data
National Research Programme



Big Data and Global Trade Law

Big Data is said to be the new driving force behind growth and innovation in many facets of societal life. The comparisons with traditional factors of production, such as natural resources and human capital, are frequent and meant to reveal the indispensable quality of data to much of modern economic activity. Looking forward, the affordances of Big Data and Big Data analytics have been heralded as the trigger of the next industrial revolution and far-reaching social transformations.

In the context of trade and trade policies, the growing importance of data for the digital economy has had one crucial implication: Data must flow across borders. Many of the innovations based on digital technologies that we are accustomed to in our everyday lives – like using apps, streaming music, or sharing content in the cloud, would not function under restrictions on the cross-border flow of data. Much of the current and future benefits that we anticipate from the data economy may plainly be lost under the conditions of data nationalism. This critical interdependence puts global trade law and policy under pressure and demands solutions. These may not be easy however, since the use of data and Big Data opens many regulatory questions as to the balance between access to and control of data and the protection of privacy and national security; it raises contentious questions of jurisdiction, sovereignty and private power. The international community has so far not moved towards finding a proper balance and ensuring the free flow of data. The multilateral forum of the World Trade Organization (WTO), while theoretically capable of accommodating diverging interests and reconciling economic and non-economic values has been rendered politically numb. Whatever development has occurred over the past decade in the field of digital trade regulation has been channelled through preferential trade agreements. Not only have free trade deals compensated for the lack of adaptation in the WTO but they have created new regulatory templates for addressing digital trade issues. The legal adaptation has been nonetheless incremental and overall, there seems to be a profound disconnect between the discourse on global trade law and its domains of services, goods and intellectual property regulation, the debates on privacy protection in the age of Big Data, and those on the present and future of a data-driven economy.

This conference seeks to connect these discourses and discuss the interfaces between Big Data as a technological advance with multiple societal implications and global trade law and policy. This is admittedly a difficult task and we are fortunate to gather together a faculty of renowned international experts that not only have a profound insight into different legal and policy fields but also an understanding of the developments in different parts of the world. We look forward to interesting and fruitful debates, also with inputs from practitioners and policy-makers.

The conference is organized in the framework of the project «The Governance of Big Data in Trade Agreements: Design, Diffusion and Implications», which is a part of the National Research Programme (NRP)75: Big Data and generously supported by the Swiss National Science Foundation.

Conference Programme

FRIDAY, 16 NOVEMBER 2018

14:00–14:30 **Registration**

14:30–14:45 **Welcome:** Mira Burri

14:45–16:00 **Session One: Understanding Big Data and its Interface with Trade Law**

Chair: Thomas Cottier (University of Bern)

Anupam Chander (Georgetown University): *AI and Trade*

Mira Burri (University of Lucerne): *Data Flows and Global Trade Law*

Manfred Elsig and Sebastian Klotz (University of Bern): *The Diffusion of Data Flow Regulation in Trade Agreements*

16:00–16:30 **Coffee break**

16:30–18:00 **Session Two: From E-Commerce to Digital Trade**

Chair: Daniel C. Crosby (King & Spalding)

Andrew D. Mitchell and Neha Mishra (University of Melbourne):

Accommodating Cross-Border Data Flows in the WTO Framework

Patrick Leblond (University of Ottawa): *Data Governance, International Trade and Multilevel Politics*

Daniel Gervais (University of Amsterdam): *Interfacing Big Data and Intellectual Property Law*

Xavier Seuba (University of Strasbourg): *Global Trade Flows, Big Data and Customs Enforcement of IPRs*

18:00–19:00 **Reception and networking**

20:00 **Speakers' dinner**

SATURDAY, 17 NOVEMBER 2018

9:00–10:15 **Session Three: Privacy and Other Users' Rights in the Age of Big Data**

Chair: Rolf H. Weber (University of Zurich)

Urs Gasser (Harvard University): *Reflections on the Future Relationship of Law, Technology, and Privacy*

Kristina Irion (University of Amsterdam): *Panta Rhei: A European Perspective on How to Ensure Individual Rights, Freedoms and Values in a World in Which Everything Flows*

Joris Van Hoboken and Svetlana Yakovleva (Free University of Brussels and University of Amsterdam): *The Algorithmic Learning Deficit: Data Protection, Artificial Intelligence, and Trade*

10:15–10:45 **Coffee break**

10:45–12:00 Session Four: Global Perspectives on Big Data and Trade
Chair: Marta Soprana (TradePolConsulting)
Florent Thouvenin (University of Zurich): *Data Ownership and Access to Data: The EU and Swiss Perspectives*
Rodrigo Polanco (University of Lucerne): *Data Rules in Latin America: Regulatory Convergence vs. Regulatory Divergence in the Pacific Alliance Countries*
Henry S. Gao (Singapore Management University): *Data Regulation in Trade Agreements: Three Digital Kingdoms – China vs. the EU and the US*

12:00–13:30 Lunch break

13:30–15:00 Roundtable Debate: The Way Ahead: (R)evolutionary Designs for Big Data Trade Law
Moderator: Mira Burri (University of Lucerne)
Susan Aaronson (George Washington University): *Data Is Different*
Sean Doherty (World Economic Forum)
William J. Drake (University of Zurich)
Antony Taubman (World Trade Organization)
Felipe Sandoval (ICTSD)

15:00–15:30 Wrap-up and farewell



Organization

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Venue

University of Lucerne
Frohburgstrasse 3
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Room 4.B55

Fees

Regular: CHF 490.–
Students and PhD fellows: CHF 120.–

Registration

Registration until 10 November at:
www.unilu.ch/rf-conference-bigdata or rahel.schaer@unilu.ch