Informal Briefing on the Joint Initiative on E-commerce

On the road to MC13

Presenter: Rashmi Jose, Senior Policy Advisor, IISD
Date: Thursday 18 January 2024
Presentation Outline

1. WTO Work Programme’s Increasing Dynamism
2. Progress in the JSI on E-commerce Negotiations
3. Overview of the 13 parked rules
4. Overview of the remaining issues to be negotiated
5. Integration of E-commerce Agreement in WTO framework
1. WTO E-commerce Work Programme’s increasing dynamism

- E-commerce first recognised with WTO Declaration on Global Electronic Commerce in May 1998 at MC2, resulting in:

  1. **Work Programme on Electronic Commerce (WP), established by General Council in September 1998:**
     - Defined “e-commerce” as the: “production, distribution, marketing, sale or delivery of goods and services by electronic means.”
     - Select WTO bodies are tasked with exploring trade-related issues relating to global electronic commerce. Considers economic, financial, and development needs of developing countries; recognizes work is also undertaken in other international fora.
     - **Increased momentum:** more conversations, broader set of topics, special attention to development; active engagement of developing and LDC members

2. **Moratorium on Customs Duties on Electronic Transmission**
   - Maintain “current practice” of not imposing tariffs on electronic transmissions
   - Decision is provisional, members must agree by consensus at every MC for extension
   - Subject to **increasing debate** over the potential customs revenue losses of developing countries in need for financing their digital transition
From the Work Programme to the Joint Initiative

The WTO now engages in a two-track deliberative process with different mandates:

<table>
<thead>
<tr>
<th>Work Programme</th>
<th>JSI</th>
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<tbody>
<tr>
<td><strong>Started in</strong></td>
<td>1998</td>
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<tr>
<td><strong>Established based on</strong></td>
<td>Ministerial decision (agreed by all WTO Members)</td>
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<td><strong>Form</strong></td>
<td>Multilateral</td>
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<td></td>
<td>• General Council (standing agenda, and cross-cutting issues) • Council for Trade in Goods • Council for Trade in Services • Council for TRIPS • Committee on Trade and Development</td>
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<tr>
<td><strong>Objective</strong></td>
<td>Exploratory/ Discussion/ Recommendations - no negotiations (as yet)</td>
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Dual track discussions picking up pace

**General Council Decision (WT/L/1079)**
“Reinvigorate the work under the WP on E-Commerce, based on the existing mandate (...). Work will include structured discussions in early 2020 based on all trade-related topics of interest brought forward by Members.”

**Nairobi Ministerial Declaration (MC10)**
“While we concur that officials should prioritize work where results have not yet been achieved, some wish to identify and discuss other issues for negotiation; others do not. Any decision (...) would need to be agreed by all Members.”

**The Friends of E-commerce for Development (FED)**
Argentina, Chile, Colombia, Costa Rica, Kenya, Mexico, Nigeria, Pakistan, Sri Lanka and Uruguay, first Ministerial Meeting “to discuss what they foresee as the future of the conversation regarding E-Commerce” in the WTO

**1st Joint Statement Initiative (10-13 Dec, 2017)**
“as a group, will initiate exploratory work together toward future WTO negotiations on trade-related aspects of electronic commerce” (71 Members, WT/MIN(17)/60)

**MIKTA workshop (July 5, 2016)**
Mexico, Indonesia, South Korea, Turkey and Australia held a workshop on e-commerce at the WTO and called for the WTO to “focus more attention on its digital trade agenda” (MIKTA, 2016)

**The 2nd Joint Statement Initiative (January, 2019)**
“We confirm our intention to commence WTO negotiations on trade-related aspects of electronic commerce.” (76 Members - WT/L/1056)
2. The Progress of JSI Negotiations (as of Jan 2024): A snapshot

- Objective: Negotiations to “achieve high standard outcome that builds on existing WTO agreements and frameworks with the participation of as many WTO Members as possible”
- Total **90 Members** (90% of global trade - all the big players)
- **All Developed** countries and most **High-Income Countries**
- Co-conveners: **Australia, Japan and Singapore** (active also at the regional level)
- Only **5 LDCs**: Benin, Lao PDR, Myanmar, Burkina Faso and the Gambia)
- Only **8 African Countries**: Benin, Burkina Faso, Cameroon, Côte d’Ivoire, Kenya, Mauritius, Nigeria and the Gambia)
- **4+ years of Negotiation** since January 2019
- Latest Updated Negotiating Text **INF/ECOM/62/Rev.5 - November 2023**
- **Legal Architecture** still undefined
## The Progress of JI Negotiations (1)

### Converged “parked” texts*

1. Electronic transaction frameworks
2. **Electronic authentication and electronic signatures**
3. **Electronic Contracts**
4. Electronic Invoicing
5. Paperless Trading
6. Single Windows data exchange and system interoperability/Unique consignment reference numbers
7. **Open government data**
8. Access to and use of the internet
9. **Online Consumer Protection**
10. **Unsolicited commercial electronic messages (Spam)**
11. Personal data protection
12. Cybersecurity
13. Transparency

### Remaining issues

1. E-payments
2. Customs duties on electronic transmissions
3. ICT products that use cryptography
4. Disciplines related to telecommunications services
5. Development
6. Cooperation
7. Scope and General Principles

### Dropped or Paused**

1. Logistics Services
2. Enhanced trade facilitation for cross-border e-commerce
3. Use of technology for the release and clearance of goods
4. Non-discriminatory treatment of digital products
5. Access to Online Platforms / Competition
6. Domestic regulation
7. E-Commerce-Related Network Products
8. Services market access
9. Temporary Entry and Stay of Electronic Commerce-Related Business Persons
10. Goods market access
11. **Source Code**
12. **Location of computing facilities**
13. **Cross-border data flows**
14. **Financial information/ Location of financial computing facilities**

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* Bolded articles are clean and endorsed at plenary level. Remaining small group discussions concluded on converged text.

** Italicised Articles: discussions recently paused; may resume in “Phase 2”.

## 3. Overview of the 13 Parked Rules (1)

<table>
<thead>
<tr>
<th>Electronic Transaction Frameworks</th>
<th>Electronic authentication and electronic signatures</th>
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<tbody>
<tr>
<td>- Promotes predictability by recognising principles of non-discrimination (paper = electronic formats); functional equivalence; and technological neutrality</td>
<td>- Promotes same principles as MLEC</td>
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<td></td>
<td>- Encourages mutual recognition and interoperability approaches to signatures and authentication</td>
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<table>
<thead>
<tr>
<th>Electronic contracts</th>
<th>Electronic Invoicing</th>
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<tbody>
<tr>
<td>- Stipulates that legality of electronic contracts should not be refused on basis of it being electronic</td>
<td>- Stipulates that legality of an electronic invoice should not be refused on basis of it being electronic</td>
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<td>- Encourages development of inter-operable frameworks</td>
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<table>
<thead>
<tr>
<th>Paperless Trading</th>
<th>Single Windows data exchange/Unique consignment reference numbers</th>
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<tbody>
<tr>
<td>Encourages government agencies (including customs) use and recognition of electronic documentation</td>
<td>- Encourages creating a system that allows traders to submit required documentation for import/export/transit via electronic single window</td>
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### 3. Overview of the 13 Parked Rules (2)

<table>
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<tr>
<th>Rule Description</th>
<th>Details</th>
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<tr>
<td><strong>Open government data</strong></td>
<td>- Recognises value of government data, and encourages its access for public use</td>
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<tr>
<td><strong>Access to and use of the Internet</strong></td>
<td>- Recognises end-users’ right to internet access and reasonable network management</td>
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<td><strong>Online consumer protection</strong></td>
<td>- Requires development of consumer protection policies for electronic commerce - Encourages cooperation among consumer protection agencies</td>
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<td><strong>Unsolicited commercial electronic messages</strong></td>
<td>- Requires development of measures to limit SPAM - Ensure commercial messages are identifiable and put in place redress mechanisms.</td>
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<td><strong>Cybersecurity</strong></td>
<td>- Strengthen capabilities of national entities responsible for cyber-security, and undertake efforts to collaborate to identify and mitigate threats</td>
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<td><strong>Transparency</strong></td>
<td>- Publish measures relating to e-commerce</td>
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<td><strong>Privacy</strong></td>
<td>- Recognises privacy as a fundamental right or as key public policy objective</td>
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4. Overview of the remaining issues to be negotiated

- Phase 1 package currently includes 13 parked articles, and possibly 7 other articles (under discussion)
- October 2023, US withdrew its proposals on data flows, localisation and source code. Articles deliberation on these issues paused, no longer in phase 1 package
- hoping to finalise substantial agreement in 2024. [Note several key players, such as US, UK, Mexico and others, are expected to have elections in 2024]

<table>
<thead>
<tr>
<th><strong>E-payments</strong></th>
<th><strong>Custom duties on electronic transmissions</strong></th>
<th><strong>Cryptography</strong></th>
<th><strong>Disciplines relating to telecommunication services</strong></th>
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<tbody>
<tr>
<td>Improve transparency of e-payment regulations, and undertake efforts to put in place interoperable frameworks</td>
<td>Debating between permanent moratorium or maintaining prominence of multilateral WP decision-making</td>
<td>Manufacturers/Suppliers not required to transfer encrypted information as condition for gaining market access (exception: law enforcement/judicial needs)</td>
<td>Recognise commitments contained in WTO reference paper on telecom; and other principles</td>
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<tr>
<th><strong>Development</strong></th>
<th><strong>Cooperation</strong></th>
<th><strong>Scope and General Provisions</strong></th>
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<tr>
<td>Small group recently established to streamline S&amp;DT articles: considering options relating exceptions, implementation periods, and capacity building options</td>
<td>Undertake efforts to cooperate on various e-commerce related matters</td>
<td>Horizontal provisions to be finalised once substantive sections are largely concluded</td>
</tr>
<tr>
<td></td>
<td>- Provisions to be finalised once substantive sections concluded</td>
<td>- Drafting led by co-coordinators instead of via small group</td>
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5. Scenarios for integrating E-commerce Agreement into WTO framework

- Integration of E-commerce Agreement requires the consensus of all 164 WTO members.
- Getting buy-in will be difficult as some WTO members (e.g. South Africa and India) question the legal basis of JSI negotiations under WTO umbrella (negotiations launched without consensus)
- Outcome of Investment facilitation negotiations will be an important indicator
- If integration is unsuccessful, may have to consider dropping or finalising outside the WTO (i.e. continue as RTA)

Annex 1 - Multilateral
- Creates obligations and rights/benefits for all Members
- Best scenario for greater participation of developing economies

Challenges
- Requires all member consensus
- Convincing members who had no role in shaping rules

Annex 4 - Plurilateral
- Creates obligations and rights for signatories only
- Signatories may extend benefits to non-signatories on voluntarily basis

Challenges
- Requires all member consensus
- Creates club agreement within WTO and may discourage participation
Thank You!

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Please visit TAF Umbrella Grant for more useful resources:
https://www.iisd.org/projects/wto-umbrella-grant-project-new-issues

[Deck based on work produced by Yasmin Ismael under TAF2+ Project]