

# Electronic Commerce and the World Trade Organization

State of play ahead of the 14th  
Ministerial Conference

IISD REPORT

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### **Electronic Commerce and the World Trade Organization: State of play ahead of the 14th Ministerial Conference**

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Photo: iStock

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## 1.0 Introduction

Electronic commerce (e-commerce) has become a central pillar of today's global economy. A growing share of global GDP is linked to digital activities, and this share is expected to continue rising. Recognizing the increasing importance of the digital economy, countries are deepening their cooperation on e-commerce-related matters and negotiating rules that shape the openness, predictability, and trust underpinning digital trade. While much of the rule-making currently takes place at bilateral and regional levels, there are important developments taking place at a more global level, notably through the World Trade Organization (WTO).

The WTO serves as the primary global forum for discussions and negotiations regarding e-commerce. Two key processes are particularly relevant. The first is the multilateral track under the Work Programme on Electronic Commerce (WPEC), which acts as the main platform for WTO members to make decisions about renewing the duty-free status of electronic transmissions (established under the “e-commerce moratorium”) and to engage in broader discussions on e-commerce issues.

The second is the plurilateral track, specifically the Joint Statement Initiative (JSI) on E-Commerce. In this process, a subset of WTO members has been negotiating new international rules on e-commerce for several years. The goal of these negotiations is to create a more open, predictable, and trustworthy environment for digital trade at the global level.

This State of Play report provides an overview of developments at both the multilateral and plurilateral levels, with a particular focus on the progress made in 2024 and 2025. It is designed to inform trade policy-makers and negotiators in preparation for the Fourteenth WTO Ministerial Conference (MC14).

The paper is part of a broader series of State of Play updates and analytical briefs that track the evolution of e-commerce discussions at the WTO. Earlier editions and related analyses can be found at <https://www.iisd.org/projects/e-commerce>.

The structure of this paper is as follows: Section 1 provides an update on multilateral processes at the WTO, including developments regarding the e-commerce moratorium and the broader work of the WPEC, particularly since MC13, as well as anticipated developments leading up to MC14. Section 2 examines the plurilateral negotiations on e-commerce rule-making, looking at how the JSI process has evolved, recent efforts to formalize and integrate these rules into an agreement within the WTO framework, and key developments expected before MC14. This section also outlines the main provisions of the potential plurilateral Agreement on Electronic Commerce (ECA).



## 2.0 The Multilateral Context

E-commerce issues were first addressed at the WTO in 1998. At its second Ministerial Conference, held in Geneva in May 1998, WTO members adopted the Declaration on Global Electronic Commerce (WTO, 1998a). This declaration committed WTO members to continue their practice of not imposing customs duties on electronic transmissions (the moratorium) until the 3rd Ministerial Conference (MC3). It also directed the WTO General Council to establish a comprehensive work program to examine all trade-related issues involving global e-commerce. Accordingly, the General Council adopted the WPEC on September 25, 1998, to examine trade-related aspects of e-commerce and ensure the WTO framework remains relevant in the digital era (WTO, 1998b). The WPEC provides a multilateral platform for members to discuss how e-commerce affects trade in goods, trade in services, intellectual property, and development.

The objectives of the WPEC include the following:

- Examine the relationship between WTO agreements and e-commerce and identify areas for clarification.
- Facilitate dialogue and cooperation among members to address challenges arising from digital trade.
- Support developing and least-developed countries (LDCs) through initiatives in technical assistance and capacity building (TA/CB) (WTO, n.d.-b).
- Maintain coherence and coordination across WTO bodies handling e-commerce-related issues.
- Examine all issues related to the moratorium on customs duties on electronic transmissions.

The WPEC tasks four WTO bodies with thematic responsibilities:

- Council for Trade in Goods—market access, classification, and customs-related aspects.
- Council for Trade in Services—applicability of the General Agreement on Trade in Services (GATS) to online delivery of services.
- Council for the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)—intellectual property considerations in e-commerce.
- Committee on Trade and Development—digital inclusion, infrastructure, and development-related dimensions.

The WTO General Council coordinates this work, addresses issues of a cross-cutting nature and those related to the moratorium, and reports overall progress to the Ministerial Conference (WTO, n.d.-a).



## 2.1 The Moratorium on Customs Duties for Electronic Transmissions

An important feature of the WPEC is the moratorium on customs duties for electronic transmissions. The moratorium has been renewed at every WTO Ministerial Conference since 1998. However, that renewal has not been automatic. As time passed, some developing-country WTO members started asking for the removal of the moratorium in view of the expanding coverage of electronic transmissions, concerns about revenue losses, and the moratorium's potential impact on indigenous digital industrialization (WTO 2023a, 2023b). On the other hand, many other members pressed for the moratorium to be continued and, in fact, for it to be made permanent, to allow for certainty in rules that support the growth of global e-commerce. The issue was subject to long and difficult negotiations at MC13, which was held in February/March 2024 in Abu Dhabi, United Arab Emirates. Members finally agreed to extend the moratorium until March 31, 2026, or until the next Ministerial Conference, whichever comes sooner. However, the MC14 Ministerial Decision on the WPEC also stated that the moratorium and the Work Programme will expire on that date (WTO, 2024a). This was the first time that such language has been used in the WTO Ministerial Conference decisions to extend the moratorium (Gao, 2024).

Supporters of the moratorium argue that lifting it will increase costs for consumers and businesses, especially small enterprises and users in developing countries. Introducing customs duties on digital products could fragment global e-commerce, create regulatory uncertainty, and discourage innovation and investment. They point out that the moratorium sustains a predictable, tariff-free environment that promotes access to digital tools and services across borders. Moreover, imposing duties on electronic transmissions would be technically complex and costly to administer, given the difficulty of valuing and tracking purely digital products. They also note that governments can still collect revenue through alternative, non-discriminatory taxation methods—such as value-added taxes and digital service taxes—without impeding digital trade flows. They further emphasize that maintaining the moratorium fosters digital inclusion, helping micro, small, and medium-sized enterprises MSMEs and developing-country producers participate more effectively in the global digital economy (Amon & Krummenacher, 2024).

Those opposed to the moratorium, on the other hand, contend that the moratorium erodes fiscal sovereignty and constrains the policy space of developing countries. In many low- and middle-income economies, customs duties account for a significant share of total tax revenue, and the fact that income is foregone under the moratorium limits government capacity to invest in infrastructure and social services. Opponents of the moratorium also highlight the lack of a clear legal definition of “electronic transmissions,” which could result in the scope of transmissions that cannot be taxed on import becoming very wide, as more goods and services become digitized (for instance, 3D-printed products or downloadable designs). This, they argue, gives an unfair advantage to digital exporters of high-tech products—primarily, developed countries and large multinational firms—while restricting developing countries' ability to protect nascent digital industries and address import surges. Furthermore, while value-added taxes and digital taxes are theoretically alternatives to customs duties, many developing countries lack the administrative systems to implement them effectively (WTO, 2023b; Kaukab, 2024).



The issue of the moratorium—whether to continue it, make it permanent, or end it—will be a key area of negotiations for the WTO members between now and the next Ministerial Conference scheduled to be held in late March 2026, in Yaoundé, Cameroon. Some developing-country WTO members, most notably India, South Africa, and Bangladesh, have concerns about the further extension of the moratorium and support ending it when the current extension expires. The United States, on the other hand, wants the moratorium to be made permanent (White House, 2025). This is in line with the provisions that the United States is including in all its “deals” with individual countries (for example, with Cambodia, the European Union, Japan, Malaysia, and Switzerland) to make the moratorium permanent and without any conditions.

## 2.2 WPEC

### 2.2.1 The Early Developments of the WPEC

Since its launch in September 1998, the WPEC has covered a lot of ground. Its work can be viewed as spanning three sub-periods, or phases, based on the intensity and content of activities under the WPEC, as judged from members’ submissions to the WTO bodies dealing with its issues. This is reflected in Table 1.

**Table 1.** Period-wise submissions by WTO members under the WPEC

Period	Total number of submissions	Comments
1998–2005	34	Average of about five submissions per year
2006–2015	21	Average of about two per year
2016–2023	73	Average of about nine per year

Source: Author’s calculations from the data in WTO, 2023c.

The first phase (from 1998 to 2005) witnessed a lot of members’ submissions and discussions in the four WTO bodies (the Council for Trade in Goods, the Council for Trade in Services, the Council for TRIPS, and the Committee on Trade and Development). These submissions and discussions aimed to clarify and better understand the impact of electronic commerce on global trade, countries at different levels of development, and the WTO rules.

The second phase that followed, until 2015, witnessed comparatively less activity. While it is not easy to identify the exact reasons for this slowdown, this could be attributed to the fact that during this period, members were generally unable to advance WTO negotiations or discussions on many issues.

The third sub-period, starting from 2016 (after MC10, held in Nairobi, Kenya, in 2015), witnessed a noticeable uptick in members’ engagement, as judged by their submissions. It can be argued that the launch of the plurilateral JSI on E-Commerce at the time of MC11, held in Buenos Aires, Argentina, in late 2017, also had a re-energizing effect on the WPEC, as the developing countries opposed to the JSI became more active in WPEC.



During this third phase, members have engaged in intense discussions based on several proposals, including those put forward by India and South Africa, who brought the issue of the “digital divide” to the centre of these discussions. Another important feature of this phase was the regular appointments of an ambassador as the facilitator to assist members in narrowing their differences. (The only earlier example was the appointment of Ambassador Suescum of Panama as a friend of the General Council Chair in 2014 to help the Chair on issues related to the WPEC.) Chair Ambassador Usha Dwarka-Canabady of Mauritius was the first to be given the responsibility as the facilitator in 2022. Ambassador Richard Brown of Jamaica succeeded her as the new facilitator after MC13, held in Abu Dhabi in 2024.

## 2.3 The WPEC Since MC13 (Abu Dhabi, 2024)

At MC13, ministers decided to continue the WPEC under existing mandates while also reaffirming the importance of addressing the digital divide and enhancing developing countries’ participation in e-commerce (WTO, 2024a). The decision also required ongoing reporting to the General Council and future ministerial review (WTO, 2024a).

The discussions under the WPEC in 2025 have focused on a range of thematic issues related to e-commerce. TA/CB to developing countries and LDCs were repeatedly emphasized in these thematic discussions while also exploring the possible role that the WTO can play at the multilateral level in addressing these issues. The main points made by members are briefly summarized below.

### Thematic Focus

The thematic focus in this period has been on the following issues:

#### a. Development and the digital divide

The digital divide has been a key issue of discussion among members in the WPEC. Members have emphasized the urgent need to close the digital divide by increasing investment in digital and information and communication technology (ICT) infrastructure, enhancing connectivity, and developing the digital skills necessary for meaningful participation in e-commerce. They underscored challenges facing developing economies and LDCs, including limited broadband access, digital skills gaps, outdated legislation, and the need for resilient ICT and payment systems to support online transactions. Members also emphasized the importance of clear and modern regulatory frameworks—such as those related to the Information Technology Agreement and the e-commerce moratorium—in facilitating digital connectivity and international investment. National initiatives shared included efforts to expand Internet access in underserved regions, upgrade networks, promote secure Internet use, reduce businesses’ operational costs through online systems, and foster inclusive digital ecosystems, including programs focused on women and vulnerable groups. Additionally, members pointed to key enablers of digital industrialization—such as connectivity, infrastructure availability, digital skills development, and a supportive regulatory environment—and shared examples of how regional cooperation and partnerships can drive technology transfer and progress in areas like payment services, cybersecurity, and bridging the digital divide, while also noting the growing importance of understanding the implications of artificial intelligence (AI) for issues such as data protection and intellectual property (WTO, 2025a, 2025b).



## **b. Legal and regulatory frameworks for e-commerce**

Members have exchanged information on national e-commerce laws, focusing on cybersecurity, consumer protection, and privacy frameworks (WTO, 2025b). These exchanges aim to identify best practices and promote transparency without creating new binding obligations. They proposed creating a compendium of best practices and policy recommendations to help members strengthen their e-commerce regulatory frameworks, drawing on national experiences in areas such as consumer protection, privacy, data protection, and cybersecurity. Members also stressed the importance of examining emerging issues, including the regulatory implications of AI and its potential impact on existing and future policy frameworks, as well as considering the broader role of the WTO in addressing these developments (WTO, 2025c).

## **c. Impact of AI and emerging technologies on e-commerce**

WTO members have underscored the transformative impact of AI on global trade, acknowledging the need to examine its implications for trade policies and development. They also emphasized AI's potential to enhance trade facilitation by streamlining customs procedures and adopting digital technologies to reduce costs and increase efficiency in cross-border trade. Furthermore, members affirmed the WTO's function as a vital forum for discussion, the exchange of best practices, and collaboration with international organizations and experts on the intersection of AI and international trade (WTO, 2025d).

## **d. Moratorium renewal**

Members have also continued the debate on whether the moratorium should be renewed. Some members argue that ending the moratorium could enable domestic revenue collection on digital products and provide policy space; others warn that tariffs on digital transmissions could create market fragmentation and uncertainty for businesses (Reuters, 2024).

## **TA/CB**

The issue of TA/CB to developing countries and LDCs has been a constant in all the thematic discussions. Members have emphasized the central role of TA/CB in narrowing the digital divide and enabling developing economies, LDCs, and small economies to participate more effectively in the global digital economy. They called for enhanced support to strengthen legal and regulatory frameworks for e-commerce, including tailored assistance in areas such as consumer protection, privacy, data protection, cybersecurity and the governance of emerging technologies like AI. Members highlighted the value of partnerships with organizations such as the United Nations Trade and Development, Organisation for Economic Co-operation and Development, International Trade Centre, International Telecommunication Union, and World Bank to deliver targeted programs, along with the organization of regional peer-to-peer learning events, thematic workshops, and dedicated matchmaking sessions to connect countries with available support. They also pointed to national and regional initiatives focused on developing digital skills, expanding Internet access, improving ICT and payment systems, and fostering inclusive digital ecosystems as important components of capacity-building efforts. Members further stressed the need to identify appropriate technologies, explore financing opportunities for MSMEs to access digital trade and promote technology



transfer through regional cooperation. With AI's growing relevance, members underlined the importance of building capacity related to AI governance, its implications for data protection and intellectual property, and its use in enhancing trade facilitation. (WTO, 2025a, 2025b, 2025c, 2025d).

## Role of the WTO

Members have discussed the role of the WTO in relation to e-commerce under all themes and made several suggestions. Although there is no explicit consensus among all members on all suggestions, the following are the leading suggestions (WTO, 2025e).

### **a. Act as a central hub for information and dialogue**

Members suggest the WTO should serve as a central hub for information sharing and dialogue by hosting thematic and regional workshops on key issues like AI and data flows, involving international organizations, businesses, and academia. This role could be strengthened by having the Secretariat map and analyze laws, regulations, and best practices, research how regulations support digital trade, and promote the development of comprehensive e-commerce data and statistics to inform discussions.

### **b. Leverage its convening power for coordination**

Members have encouraged the WTO to leverage its convening power to bring together relevant international organizations to share expertise on digital infrastructure, regulatory frameworks, and technology transfer. This includes fostering partnerships to conduct gap analyses and address the digital divide, strengthening dialogue with bodies like the World Intellectual Property Organization on cross-cutting issues such as AI and intellectual property, and engaging with other intergovernmental organizations to fulfill commitments under global initiatives such as the Global Digital Compact.

### **c. Enhance and deliver targeted TA/CB**

An important role suggested by the members for the organization is to significantly enhance the delivery of targeted TA/CB to developing countries and LDCs. This would involve creating a living database of available TA/CB programs, organizing matchmaking sessions to connect developing countries with resources, and boosting Aid for Trade for digital infrastructure and skills. Furthermore, the WTO should provide tailored training for officials, extend successful regional initiatives, mobilize resources for digital skills programs for marginalized groups, and support structured mechanisms for technology transfer to developing countries.

### **d. Facilitate better understanding and utilization of existing WTO rules**

Members propose that the WTO should help members better understand and utilize existing WTO rules by clarifying how instruments such as the Information Technology Agreement, GATS, TRIPS, and Agreement on Trade-related Investment Measures apply to e-commerce. It should also examine measures that may contravene WTO obligations, such as excessive data flow restrictions, including through reports on new areas such as AI.



### **e. Promote regulatory coherence and limit fragmentation**

Finally, the WTO is seen as an important actor in promoting regulatory coherence and limiting global fragmentation. This could be achieved by facilitating a dialogue on guidelines for implementing digital trade and AI frameworks, encouraging the regional harmonization of digital trade standards, and supporting the development of inclusive and interoperable AI governance standards that reflect the interests of all nations, particularly developing countries.

## **2.4 The Future of the WPEC**

The WPEC remains the only multilateral forum for structured discussion of e-commerce within the WTO. It plays a crucial role in providing a neutral platform for policy dialogue, evidence gathering, and experience sharing, ensuring the participation of developing countries in policy debates, contributing to an open and predictable environment for digital trade, and improving governments' understanding of the relationship between WTO rules and e-commerce.

The report by the Facilitator to the WTO General Council in July 2025 (WTO, 2025f) summarizes the status quo and points to key next steps. The WPEC is widely regarded by many members as a crucial element of the WTO's engagement on e-commerce, with strong support for its preservation and enhancement, particularly with a focus on development. A majority of members also favour extending the moratorium on customs duties on electronic transmissions (alongside the WPEC). However, a few delegations expressed concerns about potential revenue losses and constraints on policy space if the moratorium is extended.

Finally, at least two submissions have been made by the members for consideration by MC14 regarding the continuation of the WPEC and the moratorium. First, Barbados, on behalf of the African, Caribbean, and Pacific States Group, has communicated a draft Ministerial Decision (WTO, 2025g) for discussion and consideration by the members in preparation for MC14. The main elements of this draft Ministerial Decision include

- continuing to reinvigorate the WPEC, prioritizing the development needs of developing and LDC members.
- mandating enhanced collaboration with international organizations, including via a joint WTO database on training, capacity building, and digital infrastructure financing for developing countries, LDCs, and MSMEs.
- deepening dialogue and gathering more evidence on the impact of the customs duties moratorium on electronic transmissions for consumers and businesses in developing countries and LDCs.
- continuing to identify gaps in bridging the digital divide and encourage developed, developing, and members in a position to do so, to provide technical and financial support for digital skills, infrastructure, and innovation.
- agreeing to maintain the current practice not to impose customs duties on electronic transmissions until the next Ministerial Conference.



The other communication is by the USA in the form of a short draft Ministerial Decision. (WTO 2025h). This draft Ministerial Decision defines electronic transmission as “a transmission made using any electromagnetic means and includes the content of the transmission,” while committing the members to maintain the current practice of not imposing customs duties on electronic transmissions. Since no end date is mentioned, this can be seen as members agreeing to a permanent moratorium. This draft Ministerial Decision does not mention the WPEC at all.

Looking ahead, the WPEC will utilize remaining meetings in 2025 and early 2026 to delve deeper into previously discussed issues, such as online consumer protection and bridging the digital divide. In parallel, it will also focus on preparations for MC14, including discussions on the draft ministerial decision that may be adopted at MC14.



## 3.0 The Plurilateral Negotiations

As the digital economy becomes increasingly important, many countries are negotiating e-commerce rules within their trade agreements to foster a more open, predictable, and trustworthy environment for digital trade. Currently, these rules are primarily established through bilateral and regional trade agreements. This includes not only agreements that contain specific provisions on digital trade and dedicated chapters on e-commerce, but also agreements that focus entirely on digital trade issues, known as digital economic agreements or digital trade agreements.<sup>1</sup>

While significant efforts to create rules at the bilateral and regional levels are ongoing, there is also a movement toward trying to establish a more comprehensive global trade agreement on e-commerce rules through the WTO. The e-commerce JSI process involves a subset of WTO members from different regions, including countries at different stages of development. The next part of this paper will provide an overview of the e-commerce JSI process, its current status, the members engaged in this process, and a summary of the main rules addressed in the text they have finalized: the Agreement on Electronic Commerce (ECA).

### 3.1 The E-Commerce JSI Negotiating Process

#### 3.1.1 Origin and Negotiating Process

The e-commerce JSI to discuss e-commerce rules at the WTO was launched during the MC11, in Buenos Aires, Argentina, in December 2017. A subgroup of the WTO membership, consisting of 71 members, expressed through a Ministerial Statement their intention to engage in structured discussions for “exploratory work together toward future WTO negotiations on trade-related aspects of electronic commerce” (WTO, 2017). This process is coordinated by three co-conveners: Australia, Japan, and Singapore (WTO, n.d.-b).

In January 2019, members at the mini-ministerial meeting in Davos, Switzerland, confirmed their intention to switch from the structured discussion format to start formal negotiations.<sup>2</sup> In the 2019 Ministerial Statement, the participants stated that the aim of such negotiations was “to achieve a high standard outcome that builds on existing WTO agreements and frameworks with the participation of as many WTO Members as possible” (WTO, 2019).

After a little more than 5 years of negotiations, on July 26, 2024, the co-conveners announced the achievement of a stabilized legal text, which is regarded as a near-final version of the legal

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<sup>1</sup> The Trade Agreement Provisions on Electronic-Commerce and Data project and publications by Mira Burri provide important analysis on how digital trade rules are evolving at the bilateral and regional levels. See Burri (2025) for a recent analysis of the landscape of global digital trade law.

<sup>2</sup> Although China did not join the initiative in 2017, it became a participant in the e-commerce JSI in 2019. Gao (2021) explains that this shift indicates China’s view that e-commerce negotiations could revitalize the WTO’s negotiating function and restore confidence in the multilateral trading system, as well as its desire to take a more active role by “reflect[ing] the participation of developing countries and designing a flexible framework to reflect the reasonable demands of different parties.” For more on China’s evolving positions and proposals in the e-commerce JSI, see Gao (2021).



text of the Agreement (WTO, 2024b). Importantly, the release of this stabilized text marked the conclusion of the substantive technical phase of the negotiations.

Throughout the structured discussion and negotiation periods, participation in the e-commerce JSI process gradually increased from 71 to 91 WTO members. Of the total, 82 participants supported the release of the stabilized text, thereby endorsing it and the conclusion of the technical phase of the negotiations. Nine participants<sup>3</sup> chose not to endorse the stabilized text on its release, citing “ongoing domestic consultations and considerations” (WTO, 2024b).<sup>4</sup> The United States (U.S.) was one such participant. The American former ambassador to the WTO, María L. Pagán, released a statement explaining the rationale for the U.S. decision not to endorse the stabilized text. She indicated that the United States did not want the technical negotiations to conclude, that “more work [was] needed” as there were still “remaining issues” that needed to be addressed. The topic of the “essential security exception” was specifically mentioned as one of the unresolved issues (U.S. Mission Geneva, 2024).<sup>5,6</sup>

### 3.1.2 Legal Incorporation Efforts

In February 2025, another important milestone occurred in the e-commerce JSI process. The first formal request to legally incorporate the ECA as a plurilateral agreement under Annex 4 of the Marrakesh Agreement Establishing the WTO was proposed to be decided on at the WTO’s General Council meeting on February 15–16, 2025 (WTO, 2025j).<sup>7</sup> This request for legal incorporation was co-sponsored by 71 out of the 91 e-commerce JSI participants.

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<sup>3</sup> At that time, the WTO e-commerce JSI participants that did not support the stabilized text were Brazil, Colombia, El Salvador, Guatemala, Indonesia, Paraguay, the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu, Türkiye, and the United States (WTO, 2024b).

<sup>4</sup> In the case of “domestic consultations,” this could indicate that the authorities in the capital are conducting an internal review to determine whether to extend their support. In the case of “considerations,” this could indicate that a Party may have substantive concerns with the legal text itself—particularly disagreements over specific articles. Whittle (2024b) provides insights into the substantive concerns that may have led some participants not to support the stabilized text.

<sup>5</sup> The United States appears to seek a broader security exception than what has been established under the General Agreement on Tariffs and Trade (GATT) and GATS. The United States wants the “essential security exception” to be entirely self-judging, and for it to not be justiciable (i.e., when invoked it cannot be challenged) at the WTO. See Heath (2020) for insights on how the evolving economic order is driving debates over national security exceptions.

<sup>6</sup> It is worth noting a broader trend of U.S. disengagement from the e-commerce JSI negotiations, first signalled by its withdrawal of proposals on data governance in October 2023. This led to the removal of data-related provisions from the negotiations altogether. For further insights, see Gao (2021).

<sup>7</sup> Before the formal decision request, a communication regarding the draft decision was submitted “for information” at the December 2024 General Council meeting. In that communication, it was more formally acknowledged that the negotiations had “concluded.” A slightly updated version of the legal text of the ECA was attached to that communication. This text was slightly updated compared to the stabilized text, with the primary change being to Article 29 regarding Acceptance and Entry into Force. This revision clarifies the number of Parties that must ratify the Agreement for it to take effect (WTO, 2025i).



For a plurilateral agreement to be incorporated into the WTO's treaty framework, it requires a decision taken “exclusively by consensus” of the full WTO membership.<sup>8</sup> In practice, a decision on incorporation by consensus can be taken if no WTO member formally objects or raises reservations about a decision.<sup>9</sup> Seven WTO members voiced opposition to the incorporation of the ECA at the February 2025 meeting: Bangladesh, Brazil, India, Indonesia, South Africa, Pakistan, and Türkiye (WTO, 2025j). Three of the seven WTO members opposing the request are participants in the e-commerce JSI process: Brazil, Indonesia, and Türkiye. The remaining four members—Bangladesh, India, Pakistan, and South Africa—are not participants. India, South Africa, and Türkiye are also opposed to the incorporation of another potential plurilateral agreement, the Investment Facilitation for Development Agreement, into Annex 4 of the Marrakesh Agreement Establishing the WTO.

Following the February 2025 General Council meeting, there have been no further formal requests for a decision to incorporate the Agreement into the WTO's treaty framework. Instead, at the WTO General Council meeting in May 2025, and then again at the October 2025 meeting, the topic of the ECA and its incorporation was placed on the agenda as an “information” item (WTO, 2025k, 2025l).

### 3.1.3 A Closer Look at the Legal Incorporation Debate

The question of whether to legally incorporate the ECA within the WTO's treaty framework is a controversial one. The section below highlights the differing perspectives, drawing on interventions from members at the 2025 General Council meetings as well as insights from broader stakeholder discussions around plurilateral negotiations and WTO reform.

Three of the WTO members, Brazil, Indonesia, and Türkiye, that have opposed the request for legal incorporation of the ECA are participants that still have concerns about the substance of the Agreement, particularly around the specific articles relating to customs duties, the electronic transaction framework, access to the Internet, and the development article. Regarding the development article, Brazil has raised concerns about the weakness of the disciplines on TA/CB, as well as a concern regarding the opt-out mechanism that developing-country Parties are encouraged to consider in relation to it.<sup>10</sup> Brazil and others have noted that the development dimension on the whole was inadequately addressed in the Agreement overall. Indonesia and Türkiye have raised concerns over the permanent customs duties moratorium commitment in the treaty, with respect to both the permanent nature of the commitment as well as a concern that it requires developing countries to make a major commitment that entails losing policy space, without a sufficient balanced return. Some of

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<sup>8</sup> Article X:9 of the Marrakesh Agreement is a special rule that is stricter than the general consensus rule in Article IX. It makes clear that a decision to incorporate an agreement into Annex 4 may be made only by consensus, and therefore cannot be adopted through voting (WTO, n.d.-cd).

<sup>9</sup> Please see Ungphakorn (2024) for more insights on the processes and the challenges for getting consensus on the ECA at the WTO.

<sup>10</sup> In WTO (2025b), see the statement by Brazil. In the ECA incorporation proposal (WT/GC/W/955) (WTO, 2024c), the text of the communication includes a footnote that encourages developing-country Parties to opt out of availing themselves to the flexibilities of the Development article, if they are in a position to do so. Brazil opposed the inclusion of such an opt-out mechanism, noting it constituted an “unacceptable erosion of Members’ rights, especially developing country Members to [special and differential treatment] under the WTO” (WTO, 2025d).



those raising concerns about the substance of the Agreement note the need for more work, indicating potentially their preference for the negotiations to be reopened.

For some other members, their issue was not with the Agreement itself but, rather, due to concerns that adding the Agreement within the WTO treaty framework could result in potential negative systemic implications for the broader WTO system. As an example, India raised concerns that including the ECA could undermine the multilaterally mandated WPEC. Additionally, for some, like Bangladesh, there are concerns that accepting this incorporation might signal an endorsement for a shift away from prioritizing the multilateral agenda at the WTO, including the issues within them (e.g., agriculture and development) that are regarded as a higher priority for some developing economies (WTO, 2021). In addition to the specific concerns raised by members, there is some apprehension that the WTO could evolve into a platform for producing plurilateral agreements that primarily serve the interests of more powerful economies and offer more limited benefits and flexibilities for developing economies,<sup>11</sup> both because developing countries have more limited resources and capacity to engage in an increasingly fragmented negotiating agenda and because the dynamics of a plurilateral negotiation mean there is less pressure to compromise to meet all participants' demands: participants who do not align with the majority position are simply encouraged to opt out of the Agreement.

At the General Council meetings, several e-commerce JSI participants endorsing the Agreement's incorporation used the opportunity to share their perspectives on the benefits they expect from it and to counter some of the concerns raised.<sup>12</sup> In terms of benefits, it was noted that the ECA fills an important gap in rule-making on e-commerce at the global level, and that updated trade rules for e-commerce are important given that 60% of GDP is linked to digital transactions, and a substantial amount of future value is expected through such transactions (WTO 2025i, 2025j). Members argued that the Agreement will establish important baseline rules at a global level for regulating digital trade, with commitments that will result in a more transparent, predictable, open, and trustworthy environment, enabling consumers and businesses, including MSMEs, to engage and benefit from a more globalized digital economy.<sup>13</sup> It was emphasized that the Agreement aims to be of particular value for developing-country and LDC members by including benefits and flexibilities that provide additional support to such members to implement the Agreement. The main benefits and flexibilities include a longer implementation period, the potential to conduct needs assessment studies, and targeted capacity-building support through a voluntary financing framework that has already been established.<sup>14</sup>

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<sup>11</sup> See Rockwell (2025) and Bacchus and Manak (2020) for useful context on the development debate at the WTO.

<sup>12</sup> For example, in the February 2025 General Council meeting, the WTO members who provided statements on the expected benefits of the Agreement included Japan, Switzerland, Lao PDR, Liechtenstein, Hong Kong, Costa Rica, Kyrgyz Republic, Ukraine, Montenegro, Panama, Argentina, Malaysia, the Gambia, New Zealand, Chile, Brunei Darussalam, Cabo Verde, Republic of Moldova, Republic of Korea, China, Paraguay, Australia, Canada, the United Kingdom, Israel, Norway, the European Union, Cameroon, and Singapore.

<sup>13</sup> See, for example, statements by Argentina, Malaysia, and the Gambia in WTO (2025h).

<sup>14</sup> For insights on benefits, see Information Package endorsed by WTO e-commerce JSI participants, in WTO (n.d.-b).



Proponents and others have also linked the fate of the e-commerce JSI to the broader WTO reform debate and have argued that facilitating more plurilateral negotiations through the WTO is in fact important for the organization's ongoing relevance.<sup>15</sup> Proponents argue that the multilateral-level Doha development agenda negotiations have been stalled for far too long, and that the possibility for making progress on such negotiations could become even more difficult in the future, especially in an increasingly multipolar world with countries holding more staunchly diverging positions. From this perspective, the WTO system, including its negotiating function, needs to remain relevant by addressing modern needs and challenges, even if this is done through plurilateral agreements. Further, the rise of bilateral and regional trade agreements has led to greater fragmentation in trade relations. Plurilateral negotiations within the WTO system can help reduce this fragmentation by converging bilateral and regional-level rules and establishing baseline rules that a larger group of WTO members can agree upon at a more global level. These rules would only apply to a coalition of the willing and would impose no obligations on WTO members who are not willing to be Parties. Moreover, negotiations within the WTO can offer vulnerable developing countries—that often have limited resources—a better opportunity to engage and influence outcomes within the WTO framework than they would have engaging in a more fragmented way outside the WTO.

### 3.1.4 The Current Status of the E-Commerce JSI Process

The work of the e-commerce JSI process continues in three areas (WTO, 2025k).<sup>16</sup> First, the co-sponsors are engaging in consultation efforts to garner support for the legal incorporation of the ECA. This includes bilateral consultations with non-endorsing JSI participants to determine if any are in a position to become co-sponsors of the completed Agreement. It also involves consultations with the WTO members opposing the legal incorporation request to see if any are willing to drop their opposition should a future legal incorporation decision request be made.

Second, work is continuing on outreach, which includes efforts to engage non-participants to consider joining as co-sponsors, as well as to inform the broader public. As part of these efforts, the co-sponsors are organizing workshops, holding bilateral consultations, and have shared an information package outlining the value of the ECA for potential Parties (WTO, n.d.-b).

The third type of work focuses on identifying implementation priorities. These efforts are aimed at developing countries and LDC WTO members, to support them in defining their needs and priorities for a potential future implementation phase. As a part of such efforts, needs assessment studies have been initiated. More information on the value of needs assessments will be shared in the next sections.

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<sup>15</sup> Some of the insights are synthesizing analysis from non-WTO workshops, interventions, and bilateral engagement with experts and delegates.

<sup>16</sup> See WTO (2025f) for a statement by the co-convener from Japan.



### 3.1.5 What's Next?

It remains uncertain how debate around the ECA and its potential incorporation will evolve in the lead-up to, and during, the upcoming MC14. A key question is whether MC14 will provide an opportunity to advance efforts toward the legal incorporation of the Agreement. It is unclear whether a formal request for legal incorporation will be made, seeking the adoption of a ministerial-level decision, and, if so, whether opposition to the request will persist or if some or all of the current opponents can be persuaded to withdraw their objections to the incorporation request.

If prospects for achieving the necessary consensus for legal incorporation remain limited, the question becomes whether the co-sponsors will start prioritizing exploring alternative ways to implement the rules of the ECA. Various experts have analyzed and summarized the alternative options, both within and beyond the WTO, examining their respective benefits, challenges, and ultimately their feasibility. Table 2 outlines some ideas raised, for illustrative purposes.

**Table 2.** Alternative pathways for the implementation of the ECA

Alternative option	What it is	Advantages for JSI Participants	Challenges for JSI participants
Open plurilateral arrangement (benefits applied on a most-favoured-nation [MFN] basis voluntarily)	Rights and obligations borne by Parties, with benefits applied on an MFN basis voluntarily to non-Parties	<ul style="list-style-type: none"> <li>• May be more politically acceptable, making it easier to secure broad support for legal incorporation into the WTO framework.</li> <li>• Maintain the Agreement as a stand-alone agreement, and if incorporated, Parties can access the WTO's dispute settlement mechanism and institutional support services.</li> </ul>	<ul style="list-style-type: none"> <li>• Free-rider problem: non-Parties can enjoy benefits (e.g., a permanent moratorium) without reciprocal commitments.</li> <li>• Free-rider problem could become more problematic if another phase of negotiations covers more market openness-related commitments, which Parties would be reluctant to provide to non-Parties without anything in return.</li> <li>• Political feasibility of consensus will likely remain difficult even if benefits are applied on a voluntary basis (based on experience of the process involved in the Investment Facilitation for Development Agreement).</li> </ul>



<b>Alternative option</b>	<b>What it is</b>	<b>Advantages for JSI Participants</b>	<b>Challenges for JSI participants</b>
Scheduling into existing WTO agreements	Inscribing the Agreement's commitments into Parties' GATT and GATS schedules	Avoids the need for consensus.	<ul style="list-style-type: none"> <li>• Scope of e-commerce rules covers both goods and services and potentially beyond. Inscribing schedules are needed in both GATT and GATS. Legal feasibility is unclear, and whether the scope of rules can be covered by such agreements.</li> </ul>
Plurilateral agreement outside the WTO framework	Implement the ECA as a plurilateral trade agreement outside the WTO framework	<ul style="list-style-type: none"> <li>• Maintain the Agreement as a stand-alone agreement.</li> <li>• Avoids the need for consensus if taken outside.</li> </ul>	<ul style="list-style-type: none"> <li>• Costs of establishing new institutions, including a dispute settlement mechanism and a secretariat to service the Agreement.</li> <li>• Requires an assessment to ensure consistency with WTO regional trade agreement exception requirements.</li> </ul>
Ministerial declaration or voluntary implementation of ECA	Parties undertake a political commitment for the voluntary implementation of the Agreement's obligations	While decisions require consensus, statements and declarations do not.	<ul style="list-style-type: none"> <li>• Commitments would need to be implemented non-discriminatorily (thereby triggering the free-rider issue).</li> <li>• Parties would not benefit from Secretariat support or recourse to the WTO dispute settlement mechanism.</li> </ul>
Provisional implementation	To be determined: alternative approaches to implement the Agreement on a provisional basis while retaining institutional benefits linked to the WTO		<ul style="list-style-type: none"> <li>• Challenges depend on the specific provisional arrangements; they may include legal feasibility issues, limited enforceability or institutional support issues.</li> </ul>

Source: Author, based on analysis from Marceau and Nandakumar, 2025; Ungphakorn, 2024.



## 3.2 Changing Participation Dynamics

Engagement from developing countries during the negotiating phase varied by region. While there was strong participation from developing-country WTO members in the Latin American and Asian regions, participation from the African region was relatively limited. The nine African countries that participated in the negotiations are Benin, Burkina Faso, Cameroon, Cabo Verde, Côte d’Ivoire, the Gambia, Kenya, Mauritius, and Nigeria. Additionally, there was no participation from developing economies from the Pacific and Caribbean regions (Jose & Kaukab, 2024).

Regarding LDCs, participation remains comparatively limited. Only five LDCs out of the 37 LDC members have joined: Benin, Burkina Faso, the Gambia, Lao PDR, and Myanmar.

Twenty of the 91 participants are not co-sponsoring the ECA and its request for legal incorporation (status as of October 2025). See Table 3.

**Table 3.** Non-co-sponsors of the ECA and its request for legal incorporation

Africa	Asia-Pacific	Europe/ Middle East	Latin America <sup>17</sup>	North America
1. Cameroon	4. Chinese Taipei	8. Russian Federation	10. Brazil	20. United States
2. Côte d’Ivoire	5. Indonesia	9. Türkiye	11. Colombia	
3. Nigeria	6. Philippines		12. Ecuador	
	7. Thailand		13. El Salvador	
			14. Guatemala	
			15. Honduras	
			16. Mexico	
			17. Nicaragua	
			18. Panama	
			19. Uruguay	

Source: Author based on WT/GC/W/955.

## 3.3 Substance of the Agreement on Electronic Commerce

This section provides an overview of the content of the ECA.

The completed legal text of the ECA includes 38 articles and an annex (with additional substantive obligations). See Table 4 for an overview of the articles in the Agreement.

<sup>17</sup> While Paraguay had not supported the stabilized text communication of July 2024, it is now supporting the concluded legal text and its request for legal incorporation.



**Table 4.** Overview of the articles in the ECA (WT/GC/W/955) (WTO, 2024c)

<b>Section</b>	<b>Articles</b>	
Section A: Scope and general provisions	Article 1	Scope
	Article 2	Definitions
	Article 3	Relation to other agreements
Section B: Enabling e-commerce	Article 4	Electronic transactions framework
	Article 5	Electronic authentication and electronic signatures
	Article 6	Electronic contracts
	Article 7	Electronic invoicing
	Article 8	Paperless trading
	Article 9	Single-window data exchange and system interoperability
	Article 10	Electronic payments
Section C: Openness and e-commerce	Article 11	Customs duties on electronic transmissions
	Article 12	Open government data
	Article 13	Access to and use of the Internet for e-commerce
Section D: Trust and e-commerce	Article 14	Online consumer protection
	Article 15	Unsolicited commercial electronic messages
	Article 16	Personal data protection
	Article 17	Cybersecurity
Section E: Transparency, cooperation, and development	Article 18	Transparency
	Article 19	Cooperation
	Article 20	Development
Section F: Telecommunications	Article 21	Telecommunications
Section G: Exceptions	Article 22	General exceptions
	Article 23	Security exception
	Article 24	Prudential measures
	Article 25	Personal data protection exception
	Article 26	Indigenous Peoples



Section	Articles	
	Article 27	Dispute settlement
Section H: Institutional arrangements and final provisions	Article 28	Committee on trade-related aspects of e-commerce
	Article 29	Acceptance and entry into force
	Article 30	Implementation
	Article 31	Reservations
	Article 32	Amendments
	Article 33	Withdrawal
	Article 34	Non-application of this Agreement between particular Parties
	Article 35	Review
	Article 36	Secretariat
	Article 37	Deposit
	Article 38	Registration
Annex*		

\*Note: The obligations in the annex are a copy, *mutatis mutandis*, of the obligations set out in the reference paper on GATS Telecommunications Services.

Source: WT/GC/W/955 (WTO, 2024c).

The Parties to the potential ECA are agreeing to a wide range of commitments. Many of the provisions are regulatory environment-related commitments to adopt or maintain certain key types of legal and regulatory measures and frameworks for the governance of the digital economy. There are certain commitments that aim to prevent anti-competitive outcomes in the telecommunications sector and improve border efficiency for trade in goods. Others focus on promoting transparency, cooperation, and the adoption of interoperability-related approaches. Finally, there are also some important commitments that relate to openness in market access conditions. Below is a summary of the Agreement’s content by section.<sup>18</sup>

Section A of the Agreement, titled “Scope and General Provisions,” outlines the scope (Article 1), provides definitions of key terms (Article 2), and clarifies the relationship to other agreements (Article 3). This last article clarifies that WTO members who are not Parties to the ECA will have neither obligations nor rights under this Agreement, which will apply only

<sup>18</sup> The text used for the analysis is WT/GC/W/955 (WTO, 2024c). The summary highlights the main obligations by section for illustrative purposes, rather than providing a comprehensive synthesis of all the provisions in the Agreement. This analysis builds upon the summary presented in the previous IISD State of Play report (2024).



to the Parties.<sup>19</sup> Essentially, this provision confirms that the Agreement operates as a closed plurilateral arrangement.

The first main substantive section of the Agreement is Section B, “Enabling Electronic Commerce,” and it includes seven articles.

Several articles (Articles 4 to 7) focus on promoting the legal recognition of electronic transactions. The Parties commit to ensuring that communications, transferable records, and other types of transactions are not denied validity simply because they occur electronically rather than in a paper-based format. Examples of such rules include efforts to establish legal frameworks aligned with select United Nations model laws and principles,<sup>20</sup> as well as commitments to recognize electronic invoicing and electronic signatures in legal proceedings. Additionally, electronic contracts will not be denied legal recognition solely because they are concluded electronically.

The section also includes a couple of trade-facilitation rules (Articles 8 and 9), which are typically commitments that aim to enhance the transparency and efficiency of border and customs procedures to promote the trade of goods. In the ECA, the Parties are committing to advance the digitization and digitalization of border-related processes that are relevant for the import, export, and transit of goods. This includes ensuring that electronic formats of customs forms are available and accepted, with efforts to extend this to other border-related documents; and to undertake efforts to facilitate data or documentation for border processes, ideally in advance, through single windows.

Finally, the section features an article focused on electronic payments (Article 10). A key provision in this article applies specifically to Parties that have scheduled commitments under the GATS to provide “national treatment” to foreign service suppliers with a commercial establishment (Mode 3) that provide electronic payment services. These Parties must ensure that such foreign e-payment service suppliers are granted access to the country’s payment and clearing systems operated by public entities on the same conditions as domestic suppliers. Parties that do not have such “national treatment” commitments are encouraged to follow this obligation to the extent possible. Furthermore, the article includes provisions to promote transparency and other good regulatory practices.

Section C includes three articles that aim to promote “openness and electronic commerce.” The section includes the article on customs duties on electronic transmissions (Article 11), regarded as one of the more important substantive obligations in the overall Agreement. The main, and binding, commitment in this article is that the Parties agree not to impose customs duties on electronic transmissions that are exchanged between persons from the Parties to the Agreement.

The ECA customs duties moratorium differs from the WTO’s multilateral-level moratorium in important ways. First, the ECA moratorium will be applied on a plurilateral basis. This means that if the WTO’s multilateral-level moratorium were to expire, the Parties to the ECA

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<sup>19</sup> Furthermore, there is no clarification that the benefits of the agreement will be applied on an MFN basis.

<sup>20</sup> UNCITRAL Model Law on Electronic Commerce 1996 and the UNCITRAL Model Law on Electronic Transferable Records 2017.



would still commit to not imposing any customs duties on each other, but they would be able to impose duties on electronic transmissions originating from non-Parties.<sup>21</sup>

Second, while the multilateral-level moratorium is extended temporarily, the ECA's moratorium is permanent.<sup>22</sup> Although there is a review provision in the article that allows the Parties to consider future amendments to the moratorium, such changes can only be made should the Parties agree by consensus,<sup>23</sup> which may be difficult to achieve in practice.

Finally, the article provides important clarification regarding the definition of “electronic transmission,” which has been a contentious issue at the multilateral level. Under the ECA, an electronic transmission is defined as not only including the carrier medium through which the transmission occurs (such as the bits and bytes that deliver a movie from a streaming service) but also the “content” within that transmission (the movie itself). By defining electronic transmission this way, the Parties agree not to impose customs duties on any digital products and content delivered electronically, thereby effectively agreeing to provide duty-free status to all digitally delivered goods and services.

Another important article in this section is that of Open Government Data (Article 12). Parties commit to try to improve the openness of non-confidential government data, enhance their accessibility and availability, and avoid conditions that can prevent users from reproducing, regrouping, and using the data for commercial and non-commercial purposes. Article 13 addresses “access to and use of the Internet for electronic commerce.” It promotes the recognition of principles that end users should have the ability to access services and applications and connect devices of their choice on the Internet. Additionally, it states that network management should be free from unfair commercial practices and that clear, transparent information about network management practices should be available. However, the Parties are not obligated to implement measures to enforce these principles.

Section D consists of four articles that concentrate on trust and electronic commerce. Parties agree to create a more supportive regulatory environment by ensuring that regulatory measures, legal frameworks, and capabilities are established to foster a more trustworthy environment that provides consumers and businesses with the confidence they need to engage in the digital economy.

The Parties commit to adopting or maintaining measures for online consumer protection (Article 14), including measures that “proscribe misleading, fraudulent, and deceptive activities that cause harm, or potential harm, to consumers engaged in electronic commerce.” Under Article 15, the Parties commit to adopting or maintaining measures to address unsolicited commercial electronic messages (i.e., spam), for example, by requiring recipients' consent and facilitating their ability to opt out of receiving ongoing commercial messages. Article 17 focuses on cybersecurity, and Parties will undertake efforts, including to enhance

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<sup>21</sup> It is important to note that customs duties provisions are becoming an important feature of bilateral and regional trade agreements.

<sup>22</sup> See Whittle (2024a) for an additional analysis of the review clause.

<sup>23</sup> Article 32: Amendments, confirms that the Parties may amend this Agreement, but it would have to be taken by consensus.



their capabilities in national incident response, collaborate to address malicious intrusions, and promote the use of risk-based approaches, recognizing them as a more effective means to prevent cybersecurity threats.

The section, importantly, also includes an article dedicated to personal data protection (Article 16). A key binding provision in this article is that the Parties agree to “adopt or maintain a legal framework that provides for the protection of the personal data of users of electronic commerce.” While the Parties are required to establish a legal framework for personal data protection, there are no specific requirements regarding the approach they must adopt (Gao, 2024).<sup>24</sup> Rather, there is a recognition that Parties are likely to pursue different legal approaches, but in doing so, they should undertake efforts to promote compatibility between the regimes.

Section E, on transparency, cooperation, and development, covers a range of cross-cutting issues. It includes Article 18, on transparency, in which Parties agree to publish (or make publicly available) all measures of general application that affect the operation of the Agreement. Article 19, on cooperation, outlines the different topics on which the Parties will try to cooperate. It also includes efforts to share information on laws, regulations, and experiences, as well as to collaborate to enhance the participation of underrepresented groups and MSMEs in accessing and utilizing e-commerce.<sup>25</sup>

The section, importantly, includes an article on development (Article 20) that outlines the key benefits and flexibilities available to developing countries and LDC Parties for implementing this Agreement. One of the main flexibilities is that these countries are granted a longer implementation period of up to 5 years, with the possibility of an additional 2-year extension if needed. To assess whether they require these implementation flexibilities, these Parties are encouraged to conduct needs assessments to identify capacity gaps. The results of these assessments can serve as the basis for self-designating a longer timeline or requesting an extension. Additionally, there are obligations for developed country Parties and for developing countries that are in a position to provide support. While they are not required to provide assistance, these Parties are expected to facilitate capacity-building efforts and assistance in implementing the Agreement. A closer analysis of the article on development is provided in the next section.

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<sup>24</sup> Among the different approaches, according to Gao (2024), there are currently two main approaches for the protection of data: the first, which the European Union champions, is to adopt a comprehensive legislation to govern personal data, which would apply horizontally to the whole economy. The second, preferred by the United States, is to adopt personal data protection laws applicable to specific sectors.

<sup>25</sup> Several articles in the substantive sections of the Agreement also include more focused cooperation provisions in which the parties indicate that they will undertake efforts to cooperate on the specific matters addressed in those articles. This includes efforts to base measures on internationally relevant standards, and interoperable compatibility.



Section F and the annex include obligations relating to telecommunications. This sector is considered key for e-commerce, as it provides the infrastructure that enables e-commerce to operate. Through Article 21 and the annex, the Parties agree to adhere to a range of regulatory principles aimed at preventing anti-competitive outcomes in the domestic telecommunications sector. This includes undertaking the obligations set out in the reference paper on GATS telecommunication services,<sup>26</sup> which is copied into the annex to the ECA.<sup>27</sup> Beyond the obligations set out in the reference paper, the Parties are committing to additional disciplines, including undertaking efforts to ensure that the assignment of frequency bands is conducted through an open process, as well as additional disciplines aimed at safeguarding the independence of regulatory authorities, strengthening the regulatory authority's decision-making authority over determining essential facilities and enforcement functions. Many of the disciplines in Section F and the annex are binding obligations.

Section G outlines the exceptions to the Agreement, which are the circumstances in which the obligations of the Agreement do not apply. It incorporates the general and security exceptions from the GATT and GATS, as well as the prudential measures exception from the GATS annex on financial services (Articles 22 to 24). Additionally, this Agreement includes a specific exception related to "personal data protection" (Article 25). This exception clarifies that nothing in the Agreement can be interpreted as inhibiting a Party from adopting or maintaining measures for the protection of personal data and privacy, including regarding cross-border data transfers. However, the laws of that Party must also include "instruments" that would allow for the data to be transferred, subject to privacy protection conditions that apply to such transfers. Furthermore, there is an exception for Indigenous Peoples (Article 26), which states that Parties can implement more favourable domestic measures for Indigenous Peoples. These measures must not be arbitrary, unjustly discriminatory against individuals from other Parties, or used as a disguised restriction on trade.

The final section, H, covers "institutional arrangements and final provisions." Article 27, on dispute settlement, confirms that the WTO dispute resolution mechanism will be used to address any disputes arising under this Agreement. Article 36 clarifies that the WTO Secretariat will service the Agreement. Article 28 outlines the primary responsibilities of the Committee established under this Agreement, which include monitoring its implementation and operation.

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<sup>26</sup> It is worth noting that the reference paper was developed in response to concerns that market access and national treatment commitments in GATS alone were insufficient to ensure market access conditions for the telecommunications sector. Foreign providers could face potential monopoly-type practices by major suppliers, who, due to their dominant market position or control over essential facilities, might restrict access or network interconnection. Such practices could prevent new entrants from effectively participating in the market. The regulatory disciplines from the reference paper aim to prevent such market barriers behind the border (Guermazi, n.d.).

<sup>27</sup> The reference paper, and its commitments that are transposed to the annex, deals with obligations focusing on "six regulatory principles, including competitive safeguards, interconnection, universal service, licensing, allocation and use of scarce resource[s], and creation of [an] independent regulator" (Guermazi, n.d., p. 1). For more information on the obligations within the reference paper, please see Guermazi (n.d.).



This section also provides important information regarding the entry into force of the Agreement. It will take effect once 45 Parties have ratified it. For WTO member Parties that have not yet ratified it, the Agreement will only come into effect after they have individually done so. Once the Agreement is in force, all Parties are expected to fulfill their obligations under it, except for developing countries and LDC Parties that opt to schedule flexibilities under the article on development.

Lastly, the section includes a provision recognizing the need for future negotiations to establish rules that keep pace with the “evolving nature of electronic commerce and digital technology.” As part of a future phase of negotiations, Parties may revisit “outstanding issues” that were dropped or on which they could not previously reach an agreement, which include topics such as data flow, data localization, source code, and ICT products that use cryptography.

### 3.4 A Closer Look at Development

The JSI Agreement on Electronic Commerce has several development-related provisions. The most significant are concentrated in Article 20, titled “Development.” However, developmental considerations are mentioned throughout the Agreement. The preamble to the Agreement sets the tone and recognizes fundamental development principles, including

- the determination to “narrow the digital divide,”
- the recognition of the “special needs” of developing countries and LDCs,
- the importance of supporting developing countries and LDCs through “technical assistance and capacity building,” and
- the goal of enhancing opportunities for MSMEs and “underrepresented groups.”

#### 3.4.1 Key Development Provisions in Article 20 – A mix of mandatory and non-mandatory elements

The article is a blend of legally binding obligations and non-mandatory “best endeavour” language. This blend requires close reading and a strategic and well-informed approach from developing and LDC members.

#### **Mandatory Rights and Protections for Developing Countries and LDCs**

Several provisions in Article 20 provide concrete flexibilities and protections to developing countries and LDCs. The most significant of these is the right to extended implementation timelines. Under Articles 20.6 and 20.7, each developing and LDC Party has the right to self-designate which specific provisions of the Agreement it requires more time to implement. This can be for an initial period of up to 5 years from the Agreement’s entry into force for that Party. Furthermore, recognizing that the initial period may prove insufficient, the Agreement grants the right to request an extension in this implementation period for up to 2 additional years. However, the total potential implementation period of 7 years is a possible maximum, not an automatic flexibility. For instance, a country that initially self-designates a provision for implementation after only a 2-year period can only request to extend it by a maximum of 2 additional years, hence to a total of 4 years, not 7. This underscores the importance of



conducting a meticulous capacity assessment, as the initial choices will dictate the maximum available flexibility.

The flexibility in implementation periods for developing countries is directly linked to a second mandatory protection: a grace period from dispute settlement. For these countries, the protection from dispute settlement under Article 20.13 is targeted; it applies only to those provisions they have self-designated for longer implementation and lasts only for the duration of that designated period. This linkage makes the initial self-designation a strategic decision not just about implementation capacity, but also about legal certainty. On the other hand, Article 20.12 provides LDC Parties with a stronger shield, protecting them from any dispute settlement case under this Agreement for 7 years after it enters into force for them. Additionally, Article 20.14 mandates that even after this grace period, other Parties must give “particular consideration” to the special situation of LDCs and exercise “due restraint” in raising disputes against them, offering some measure of ongoing protection to LDCs from dispute settlement.

A third element of mandatory obligations involves the institutional oversight mechanism. The Agreement establishes a Committee on Trade-Related Aspects of Electronic Commerce, which is mandated under Article 20.19 to hold at least one dedicated session annually to monitor technical assistance, review implementation progress, and identify any gaps in TA/CB support to developing countries and LDCs. To support this process, developed country Parties are obliged to submit descriptions of their technical assistance programs to the Committee. Similarly, developing and LDC Parties intending to seek TA/CB support must submit their official contact points to the Committee, which is then required to make this information publicly available online.

### **TA/CB Support**

Article 20 also contains a set of provisions for TA/CB support to help developing countries and LDCs implement the Agreement. Two of these (Articles 20.3 and 20.4) are general in nature and without creating any commitments. These recognize the importance of TA/CB support and that assistance and support for capacity building should be provided to developing countries and LDCs. Similarly, Article 20.11 enumerates several principles that Parties must endeavour to apply, to provide assistance and support for capacity building. Article 20.10, on the other hand, creates a commitment for developed countries, and developing countries in a position to do so, who “agree to facilitate the provision of assistance and support for capacity building” for the implementation of those provisions of the Agreement that developing countries and LDCs have identified for such assistance and support. But this article leaves it unclear as to who will provide the assistance. The language widens the range of actors who might provide the assistance, but does not attach responsibility to any one actor. Interestingly, identical language is used in the JSI Investment Facilitation for Development Agreement. However, under that agreement, developing countries can identify specific provisions they need assistance to implement, and the obligations in those provisions do not apply until they receive the necessary support. This is not the case under the JSI Agreement on Electronic Commerce, where no link has been established between the provision of TA/CB support to, and the implementation obligations of, developing countries and LDCs.



Importantly, support for the critical first step of conducting a needs assessment for the Agreement's implementation is addressed through non-mandatory language. Articles 20.8 and 20.9 encourage developed countries to support developing and LDC Parties in conducting or updating assessments to identify their implementation capacity gaps. The Agreement stipulates that the results of these assessments “should” inform a country's self-designation of provisions, but it does not create an obligation for donors to fund these assessments, nor does it mandate that the identified needs will be met with corresponding technical assistance. This creates a potential gap between the work required to identify implementation periods and the resources required to do that work.

### 3.4.2 Other Articles With Development Implications

There are some other provisions in the Agreement that can offer potential benefits and flexibility to developing countries and LDCs. For example, provisions that emphasize taking into account the needs of and creating business opportunities for MSMEs—Article 9.6 on “single windows” and Article 12.7 on “open government data,” respectively—can be of particular interest to MSMEs in developing countries and LDCs. Similarly, Article 19, on cooperation, fosters a collaborative environment useful for development. This Article, among other things, asks Parties to establish enquiry points to respond to reasonable inquiries from other Parties, which will be a good resource for countries with less institutional capacity.

Finally, throughout the Agreement, many provisions for domestic legal and regulatory frameworks use softer language, such as “each Party shall endeavour to,” “to the extent practicable,” and “in accordance with its laws and regulations,” and similar wording. This provides some flexibility, allowing developing countries and LDCs to implement these rules at a pace and in a manner suited to their capacity and resources.

### 3.4.3 Reflections on Developing-Country and LDC Considerations in Relation to the ECA

Several developing countries (for example, Brazil, Colombia, Côte d'Ivoire, Indonesia, and Nigeria) that participated in the negotiations for the Agreement have refrained from joining it so far, due to specific concerns about certain articles of the agreement—most notably the one on customs duties. Many countries remain wary of endorsing the permanent moratorium on such duties while negotiations regarding the continuation of the multilateral moratorium are ongoing. Although the article on customs duties (Article 32) includes a review clause, the requirement for consensus among Parties makes any amendment unlikely, thereby reinforcing the perception that the ECA moratorium will, in practice, be permanent (Jose & Kaukab, 2024).

For several other developing countries and LDCs, including those that did not participate in the negotiations but may consider doing so, there remains hesitation to do so in the near term. This reluctance stems largely from perceptions that the flexibilities offered under the article on development are insufficient. The additional 5 to 7 years provided for implementation are seen by some as inadequate, especially given that many of the provisions require establishing complex legal and regulatory frameworks—an especially challenging task for resource-constrained economies (South Centre, 2023).



An important next step will be to work out how to support the developing countries and LDCs that are interested in joining the Agreement but face significant implementation gaps that cannot be bridged easily. Conducting needs assessment studies will be essential to help these countries better understand their capacity gaps and prioritize actions. Hence, donor partners could consider providing early and targeted support to them for carrying out their needs assessments, with the promise to help further in the implementation of the Agreement. The World Bank has consistently emphasized that “upstream” diagnostic work and capacity building are critical for enabling meaningful participation in digital trade agreements, as the costs of implementation can be prohibitive (World Bank, 2021). This assistance can accelerate the readiness of these developing countries and LDCs to participate and eventually join the Agreement with confidence.

For many developing countries and LDCs, the decision to join the ECA is hampered by concerns over policy space and implementation capacity. However, a parallel case for engagement exists on the basis that the Agreement offers a strategic pathway to harness the opportunities of the global digital economy. Developing countries and LDCs that have joined the Agreement point out that the long-term benefits of integration, modernization, and influence can provide a catalyst for sustainable development. At its core, the argument for joining the Agreement rests on the Agreement’s potential to create a predictable and attractive environment for investment. By locking in clear, transparent rules on issues like electronic signatures, contracts, and online consumer protection, a country sends a signal to the global market about its commitment to a modern digital framework. This predictability reduces regulatory risk for tech companies and investors seeking stable investment opportunities, thereby stimulating both foreign direct investment and domestic entrepreneurship. According to this view, a globally harmonized regulatory framework is essential for seizing the opportunities of digital globalization, as it significantly lowers costs and uncertainties for businesses, especially the MSMEs that are the backbone of many developing economies and LDCs (World Bank, 2021).

In conclusion, the development provisions of the ECA reflect a dual reality. On one hand, they offer developing and LDC Parties tangible flexibility in the form of self-determined implementation periods of up to 7 years for self-selected provisions and associated dispute settlement protections. These are rights that can be strategically exercised to manage, to some extent, the pace of integration into the global digital economy. On the other hand, the provisions for the technical and financial support necessary to make this integration successful are largely voluntary, creating uncertainty. This dichotomy complicates the decision for developing countries and LDCs regarding whether or not to join the Agreement.

Therefore, for developing countries and LDCs, the path forward requires a proactive and meticulously prepared strategy. As a starting point, they must conduct thorough needs assessments to identify the gaps between their current situation and the implementation requirements of the Agreement. The analysis should preferably be done before committing to the Agreement, so that Parties can make fully informed decisions on self-designation of specific provisions for longer implementation periods as well as the length of those longer periods. Donor funding will be essential to enable this analysis to be completed thoroughly and well, but developing countries should also be proactive in seeking TA/CB support. This clear, strategic, and nuanced approach will help countries make well-informed decisions about



whether to join the Agreement and, if they do, to effectively utilize its provisions to serve their national development objectives and ensure the digital economy becomes a source of inclusive growth rather than widening the digital divide.



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