WTO Joint Initiative on E-Commerce State of Play

Past, present, and future

IISD REPORT

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1.0 Electronic Commerce in the World Trade Organization: An overview

Electronic commerce (e-commerce) has been on the World Trade Organization's (WTO's) agenda since 1998. It is addressed at two levels. The first is the multilateral track, through the WTO work programme on e-commerce. The work programme was established in 1998 to serve as a platform through which all WTO members can discuss matters relating to e-commerce and trade. When engaging in this platform, members are not looking to negotiate new rules; rather, the emphasis is on discussion and information sharing. The work programme is also the platform through which members discuss the e-commerce moratorium, which is a provisional commitment by all WTO members to not impose tariffs on electronic transmissions. WTO members have multilaterally agreed to extend this provisional commitment, at least so far, every 2 years or so.[1]

The second level at which e-commerce is addressed at the WTO is via the plurilateral track. The plurilateral track focuses on the negotiation of rules for a new plurilateral agreement on e-commerce. While recognizing the importance of the multilateral track, particularly for developing countries and least developed countries (LDCs), this paper is a deep dive into the second plurilateral track.[2] Upcoming papers will examine issues discussed in the multilateral work programme.

The paper reviews how the draft legal text of the plurilateral agreement on e-commerce has evolved up to June 2024. Given that the legal text is not final, the text and its various articles may undergo further changes.

[1] For more information on the WTO's e-commerce work programme, see https://www.wto.org/english/tratop_e/ecom_e/ecom_work_programme_e.htm.

[2] This state-of-play update is part of a series of update reports. For additional insights on the earlier phases of the negotiations, please see Ismail, 2023, and Ismail, 2020.

2.0 E-commerce Joint Statement Initiative Negotiations at the WTO: Background

The plurilateral track to discuss e-commerce rules was launched at the Eleventh Ministerial Conference in Buenos Aires, Argentina, in December 2017 (WTO, 2017) through a Joint Statement Initiative (JSI). A group of 71 WTO members embarked on exploratory discussions, aiming to pave the way for future negotiations on trade-related aspects of e-commerce. After 2 years, these discussions transitioned into formal negotiations in January 2019, with JSI participants stating that their ambition was to deliver a high-standard outcome that builds on existing WTO agreements and frameworks, with the broadest possible participation (WTO, 2019).

By June 2024, the negotiators will have completed more than 5 years of formal negotiations. Over this time, participation in the negotiations has grown to 91 WTO members. This represents more than half the membership base of the WTO, but the economic power of many of those engaging is significant, with the trade between them accounting for more than 90% of global trade (WTO, 2020a). Countries regarded as major global economic powers, such as the United States, China, and the European Union, are participating in the negotiations. However, some large emerging economies, notably India and South Africa, are not engaging due to their objection to these plurilateral negotiations (these objections are discussed in more depth below).

3.0 The Evolution of the Draft Legal Text

The parties are currently negotiating the agreement's legal text (i.e., the rules they all agree to abide by in regulating e-commerce). During the earlier phase of negotiations, referred to as the stocktaking phase, the parties submitted various proposals on potential rules that could be considered. At least 60 issues were put on the table in this early phase. See Appendix A for the list of topics proposed during the earlier phases.

The rules initially proposed were very diverse. Many ideas were based on countries' experiences negotiating digital trade provisions through their regional trade agreements. Part of this diversity reflected the countries' distinct commercial interests and differing regulatory approaches to digital trade (Gao, 2022).

One approach reflected in early proposals mainly advocated for rules that promoted the free flow of data, subject to few regulatory constraints. The proposals included prohibiting the forced transfer of source code, prohibiting mandating data localization, and limiting domestic regulations that prevented the free flow of data unless the regulation is legitimate, non-discriminatory, and not more restrictive than necessary. The proposals also sought to provide more legal certainty by advocating for the non-discriminatory treatment of digital products and seeking legal protections for digital firms from intermediary liability. These rules would have been particularly beneficial for digital companies that focus on selling digital services. The free movement of data enables those firms to build their data-dependent services for collecting the data needed to create new and personalized products.

Another approach aimed to ensure this free flow would not come at the cost of countries' ability to regulate matters relating to privacy. These proposals argued that the right to safeguard personal data should be recognized as a fundamental right and that, to facilitate this safeguarding, governments should be allowed to adopt frameworks or measures to ensure personal information protection.

A third approach mainly advocated for trade facilitation rules to increase the efficiency and transparency of customs procedures and logistical services. These proposals aimed to enhance the flow of goods bought or sold online. The prominence of trade facilitation in these proposals reflects a priority given to facilitating the online sale of goods.[3]

3.1 The Streamlining of the Draft Legal Text

Over time, many of the proposals initially put on the table were dropped from consideration. The legal text was whittled down to issues around which the wider group was prepared to negotiate. Examples of issues dropped include certain trade facilitation and market access proposals, with some parties arguing these issues were better addressed through existing WTO agreements. On other issues, such as competition policy, national treatment of digital products, and legal protection from intermediary liability, some parties were not ready

[3] For useful analysis on differing approaches to e-commerce governance, see Gao, 2022 and Klonick, 2024.

to negotiate international disciplines due to diverging positions or because the domestic approaches were too nascent, despite these subjects' pertinence to digital trade.

Of these various issues, the most surprising topics to be dropped were data flow, data localization, and source code. These topics were dropped not because most parties did not support negotiations on them but because the United States retracted proposals it had tabled for liberalizing rules on these topics in October 2023 (Office of the United States Trade Representative, 2023). The retraction significantly affected the overall negotiations, as without the key player, members stopped negotiating these topics altogether.

When withdrawing the proposals, the United States cited a need to maintain policy space as it re-evaluated its domestic policy considerations on e-commerce. This included evaluating whether more regulation would be needed to reign in the anti-competitive behaviour of big tech firms (Lawder, 2023). Another reason may have been the growing competition from China and worries around China's access to United States citizens' and companies' data (Tai, 2024).

More recently (May 2024), the issue of information and communication technology products that use cryptography was also removed from the legal text. Despite its importance, it seemed extremely difficult to resolve the widely divergent positions of the participating members on this issue.

The removal of articles related to data governance and information and communication technology products that use cryptography has meant that some of the more ambitious elements of the e-commerce agreement are no longer on the table. The co-conveners (Australia, Japan, and Singapore) of the negotiating process argue that, notwithstanding, the remaining package is a "substantive and credible package of digital trade rules" that would be the "first ever set of baseline digital trade rules, and it would contribute to the growing e-commerce in our countries by providing greater legal predictability and certainty against the backdrop of increasing regulatory fragmentation" (WTO, 2024a).

3.2 So, What's Left in the Draft Agreement, and What's Left to Do?

The co-conveners have indicated that a final agreement is within reach (WTO, 2024a). The table below highlights the articles in the latest draft of a legal text produced under the co-conveners' responsibility, known as the Chairs' text (WTO, 2024b). The articles reflect the co-conveners' judgment on where they expect consensus to land regarding the legal text.

Table 1. *WTO electronic commerce negotiations: Draft Chairs' text – May 2024* (INF/ECOM/85/Rev3)

Section	Articles	
Section A: Scope and general provisions	Article 1	Scope
	Article 2	Definitions
	Article 3	Relation to other agreements
Section B: Enabling electronic commerce	Article 4	Electronic transaction frameworks
	Article 5	Electronic authentication and electronic signatures
	Article 6	Electronic contracts
	Article 7	Electronic invoicing
	Article 8	Paperless trading
	Article 9	Single windows data exchange and systems interoperability
	Article 10	Electronic payments
Section C: Openness and electronic commerce	Article 11	Custom duties on electronic transmissions
	Article 12	Open government data
	Article 13	Access to and use of the Internet for electronic commerce
Section D: Trust and electronic 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	Articles	
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 H: Institutional arrangements and final provisions	Article 27	Dispute settlement
	Article 28	Committee on trade-related aspects of electronic 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		

Source: WTO, 2024b.

Beyond the procedural articles (Sections A, G, and H), there are 18 remaining substantive articles (Sections B to F). What follows is a high-level summary of the key articles and sticking points that are still to be resolved.

Section A includes articles that clarify the scope of the agreement, definitions of key terms, and relationship to other international agreements.

Section B, "Enabling electronic commerce," is the first substantive section of the agreement. It includes various articles that aim to create a more enabling environment for e-commerce. Several articles, such as "Electronic transaction frameworks" (Article 4), "Electronic authentication and electronic signatures" (Article 5), "Electronic contracts" (Article 6), and "Electronic invoicing" (Article 7), aim to provide more legal certainty for e-commerce by

ensuring that parties do not deny legal recognition to digital transactions simply because they take place electronically.

The section also includes some articles focused on the facilitation of digital trade, including "Paperless trading" (Article 8), which encourages parties to eliminate paper forms and documents relating to customs procedures. The article on "Single windows data exchange and system interoperability" (Article 9) encourages parties to establish a single window to facilitate the submission of customs-related documentation.

Finally, this section includes an article on "Electronic payments" (Article 10). This article is still under discussion. It includes a range of provisions, from encouraging improved transparency of regulations relating to electronic payment systems to encouraging more interoperable approaches concerning these systems. Another key requirement is that parties undertaking a national treatment commitment for electronic payment services under their mode 3 General Agreement on Trade in Services schedule are expected to provide financial service suppliers of other parties with access to payment and clearing systems operated by their national public entities.[4]

Section C, on "Openness and electronic commerce," includes articles on a variety of topics. Article 12, on "Open government data," encourages the public sharing of non-confidential datasets (for example, information on social data, transportation, or geographic information) that are collected and maintained by public bodies, so that they can be leveraged to produce broader social benefits (e.g., businesses can use the data to create additional citizen-oriented services). Article 13, on "Access to and use of the Internet for electronic commerce," encourages adherence to principles that ensure that end users' access to the Internet is free from discriminatory and unfair commercial practices.

The section also includes an article on "Custom duties on electronic transmissions" (Article 11). The topic has been one of the harder issues to negotiate, and members have had to reconcile diverging positions. Some members advocated for a permanent moratorium (under which parties to the agreement would not ever impose tariffs on electronic transmissions), while others argued that decisions on a moratorium on customs duties on electronic transmissions should be dealt with at the multilateral level through the work programme and its discussion of the multilateral WTO moratorium on these customs duties. In the latest legal text, the co-conveners have proposed a landing zone. The parties would agree to a permanent moratorium, but a review provision will be included, under which, 5 years after the entry into force of the agreement, the parties will review the moratorium under the agreement periodically to understand its impacts and consider whether amendments may be needed.

The articles in Section D aim to improve trust for consumers and businesses so that they have the confidence to engage in e-commerce more freely. Parties agree to try to develop measures relating to "Online consumer protection" (Article 14) and must implement measures to limit spam (Article 15, on "Unsolicited commercial electronic messages"). Parties must also establish a legal framework for "Personal data protection" (Article 16).

[4] The General Agreement on Trade in Services mode 3 (commercial presence) provides a commitment to allow foreign service suppliers to set up offices in the host state territory so that the foreign supplier can provide services directly to the consumers.

Finally, under Article 17, on "Cybersecurity," parties must strengthen the capabilities of national entities to address cybersecurity incidents and engage in cross-border collaboration to identify and mitigate intrusions.

Section E 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 that could relate to or affect the operation of the agreement. Article 19, on "Cooperation," encourages parties to cooperate by sharing information on relevant measures, collaborating on various issues, and working together to improve the participation of underrepresented groups and micro, small, and medium-sized enterprises in using and accessing electronic commerce.

The section, importantly, also includes the article on "Development" (Article 20). Recognizing that developing countries and LDCs may not be able to implement the various provisions of the agreement right away, these parties are granted additional implementation time of 5 years and the possibility of a 2-year extension beyond that. The implementation flexibility reflects the approach in earlier WTO agreements, in which developing countries and LDC members would benefit from additional implementation time, but this additional time was of a standard period. Such an approach is different from the approach of the more recently established Trade Facilitation Agreement (TFA) and the potential Investment Facilitation for Development Agreement (IFDA), in which developing countries and LDCs have the flexibility of determining the specific additional implementation time they would need for each article individually, based on their capacity.

The development article also includes provisions relating to technical assistance and capacity building. Developed and developing countries in a position to do so agree to facilitate potential technical assistance and capacity-building support to help other developing countries and LDC parties implement relevant provisions. It is important to note that donor countries are not obliged to provide the support but only to facilitate it.

Other key provisions focus on transparency (requirements for donors and recipients to share relevant information for funding activities), grace periods from disputes, the work of the committee on matters relating to development, and requirements relating to needs assessments. Needs assessments are studies that developing countries and LDCs can undertake to understand the gap between international obligations and their domestic framework, and to determine which obligations they need additional time to implement. Given its importance, in the next section of this paper, we include a deeper analysis of the "Development" article and provide some recommendations to consider for the negotiations.

Section F features an article on "Telecommunications" (Article 21), where parties commit to principles to foster fair competition and increased interconnectivity of telecommunication service providers. A competitive telecommunications market is regarded as important for the smooth functioning of e-commerce. Parties to this agreement that have not done so already agree to the commitments contained in the WTO reference paper: *Negotiating Group on Basic Telecommunications.* Other areas of regulatory reform focus on the role of telecommunication regulatory authorities, with parties required to ensure they are impartial (e.g., financially and managerially independent from public service suppliers of telecommunication networks and services) and effective (e.g., equipped with powers to carry out their legally mandated

functions, such as the ability to impose sanctions). The article also includes requirements relating to how frequency bands are to be assigned (e.g., openly and competitively) and principles around the access to essential dispute resolution functions, including ensuring telecommunications suppliers have access to the regulatory authority to help resolve disputes with other suppliers on matters related to this agreement.

Section G clarifies the exceptions that apply to all of the rules in the treaty. It includes an exception for personal data protection (Article 25), which states that parties are allowed to adopt or maintain personal data protection or privacy measures, as long as the laws of that party also allow the transfer of some data, subject to conditions for privacy protection that apply to all such transfers. There is also an exception for Indigenous Peoples (Article 26), which clarifies that parties can put more favourable domestic measures in place for Indigenous Peoples, as long as the measures are not arbitrary, unjustified discrimination against other parties' persons, and are not used as a disguised restriction on trade.

The final section, H, covers "Institutional arrangements and final provisions," from dispute settlement to the committee's functions, among others. A significant development has occurred recently with this section; a major party has submitted a new proposal regarding the dispute settlement article. This new proposal is expected to be subject to intense discussion.

4.0 A Closer Look at Development

As of June 2024, the participation of developing countries and LDCs in the e-commerce JSI has not been as extensive as with the other recent plurilateral initiative, the IFDA.[5] While several Latin American and Asian developing countries are involved in the e-commerce negotiations, Africa's participation is limited to just nine countries[6] and, from LDCs, to five LDCs.[7] Furthermore, no developing countries and LDC participants are from the Caribbean and the Pacific islands, highlighting a significant regional disparity.

More developing countries and LDC members may not be participating in the negotiations because of limited commercial and regulatory experience, limited technical and negotiating capacity, and the priority they assign to the WTO multilateral track. However, those that are engaging in the negotiations may see it as an opportunity to signal to businesses that they are an e-commerce-friendly place to invest in and as a chance to develop their digital ecosystem aligned with the needs of the 21st century. Many participating developing countries and LDCs also view the agreement as a potential means to bridge the "digital divide," particularly through its provisions related to technical assistance and capacity building. While they recognize the value of international rules to provide transparency and predictability to e-commerce, they have also emphasized their need for policy space and capacity building so that they can pursue their development objectives in the digital era.

Participating developing countries and LDCs have made several detailed proposals in the negotiations to incorporate a strong development dimension in the outcome.[8] These proposals have three key elements:

- longer implementation periods for developing countries and LDCs;
- linking implementation of specific provisions in the final agreement with the mandatory provision of required technical assistance and capacity building to individual developing countries and LDCs; and
- providing policy space to developing countries and LDCs to selectively implement the final agreement in line with their development needs.

Article 25 in the most recent Chairs' text of the June 28, 2024 (INF/ECOM/86) agreement deals with "Development." This is the longest article in the text, attesting to both the depth and breadth of the proposals by participating developing countries and LDCs and the effort by the co-convenors to reflect those. On the other hand, many of the elements in the article

[5] For the latest list of participating countries in the e-commerce JSI negotiations, see https://www.wto.org/english/tratop_e/ecom_e/joint_statement_e.htm#participation.

[6] The nine African countries participating in the e-commerce JSI negotiations are Benin, Burkina Faso, Cameroon, Cabo Verde, Côte d'Ivoire, The Gambia, Kenya, Mauritius, and Nigeria.

[7] The five LDCs participating are Benin, Burkina Faso, The Gambia, Lao People's Democratic Republic, and Myanmar.

[8] A consolidated version of the main elements of the proposals by developing countries is in the Updated Consolidated Negotiating Text of November 15, 2023, INF/ECOM/62/Rev.5 (WTO, 2023).

are couched in general and best-endeavour language, potentially weakening their usefulness for developing countries and LDCs.

A key demand of developing countries and LDCs for longer implementation periods for specific provisions is reflected in Articles 20.6 and 20.7. In the absence of special treatment, the obligations would apply to them at the point the agreement enters into force for each country. The text proposes that each developing country and LDC can choose to implement any provision(s) over a longer implementation period of up to 5 years (instead of at the time of entry into force of the agreement). This period can be extended for another up to 2 years by notifying the committee that will be established to oversee the agreement. While this is a useful flexibility, it is interesting to note that these provisions treat developing countries and LDCs equally (LDCs are usually granted additional flexibilities over and above those for developing country members). It is also noteworthy that the agreement fixes the maximum possible period for the implementation of all the provisions in the agreement at 7 years without considering the implementation capacities of individual developing countries or LDCs, which agreements like the WTO's TFA do.

There are as many as 10 provisions in the article dealing with the importance of technical assistance and capacity building, the needs of developing countries and LDCs, and the role of the committee in transparency and the monitoring of implementation and assistance provided. In addition, Article 20.8 also encourages developed countries, and developing countries in a position to do so, to provide developing countries and LDCs with support to conduct or update needs assessments to identify gaps in capacity to implement this agreement. While useful, these provisions are not mandatory; developed countries, and developing countries in a position to do so, commit to *facilitating* the provision of technical assistance and capacity building to individual developing countries and LDCs, but they do not commit to providing that assistance directly. Even more significantly, there is no link between the provision of technical assistance and capacity building required for the implementation and application of the agreement by developing countries and LDCs. Developing countries and LDCs will have a maximum of 7 years to implement the full agreement irrespective of their capacity and whether they have received technical assistance and support to build that capacity or not.

At the same time, there is no provision in the text that allows any opt-outs to any developing country or LDC for any reason to consider their demands for policy space.

It is for developing countries and LDCs to assess and determine whether the current development provisions in the text meet their demands and needs. As they do so, they may want to consider the following:

1. Whether extended implementation periods could be different for developing countries and LDCs. For example, the extended implementation periods for LDCs can be twice as long as for developing countries. This flexibility will allow for a more tailored approach to the unique circumstances of LDCs and ensure that their specific needs are considered.
2. Whether implementation periods for specific provisions should be explicitly linked with the capacities of individual developing countries and LDCs (as has been done

under the TFA and the IFDA). This can be based on the needs assessments for which the resources should be made available to individual developing countries and LDCs.

3. Whether the implementation of specific provisions by individual developing countries and LDCs should be linked to the mandatory provision of the required capacity-building assistance—again as has been done under the TFA and IFDA and as demanded by developing countries and LDCs throughout the negotiations.

5.0 What Can We Expect Next?

The co-conveners hope to announce the completion of the technical negotiations and the adoption of legal text following the (European) summer of 2024. For that to happen, the 90 JSI participants will need to agree on the last remaining issues in the text.

5.1 The Legal Architecture Issue

Following the adoption of legal text, attention is likely to shift to the issue of legal architecture, in other words, whether this agreement is incorporated and, if it is, where its incorporation appears in the WTO treaty framework. The main hurdle is that the parties to this agreement must secure agreement by consensus from the membership that this plurilateral agreement can be integrated into the WTO's treaty framework.

Judging by the experience of the IFDA JSI, getting this consensus will be far from easy. The parties of the IFDA finalized their legal text in July 2023 and have been trying since then to secure approval to integrate the document as a new stand-alone agreement within the WTO framework.[9] Their efforts were recently rebuffed at the Thirteenth Ministerial Conference (held in Abu Dhabi, United Arab Emirates, in February 2024), where India and South Africa filed a formal objection against a decision to include the agreement in the WTO framework during the ministerial (Uppal & Farge, 2024).

The two countries have long opposed these plurilateral initiatives (WTO, 2021), and some others share their concerns. Those with concerns question whether these new plurilateral initiatives have a legal basis to be negotiated at the WTO, given that they were started without a multilateral mandate. They also argue that agreeing to integrate the stand-alone agreements will open the door for the WTO to increasingly prioritize plurilateral negotiations. Doing so will, they fear, not only shift limited resources and attention away from finalizing the multilateral Doha development agenda, but it will also weaken the voice of developing countries. They argue that in plurilateral negotiations, their voices will not matter as much as they would have otherwise in multilaterally focused negotiations and that the new negotiations will increasingly prioritize and serve the needs and interests of the richer countries.

Those in favour of incorporating the agreement, and other plurilaterals, into the WTO framework argue for the importance of injecting more flexibility within the WTO system so that it can remain relevant and serve the needs of a modernizing economy. JSI proponents argue that they did not need a multilateral mandate to start negotiations on new topics at the WTO.[10] They also argue that these plurilateral agreements can better serve developing countries' interests by creating agreements tailor-made for their priorities. Finally, they note that while it is critical for the multilateral consensus function to be safeguarded, this function

[9] For an in-depth understanding of the IFDA and how the legal architecture discussion has evolved in regard to it, see Jose, 2024.

[10] To understand the debate on whether the WTO has a legal mandate to discuss the JSIs and their broader systemic implications, see Ungphakorn, 2024, and Kelsey, 2022.

should no longer be used to hold the organization's negotiating function hostage, preventing it from modernizing and creating more up-to-date agreements that serve the modernized world.

Beyond having to overcome the intractability of the above political and legal debates, the e-commerce initiative also faces some additional hurdles that may make securing consensus challenging, even when compared to the IFDA initiative.

The first hurdle is the lower participation of developing and LDC parties. More WTO members participate in the IFDA and, by extension, endorse its outcome (as of May 2024, participation in the IFDA includes more than 125 members representing more than three quarters of the membership). Many of these members are developing and LDC parties. Therefore, proponents of the IFDA can use the argument that the initiative is broadly supported and that blocking the agreement is stalling an agreement largely favoured by developing and LDC parties. In comparison, e-commerce has fewer participants, including fewer developing and LDC parties. This limited participation makes it more difficult to argue against the inclusivity-related concerns raised against plurilateral initiatives.

Another factor that differentiates the e-commerce JSI from the IFDA is that the parties to the e-commerce agreement have indicated that they are likely to apply the benefits of the agreement on a "closed most-favoured-nation (MFN)" basis. This means that the obligations of the agreement will apply only to those who are parties to the agreement and that only they will be able to enjoy the rights and benefits that come with the agreement. Non-parties to the agreement will not have access to the benefits of the agreement nor the rights (most importantly, to enforce their access to those benefits) established by the agreement. This is different from the IFDA. There, the parties have indicated that the agreement will be applied on a somewhat "open MFN" basis. Under this system, non-parties will be able to access the agreement's benefits (facilitated investment procedures) without having to take on any obligations regarding the agreement, but they will not have access to the rights of the agreement (i.e., the right to enforce their access to the benefits of the agreement). The open MFN model makes sense for an agreement like the IFDA. The nature of the rules, which focus on transparency and administrative improvements, can only be implemented in a generalized manner, making it hard to provide the benefit of those streamlined procedures only to some investors (of parties to the IFDA) and not to others (of non-parties to the IFDA). The open MFN characteristic allows IFDA proponents to argue that the agreement's incorporation into the WTO framework has upsides only for other members, as non-parties can access benefits without having to take on obligations. The e-commerce JSI cannot make such an argument.

5.2 A Future Round of Negotiations

In the current draft of the legal text, the parties have included a review article (Article 35), which states that no later than 2 years after the entry into force of this agreement, the parties may conduct new negotiations to establish additional global rules on e-commerce. In this new round, parties may reconsider some of the issues raised in the earlier phases of negotiating this e-commerce agreement (e.g., potentially bringing back negotiations on the data governance articles). They may also use the opportunity to discuss other issues not previously raised. Furthermore, parties may use the new round to introduce amendments to this agreement.

6.0 Conclusion

The e-commerce JSI has overcome technical and political challenges over 5 years of negotiation and appears close to producing a final draft text. Its relationship with multilateral discussions on contentious issues (in particular, the e-commerce moratorium) makes it an interesting example of tactical forum choice in rule-making. On the issue of legal architecture, the JSI is running into the same political challenges as its forerunner on investment facilitation, but it is differently placed in that debate. It is not yet clear how the difficult political and legal debates that remain will play out—whether parties will move beyond their seemingly intractable positions and whether the differentiating factors between the IFDA and the e-commerce JSIs will matter at all.

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Appendix A. World Trade Organization Electronic Commerce Negotiations: Stocktake text

Table A1. *World Trade Organization electronic commerce negotiations: Stocktake text – August 2020* (INF/ECOM/57)

Section	Sub-section	n	Topic
Section A: Enabling electronic commerce	A.1. Facilitating electronic transactions	1	Electronic transaction frameworks
		2	Electronic authentication and e-signatures
		3	Electronic contracts
		4	Electronic invoicing
		5	Electronic payment services
	A.2. Digital trade facilitation and logistics	6	Paperless trading
		7	Electronic transferable records
		8	De minimis
		9	Customs procedures
		10	Improvements to trade policies
		11	Single windows data exchange and system interoperability
		12	Logistics services
		13	Enhanced trade facilitation
		14	Use of technology for the release and clearance of goods
		15	Provision of trade facilitating and supportive services

Section	Sub-section	n	Topic
Section B: Openness and electronic commerce	B.1. Non-discrimination and liability	16	Non-discriminatory treatment of digital products
		17	Interactive computer services (limiting liability)
		18	Interactive computer services (infringement)
	B.2. Flow of information	19	Cross-border transfer of information by electronic means/ cross-border data flows
		20	Location of computing facilities
		21	Location of financial computing facilities for covered financial service suppliers
	B.3. Customs duties on electronic transmissions	22	Customs duties on electronic transmissions
	B.4. Access to Internet and data	23	Open government data
		24	Open Internet access
		25	Access to and use of interactive computer services
		26	Competition
Section C: Trust and electronic commerce	C.1. Consumer protection	27	Online consumer protection
		28	Unsolicited commercial electronic messages
	C.2. Privacy	29	Personal information protection/ personal data protection
	C.3. Business trust	30	Source code
		31	Information and communications technology products that use cryptography

Section	Sub-section	n	Topic
Section D: Cross-cutting issues	D.1. Transparency, domestic regulation and cooperation	32	Transparency
		33	Electronic availability for trade-related information
		34	Domestic regulation
		35	Cooperation
		36	Cooperation mechanism
	D.2. Cybersecurity	37	Cybersecurity
	D.3. Capacity building	38	Options for capacity building and technical assistance
Section E: Telecommunications	E.1. Updating the WTO reference paper on telecommunications services	39	Scope
		40	Definitions
		41	Competitive safeguards
		42	Interconnection
		43	Universal service
		44	Licensing and authorization
		45	Telecommunications regulatory authority
		46	Allocation and use of scarce resources
		47	Essential facilities
		48	Resolution of disputes
		49	Transparency
	E.2. Network equipment and products	50	Electronic commerce-related network equipment and product
Section F: Market access	Market access	51	Services market access
		52	Temporary entry and sojourn of electronic commerce-related personnel
		53	Goods market access

Section	Sub-section	n	Topic
Annex 1: Scope and general provisions	Scope and general provisions	54	Preamble
		55	Definitions
		56	Principles
		57	Scope
		58	Relation to other agreements
		59	General exceptions
		60	Security exception
		61	Prudential measures
		62	Taxation
		63	Dispute settlement
		64	Committee on trade-related aspects of electronic commerce

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