



Informal Briefing on the Joint Initiative on E-commerce

On the road to MC13

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International Institute for
Sustainable Development

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

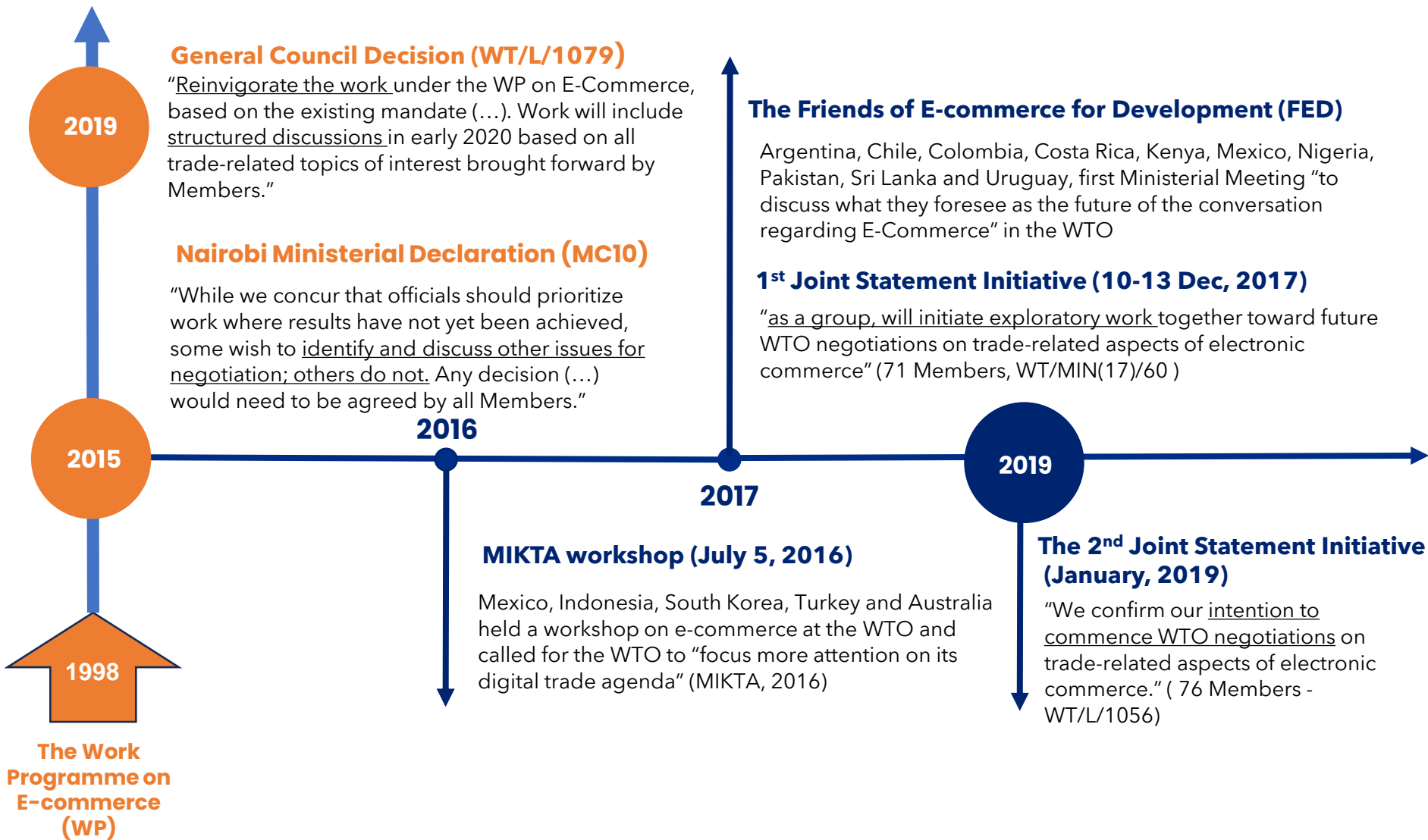
- Maintain "current practice" of not imposing tariffs on electronic transmissions
- Decision is provisional, members must agree by consensus at every MC for extension
- Subject to **increasing debate** over the potential customs revenue losses of developing countries in need for financing their digital transition

From the Work Programme to the Joint Initiative

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

	Work Programme	JSI
Started in	1998	2017
Established based on	Ministerial decision (agreed by all WTO Members)	2 Joint Statement Declarations (2017 and 2019) by subset of WTO Members (open to others – currently 90 members participating)
Form	Multilateral <ul style="list-style-type: none"> • 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 	Not Multilateral <ul style="list-style-type: none"> • Member-led initiative housed under WTO umbrella • Negotiations are not in WTO bodies, though some reporting takes place in General Council
Objective	Exploratory/ Discussion/ Recommendations - no negotiations (as yet)	Negotiations to “achieve high standard outcome that builds on existing WTO agreements and frameworks with the participation of as many WTO Members as possible”

Dual track discussions picking up pace



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*

* 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)

Electronic Transaction Frameworks

- Refers to UNCITRAL Model laws on Electronic Commerce (MLEC) 1996 and UNCITRAL Model Law on Electronic Transferable Records 2017
- Promotes predictability by recognising principles of non-discrimination (paper = electronic formats); functional equivalence; and technological neutrality

Electronic authentication and electronic signatures

- Inspired by UNCITRAL model law on electronic signatures 2001
- Promotes same principles as MLEC
- Encourages mutual recognition and interoperability approaches to signatures and authentication

Electronic contracts

- Stipulates that legality of electronic contracts should not be refused on basis of it being electronic

Electronic Invoicing

- Stipulates that legality of an electronic invoice should not be refused on basis of it being electronic
- Encourages development of inter-operable frameworks

Paperless Trading

Encourages government agencies (including customs) use and recognition of electronic documentation

Single Windows data exchange/Unique consignment reference numbers

- Encourages creating a system that allows traders to submit required documentation for import/export/transit via electronic single window

3. Overview of the 13 Parked Rules (2)

Open government data

- Recognises value of government data, and encourages its access for public use

Access to and use of the Internet

- Recognises end-users' right to internet access and reasonable network management

Online consumer protection

- Requires development of consumer protection policies for electronic commerce
- Encourages cooperation among consumer protection agencies

Unsolicited commercial electronic messages

- Requires development of measures to limit SPAM
- Ensure commercial messages are identifiable and put in place redress mechanisms.

Cybersecurity

- Strengthen capabilities of national entities responsible for cyber-security, and undertake efforts to collaborate to identify and mitigate threats

Transparency

- Publish measures relating to e-commerce

Privacy

- Recognises privacy as a fundamental right or as key public policy objective

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]

E-payments

Improve transparency of e-payment regulations, and undertake efforts to put in place interoperable frameworks

Custom duties on electronic transmissions

Debating between permanent moratorium or maintaining prominence of multilateral WP decision-making

Cryptography

Manufacturers/Suppliers not required to transfer encrypted information as condition for gaining market access (exception: law enforcement/judicial needs)

Disciplines relating to telecommunication services

Recognise commitments contained in WTO reference paper on telecom; and other principles

Development

Small group recently established to streamline S&DT articles: considering options relating exceptions, implementation periods, and capacity building options

Cooperation

- Undertake efforts to cooperate on various e-commerce related matters
- Provisions to be finalised once substantive sections concluded

Scope and General Provisions

- Horizontal provisions to be finalised once substantive sections are largely concluded
- Drafting led by co-coordinators instead of via small group

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!

Email: rjose@iisd.org

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
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