

E-commerce in the World Trade Organization: History and latest developments in the negotiations under the Joint Statement

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Presentation Overview

- Trade-Related Aspects of E-Commerce Captured in WTO agreements
- Tracking E-commerce in the WTO from the Work Programme (1998) to the Joint Statement (2017)
- The E-commerce Joint statements from the exploratory phase to the negotiation phase
- Negotiations State of Play
- Challenges on the road to MC12 (and beyond?)

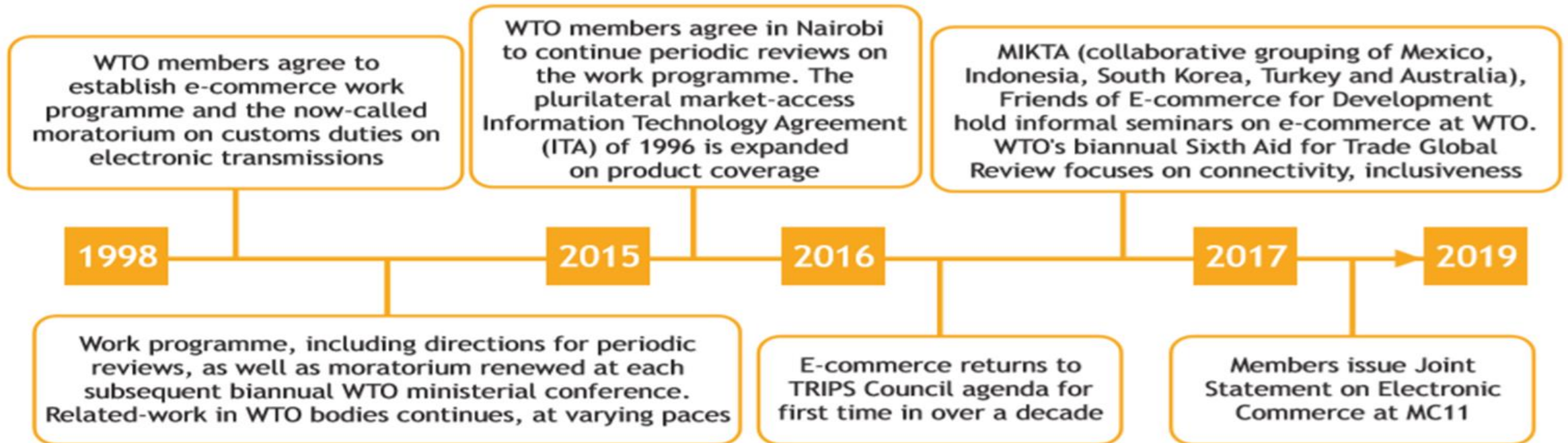
| | Layer component | Relevant WTO trade regulation |
|----------------|---------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| Content | Goods | GATT, TFA, ITA |
| | Entertainment Books, films, music, games, television | TRIPS |
| | Telecommunications Access to networks, email, VoIP, etc. | GATS Annex on Telecommunications and Agreement on Basic Telecommunications |
| | Retail and supply chain management Online platforms, websites | GATT, TFA |
| | Financial services Payments and other financial transactions | GATS Annex on Financial Services |
| | Other Social media, data storage and processing, cloud computing, etc. | TRIPS, GATT, TFA, ITA |
| Technical | Domain names | TRIPS, TBT |
| | IP addresses | |
| | Software | |
| | Internet Protocols (TCP/IP) | |
| Infrastructure | Undersea and terrestrial cables | TBT, GATT, ITA, GATS Annex on Telecommunications and Agreement on Basic Telecommunications |
| | Satellite and wireless networks | |
| | Internet exchange points | |
| | Devices (computers, smartphones, etc.) | |

Trade-Related Aspects of E-Commerce Captured in WTO agreements

Source: López González & Ferencz, in OECD, 2018, p. 14.

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Tracking E-commerce in the WTO from the Work Programme (1998) to the Joint Statement (2017)



Source: ICTSD, 2018.

Tracking E-commerce in the WTO from the Work Programme (1998) to the Joint Statement (2017) – Cont.

Electronic Commerce issues discussed from 1998–2015

| The Issue | Council on Trade in Services | Council on Trade in Goods | Committee on Trade and Development | Council on TRIPS |
|--------------------------------------------------------------------------------------|------------------------------|---------------------------|------------------------------------|------------------|
| Classification | X | X | X | |
| Transparency | X | | | |
| Domestic regulation | X | | | |
| Competition | X | | | |
| Customs duties | X | X | | |
| Interests of developing countries (access to technology/ capacity building ... etc.) | X | X | | |
| Consumer/privacy protection | X | | | |
| SMEs and MSMEs | | | x | |
| Market access | X | X | | |
| infrastructure | X | | X | |
| Intellectual property and copyright | | | | X |

Electronic Commerce issues discussed from 2015-2017

| The issue | Council on Trade in Services | Council on Trade in Goods | Committee on Trade and Development | Council on TRIPS |
|------------------------------------------------------------------------------------------|------------------------------|---------------------------|------------------------------------|------------------|
| Transparency and domestic regulations | X | | | |
| Flow of Information: Information flows and localization requirements | X | | | |
| Personal information protection and privacy | X | | | |
| Customs duties on electronic transmissions | X | | | |
| Facilitating e-commerce transactions: Electronic signatures, payments and authentication | X | | | X |
| Cooperation and interests of developing countries, LDCs and SMEs | X | X | X | X |
| Infrastructure and connectivity (Internet and data access) | X | X | X | |
| Market access (for digital goods and services) | X | | | |
| Business trust and copyright | | | | X |
| Consumer protection | X | | | |
| Non-discrimination of digital products | | X | | |

Source: Garcia-Israel & Grollier, CUTS International 2019, (amended by the author)

The E-commerce Joint statements from the exploratory phase to the negotiation phase

- 1st JSI WTO's December 2017 Buenos Aires Ministerial Conference: the joint initiative for exploratory talks on the potential negotiation of trade rules on electronic commerce - 71 Members. Total of 9 meetings were held.
- 2nd JSI Davos January 2019: An expanded version of that group 76 Members - announcing the intention to begin negotiations, based on the existing agreements of the WTO. It also invited more Members to join the JSI process, while acknowledging that the challenges associated with e-commerce are different for developing countries and LDCs.

Process is lead by: Australia – Japan and Singapore

- Until now and after Davos meeting in January 2020: Benin, Saudi Arabia, Kenya, Côte d'Ivoire, Cameroon, Indonesia and Philippines bringing its **total membership to 83**.

The following can be observed regarding the current Membership composition:

It includes all developed countries.

Only three LDCs joined the JSI. These are: Benin, Lao PDR and Myanmar.

Five WTO Members from Africa are co-sponsors of the JSI (Benin, Nigeria, Côte d'Ivoire, Kenya and Cameroon).

WTO Members from other regions, such as the Caribbean and the developing Pacific Island countries, are not part of the joint statement.

Negotiations State of Play

- 6 negotiating rounds (From March to November 2019) / 6 Focus Groups / handling (around) 15 categories of issues. Not all focus groups meet each negotiating round.

- Davos informal meeting 24 Jan. 2020 – 83 Members agreed to proceed with streamlining text proposals and working on a negotiating proposal for MC12 / Negotiating rounds to pick up again on monthly basis starting February.

| 6 Focus Groups | 15 Category of issues covered (sub-issues in the Negotiating Brief) |
|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Enabling e-commerce | Facilitating e-transactions-digital trade facilitation and logistics – customs duties |
| Openness and e-commerce | Non-discrimination (of digital products) and Liability – Flow of Information/Data – Access to internet and data (government data – platforms and competition issues..) |
| Trust and e-commerce | Consumer protection – Personal Information protection and privacy – Business Trust |
| Cross-cutting issues | Transparency , Domestic Regulation and Cooperation – Cybersecurity – Capacity building - legal issues |
| Telecommunications | Telecommunications reference paper and e-commerce related network equipment and products |
| Market Access | Services and goods market-access |

Challenges on the road to MC12

- **The scope and Coverage:** wide scope – multi-layered – very problematic issues like “data” (Osaka track/declaration), many of the issues are subject to discussions under other fora.
- **The definitions :** e-commerce – e-commerce vs. digital trade... others.
- **Transparency of the process :** Restricted access to text proposals – negotiating reports - agenda
- **The legal architecture of the outcome:** Multilateral/plurilateral – relation with existing agreements and related commitments
- **The digital divide and the development-related aspects (session 2)**

Issues related to developing countries, LDCs and MSMEs are discussed across each of the focus groups and category of issues.

A key repeated challenge is the need to understand the implications of regulation for developing countries/LDCs and MSMEs (Not only key players in their economic development but also in addressing the gender gap and social inclusion issues)

Thank you for your attention...
