



**WHAT IS AT STAKE FOR  
DEVELOPING COUNTRIES IN  
TRADE NEGOTIATIONS ON E-COMMERCE?  
THE CASE OF THE JOINT STATEMENT INITIATIVE**



© 2021 United Nations

The work is available open access by complying with the Creative Commons licence created for intergovernmental organizations, available at <http://creativecommons.org/licenses/by/3.0/igo/>.

The findings, interpretations and conclusions expressed herein are those of the authors and do not necessarily reflect the views of the United Nations or its officials or Member States.

The designation employed and the presentation of material on any map in this work do not imply the expression of any opinion whatsoever on the part of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Photocopies and reproductions of excerpts are allowed with proper credits.

This publication has not been formally edited.

United Nations publication issued by the United Nations Conference on Trade and Development.

UNCTAD/DITC/TNCD/2020/5

eISBN: 978-92-1-005636-6

## ACKNOWLEDGEMENTS

The study was produced jointly by UNCTAD's Division on International Trade and Commodities (DITC) and Division on Technology and Logistics (DTL). It was prepared under the guidance of Pamela Coke Hamilton, previously Director, DITC (currently Executive Director, International Trade Centre), and Shamika N. Sirimanne, Director, DTL, by an inter-divisional team composed of Pilar Fajarnes Garces, Torbjörn Fredriksson, Jan Hoffman, Taisuke Ito, Martine Julsaint Kidane, Rishab Raturi, James Schwab, Miho Shirotori and Liping Zhang.

Substantive inputs were also received from Harsha Vardhana Singh. The study benefited from extensive comments provided by the following external reviewers: Dan Ciuriak, Deborah Elms, Anabel Gonzalez, Trudi Hartzenberg, and Pierre Sauvé.

The cover design and desktop publishing were done by Laura Moresino-Borini and Belén Camarasa.

## NOTE

Values are presented in short scale and references to dollars are United States of America dollars, unless otherwise stated.

For further information on the publication, please contact:

**Trade Negotiations and Commercial Diplomacy Branch**

**Division on International Trade and Commodities**

**Tel: +41 22 917 56 40**

**Fax: +41 22 917 00 44**

<https://unctad.org/topic/trade-agreements>

[tncdb@unctad.org](mailto:tncdb@unctad.org)

## PREFACE

Digitalization has greatly affected the world of trade in the past two decades with more and more goods and services being sold online. Like in previous technological revolutions, the benefits will be immense, but they will not materialize through a smooth, cost-free process. The net outcome will depend on policies undertaken at both national and international levels to build the capabilities needed for countries to take advantage of these transformations.

The current COVID-19 pandemic has further accentuated the shift towards electronic commerce as people and businesses have gone online to cope with various lockdown measures and travel restrictions. The crisis has also shed light on the significant digital divides that characterize the world, both between and within countries, raising concerns that the digital shift will result in widening divides and inequalities.

Governments are giving increasing attention to the treatment of electronic commerce in various trade agreements. Given that countries are at very different stages of e-trade readiness and give different priority to various trade policy objectives, their responses to the evolving landscape vary considerably. A significant number of members of the World Trade Organization (WTO) have chosen to engage in the Joint Statement Initiative (JSI) negotiations on electronic commerce, while many developing countries have chosen not to, preferring to first build their regulatory and institutional capacities and safeguard their policy space to pursue development objectives in this fast-evolving area.

Whether developing countries are party to these negotiations or not, the outcome will have implications for the governance of various dimensions of e-commerce and for the multilateral trading system as a whole. There is therefore a need for developing a better understanding of the possible implications of the ongoing e-commerce negotiations and binding commitments that may result therefrom.

It was against this background that the Division on International Trade and Commodities and the Division on Technology and Logistics decided to prepare this joint report. The report aims to provide evidence that can help the developing world acquire better understanding on the implication of the ongoing JSI negotiations in the WTO to their development prospect. By focusing on the development implications of aspects that may be covered in a possible negotiation outcome, it seeks to offer valuable inputs that can help countries assess various options for harnessing e-commerce for sustainable development.



Shamika N. Sirimanne  
Director  
Division on Technology and  
Logistics



Miho Shirotori  
Officer-in-Charge  
Division on International Trade and  
Commodities

## EXECUTIVE SUMMARY

The expansion of the digital economy has transformed the way we produce, consume and do business. Electronic commerce (e-commerce) — the sale or purchase of goods or services ordered over computer networks or online platforms — is a significant segment of the digital economy. With the rapid expansion of e-commerce, increasing calls were made for common rules in the framework of the World Trade Organization (WTO) for governing cross-border e-commerce in goods and services. Such calls were based on the perception that the multilateral trade rules that were built upon traditional forms of trade prevalent in the last century could not adequately address opportunities and challenges associated with e-commerce.

The launch of the Joint Statement Initiative (JSI) negotiations on e-commerce among a group of WTO members in 2019 was a significant trade policy development. Participation of a diverse group of WTO members with markedly differing policy preferences, contrasted with the non-participation of a large number of developing countries, in the midst of rapidly evolving digital ecosystems, business models and regulatory requirements, point to the highly complex nature of the negotiations. The negotiations would require finding a delicate balance in reconciling different regulatory practices and priorities across countries with respect to such sensitive public policy areas as privacy, personal data protection, competition, consumer protection and cyber security, as well as industrialization objectives for the digital economy.

One key question that confronts trade negotiators is what negotiated outcome would allow developing countries – both participant and non-participant – to harness potential benefits of e-commerce for sustainable development. The digital divide is still significant within and among countries, and many developing countries are yet to develop their own national policy frameworks to support their ability to harness the evolving digital economy.

Whether and how the outcome of the JSI negotiations should be multilateralized remain key questions that need to be addressed. Defining the JSI outcome as a plurilateral agreement or a regional trade agreement (RTA) does not appear to settle the institutional standing of the future e-commerce agreement. Procedurally, multilateralization, and agreement for a plurilateral agreement within the WTO framework, would require consensus, including from those WTO members that have opted not to participate in the negotiations.

In this connection, there is a need for careful consideration of the implementation mechanisms that would facilitate greater participation and possible future multilateralization of any negotiated outcome. Among the built-in mechanisms that could facilitate the gradual implementation are modulated commitments, so that developing countries could gradually assume a higher level of commitments in differentiated time frames. Some transitional implementation mechanisms, such as a scheduling approach of the type used in WTO's Trade Facilitation Agreement (TFA), which allows parties to take into account individual countries' implementation capacities, capacity-building support and capacity acquisition, might provide useful lessons.

The TFA-type implementation mechanism would not substitute the need for adequately defining the scope of the agreement and designing the content of the rules. As some proposed rules are novel issues for national regulatory systems and for the multilateral trading system, there is a need to carefully assess the development implications of internationally legally binding commitments which may constrain countries' policy options. Additionally, if rules are warranted, how they can be designed to best cater for individual countries public policy and development needs should be adequately addressed.

In the emerging global digital economy, it is important to understand how key development objectives associated with e-commerce may be tackled domestically and internationally through various trade and Internet governance fora. As far as the JSI negotiations are concerned, a key consideration for developing countries is whether the rules being developed in these negotiations provide the necessary regulatory space to allow them to shape their digital economies.

As a new data value chain, from raw data to “digital intelligence”, has emerged, challenge arises particularly for developing countries to build and develop required skills and capacities to create and capture value from digital data. Policy makers across the globe are still considering various approaches for defining categories of data, including to establish ownership of data generated by individuals and communities when using digital platforms and possible compensation for those whose data are being used. These definitions would also be relevant in discussions surrounding “data sovereignty” rights. In this context, concerns exist over proposed rules in trade agreements in favour of unrestricted cross-border data flows.

Certain proposed e-commerce disciplines could have implications for government revenues. Persistent ambiguities of the existing moratorium on customs duties on electronic transmissions and the rapid technological advances which affect the volume of products transmitted electronically makes it particularly challenging for developing countries to assess the likely effect of foregoing permanently their ability to charge duties on electronic transmissions. Similarly, in discussing the *de minimis* threshold to apply to cross-border transactions, the issue has been raised on how to strike a balance between reduced government revenues from import duties and taxes and possible gains to economic agents, including consumers and Micro, Small and Medium-sized Enterprises (MSMEs), as the expansion of e-commerce will substantially increase the number of small, low-value parcels. The net effects of an increased *de minimis* value for developing countries still need to be ascertained.

Proposed provisions that call for establishing an enabling domestic legal framework to facilitate e-commerce have underscored the lack of implementation capacities in many developing countries, which currently do not possess national laws regulating domestic e-transactions and online consumer protection, for instance. These countries would need to weigh the costs required to establish such a regulatory framework against the benefits they could expect from a predictable and secure e-commerce environment resulting from effective regulation and from increased international regulatory cooperation. In the case of e-transactions, for example, regulations mainly seek to ensure the validity of contracts, and it would be desirable that national e-transaction laws be formulated in a manner to promote regional and global compatibility to minimize barriers to cross-border e-commerce. The protection of consumers in online e-commerce transaction is essential for enhancing trust, and international cooperation would be key for cross-border e-commerce.

In certain areas, interests of private sector actors and governments could be sharply different, pointing to the complexities of addressing wider socio-economic implications under trade agreements, as exemplified by the debate surrounding source code and intermediary liability. In the first case, regulatory friction may arise when governments seek to access source codes when required for what they consider legitimate public policy reasons, which may include transfer of technology. In the second case, governments may seek to hold intermediary platforms accountable for illegal or harmful content posted by the platform users. This is particularly relevant in cases where foreign-owned platforms have access to resources and technology useful for monitoring the online behaviour of platform users that regulators would not have.

For developing countries, irrespective of whether they are participating in the JSI negotiations or not, the formulation of adequate national regulatory frameworks to build digital capabilities should remain an essential component of a broader national development agenda. Efforts are warranted to strengthen their capabilities to engage in e-commerce and bridge the digital divide to help them take advantage of the digital economy for sustainable development. Such national efforts will also need to be increasingly supported by international development partners, including UNCTAD.

## CONTENTS

Acknowledgements.....	iii
Note.....	iv
Preface.....	v
Executive summary .....	vi
Abbreviations and acronyms.....	x

### **INTRODUCTION ..... 1**

#### **PART 1**

### **THE JOINT STATEMENT INITIATIVE NEGOTIATIONS: AN OVERVIEW..... 3**

#### **I. RECENT TRENDS IN E-COMMERCE AND THE DIGITAL ECONOMY ..... 4**

#### **II. E-COMMERCE IN THE CONTEXT OF THE WTO..... 8**

- A. The treatment of e-commerce in WTO ..... 8
- B. The JSI negotiations on e-commerce ..... 9
- C. Developments under the COVID-19 pandemic ..... 10
- D. Scope and content of the JSI negotiations ..... 11

#### **III. E-COMMERCE DISCIPLINES: NATIONAL AND REGIONAL APPROACHES ..... 13**

- A. Individual WTO members' approaches ..... 13
- B. Regional approaches to e-commerce disciplines ..... 16

#### **PART 2**

### **SALIENT ISSUES IN THE JOINT STATEMENT INITIATIVE NEGOTIATIONS ..... 20**

#### **IV. SYSTEMIC CHALLENGES: THE JSI NEGOTIATIONS AND WTO ..... 21**

- A. Joint Statement Initiative outcome as a plurilateral agreement in the WTO ..... 22
- B. Joint Statement Initiative outcome as an RTA-type agreement outside WTO? ..... 24
- C. What options for multilateralization? ..... 24
- D. How should Special and Differential Treatment be addressed? ..... 26

#### **V. SELECTED ISSUES IN THE JSI NEGOTIATIONS FROM A DEVELOPMENT PERSPECTIVE ..... 28**

- A. Issues concerning "data" ..... 28

预览已结束，完整报告链接和二维码如下：

[https://www.yunbaogao.cn/report/index/report?reportId=5\\_8642](https://www.yunbaogao.cn/report/index/report?reportId=5_8642)

