



Note

Electronic Commerce Joint Statement: Issues in the Discussion Phase

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Summary

At the 11th Ministerial Conference in Buenos Aires on 13 December 2017, 71 members signed a joint statement announcing their objective of “advancing electronic commerce work in the WTO” as a group. During the year 2018, members hold several meetings to initiate exploratory discussions towards future WTO negotiations on trade-related aspects of electronic commerce. This note provides an overview of the meetings and proposals tabled during this discussion phase. Issues covered during the ensuing negotiation phase are examined in another note available at <http://bit.ly/2MB9ZOe>.

Introduction

The first Joint Statement on Electronic Commerce was released at the 11th Ministerial Conference in Buenos Aires on 13 December 2017. The 71 signatory members to the first joint statement announced their objective of “advancing electronic commerce work in the WTO” as a group, and hosting an initial meeting in early 2018, open to all member countries.¹ The intention of the meetings held in 2018 was to “initiate exploratory work together toward future WTO negotiations on trade-related aspects of electronic commerce.”² This note provides an overview of the meetings and proposals tabled during this discussion phase.³

Following this process, a later joint statement of 25 January 2019 expressed the participating members’ intention to begin electronic commerce negotiations at the WTO, based on “existing WTO agreements and frameworks.”⁴ The document elaborated that the members hoped to include “as many WTO Members as possible,”⁵ while acknowledging that developing countries and LDCs faced different challenges associated with electronic commerce.

Membership

Number of members: 77 as of 29 March 2019

LDC members: Benin, Lao People’s Democratic Republic, and Myanmar

Number of Meetings: 12

Table 1: Least-developed countries in the Joint Statement on Electronic Commerce

LDCs in the Joint Statement on Electronic Commerce
Benin ⁶ , Cambodia (withdrew; only present in 2017 statement), Lao People's Democratic Republic, Myanmar

¹ Joint Statement on Electronic Commerce 2017

² Joint Statement on Electronic Commerce 2017

³ Issues covered during the ensuing negotiation phase are examined in another note available at <http://bit.ly/2MB9Z0e>

⁴ Joint Statement on Electronic Commerce 2019

⁵ Joint Statement on Electronic Commerce 2019

⁶ Joined on 29 March 2019 (INF/ECOM/18)

Table 2: Developing Countries⁷ and LDCs⁸ in the E-commerce Joint Statement (by region)

Asia	Africa	Central America and Mexico	South America
Bahrain	Benin*	Costa Rica	Argentina
Brunei Darussalam	Nigeria	El Salvador	Brazil
China		Honduras	Chile
Hong Kong		Mexico	Colombia
United Arab Emirates		Nicaragua	Paraguay
Israel		Panama	Peru
Kuwait			Uruguay
Lao People's Democratic Republic*			
Malaysia			
Mongolia			
Myanmar*			
Qatar			
Republic of Korea			
Singapore			
Taiwan			
Thailand			
Turkey			

Table 3: Emerging Economies⁹ in the E-commerce Joint-Statement

G20 Members
Argentina, Brazil, China, Mexico, Turkey

⁷ Country classifications based on UN 2014 country tables:

https://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf

⁸ (*) indicates LDC status

⁹ Proxy for "emerging economies" is the developing countries in the G20 (<http://q20.org.tr/about-q20/q20-members/>)

Table 4. Economies in Transition Not Present in the E-commerce Joint Statement

Economies in Transition Not Present in Joint Statement ¹⁰
Armenia, Kyrgyzstan, Republic of Moldova, Tajikistan

Topics covered in the Discussion Phase

Timeline and Themes of 2018 Meetings¹¹

14 March 2018: First meeting, discussion about expectations and approaches

18 April 2018: Second meeting, ten proposals submitted for issues to add to framework

23 May 2018: Third meeting, discussion of the proposals that had been submitted

18 June 2018: Fourth meeting, further discussion of proposals

17 July 2018: Fifth meeting, further discussion of proposals

27 September 2018: Sixth meeting, further discussion of proposals

31 October 2018: Seventh meeting, further discussion of proposals

28 November 2018: Eighth meeting, further discussion of proposals

18 December 2018: Ninth meeting, further discussion of proposals

Key issues in the discussion phase

During the discussion phase in 2018, proposals for issues to be added to the framework were tabled by both developing countries (e.g. Argentina, Brazil, Colombia, Costa Rica, Singapore) and developed countries (e.g. Australia, Canada, European Union, Japan, New Zealand, United States).

The tables in the below annex provide an overview of the topics covered and approach adopted by different proposals, from different country categories. The issues covered are categorised as follows: (i) Infrastructure for Electronic Trade; (ii) Open trading environment/trade facilitation; (iii) Electronic Payments and Paperless trading; (iv) Customs Duties; (v) Domestic Regulations; (vi) Intellectual Property and Source Code; (vii) Privacy Protection; (viii) Online Security; (ix) Data Localisation; (x) Developing Countries and LDCs' interests; (xi) Inclusion, i.e. MSMEs and women; and (xii) Past Agreements.

¹⁰ Country classifications based on UN 2014 country tables:

https://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf

¹¹ http://www.meti.go.jp/english/press/2018/0315_002.html Japanese Ministry for Economy, Trade, and Industry

Annex: Tables of Proposals from the Discussion Phase

Table 1. Proposals from Developing Countries

	Argentina ¹²	Brazil ¹³	Colombia ¹⁴	Costa Rica ¹⁵	Singapore ¹⁶
Infrastructure for Electronic Trade	<ul style="list-style-type: none"> • Agenda should include commitments to infrastructure for online goods and services. 	<ul style="list-style-type: none"> • Reduce tariffs of goods related to digital infrastructure. 	<ul style="list-style-type: none"> • Agenda should include commitments to infrastructure for online goods and services. 	<ul style="list-style-type: none"> • Agenda should include commitments to infrastructure for online goods and services. 	<ul style="list-style-type: none"> • Infrastructure development should be promoted in services sector
Open trading environment/trade facilitation		<ul style="list-style-type: none"> • Open and free internet for businesses. • Transparent domestic policies are essential for international trade participation • No discrimination of data packages based on origin, destination, or content 	<ul style="list-style-type: none"> • The agenda should include trade in goods access issues. 	<ul style="list-style-type: none"> • The agenda should include trade in goods access issues. 	<ul style="list-style-type: none"> • Single window provisions • Trade administration documents should be publicly available • Elimination of tariffs on products
Electronic Payments and Paperless trading		<ul style="list-style-type: none"> • Electronic contracts and signatures should be given the same legal validity as paper documents. 			<ul style="list-style-type: none"> • Paperless trading is vital for trade facilitation • Domestic laws should be in place regarding recognition of electronic signatures and authentication

¹² JOB/GC/174

¹³ JOB/GC/176, 200/Rev.1, 203

¹⁴ JOB/GC/174

¹⁵ JOB/GC/174

¹⁶ JOB/GC/179

	Argentina ¹²	Brazil ¹³	Colombia ¹⁴	Costa Rica ¹⁵	Singapore ¹⁶
Customs Duties		<ul style="list-style-type: none"> • Customs duties moratorium extension should be discussed carefully 			<ul style="list-style-type: none"> • Customs duties moratorium should be made permanent
Domestic Regulations		<ul style="list-style-type: none"> • Transparent domestic policies are essential for international trade participation • Members should still be able to regulate within their countries as their public policy dictates. • Domestic frameworks must support electronic payment systems. 			
Intellectual Property and Source Code		<ul style="list-style-type: none"> • Access to source code and cyberspace trade barriers should be discussed 			
Privacy Protection	<ul style="list-style-type: none"> • Members should regulate to ensure privacy protection and confidentiality 	<ul style="list-style-type: none"> • Privacy of consumers and medical patients should be discussed • No unsolicited electronic messages from commercial enterprises 	<ul style="list-style-type: none"> • Members should regulate to ensure privacy protection and confidentiality 	<ul style="list-style-type: none"> • Members should regulate to ensure privacy protection and confidentiality 	<ul style="list-style-type: none"> • Measures against SPAM • International collaboration of consumer protection agencies • Form personal information protection frameworks
Online Security		<ul style="list-style-type: none"> • Measures should be taken for consumer protection and cybersecurity, terrorism, pedophilia and other crimes • Consider human rights to expression and non-discrimination • Disinformation issues 			<ul style="list-style-type: none"> • Build cybersecurity proficiencies and advance collaboration • Protect consumers from deceptive commercial activity

	Argentina ¹²	Brazil ¹³	Colombia ¹⁴	Costa Rica ¹⁵	Singapore ¹⁶
Data Localisation					
Developing Countries and LDCs' interests		<ul style="list-style-type: none"> • Discussion of challenges that businesses in developing countries face 	<ul style="list-style-type: none"> • “Promoting connectivity and bridging the digital divide” is especially important for the interests of LDCs 	<ul style="list-style-type: none"> • “Promoting connectivity and bridging the digital divide” is especially important for the interests of LDCs. 	<ul style="list-style-type: none"> • E-commerce has a great deal of potential for developing countries' economies • Relevant issues for developing countries and LDCs: trade facilitation, infrastructure gaps, payment solutions access, online security
Inclusion (MSMEs and women)		<ul style="list-style-type: none"> • Women's participation in e-commerce should be promoted. • Addressing challenges of MSMEs should be part of a WTO outcome. 	<ul style="list-style-type: none"> • Businesses of all sizes should have access to e-commerce opportunities 	<ul style="list-style-type: none"> • Businesses of all sizes should have access to e-commerce opportunities 	<ul style="list-style-type: none"> • E-commerce can be used to provide opportunities for MSMEs
Past Agreements		<ul style="list-style-type: none"> • separation should be made between 1990s agreements and current ones to avoid conflict 			

Table 2. Proposals from Developed Countries

	Australia ¹⁷	Canada ¹⁸	European Union ¹⁹	Japan ²⁰	New Zealand ²¹	United States ²²
Infrastructure for electronic trade		<ul style="list-style-type: none"> • Businesses' access to financial services and payments solutions 		<ul style="list-style-type: none"> • Infrastructure for the digital economy should be created/supported 		
Open trading environment/trade facilitation	<ul style="list-style-type: none"> • Transparency and easy access to trade information <p>A single window to improve customs efficiency</p>	<ul style="list-style-type: none"> • Information and communication technology should be tariff-free to encourage international competition in markets 	<ul style="list-style-type: none"> • Prior authorization requirement (permits, licenses, etc.) should not exclusively target electronic services <p>Open internet access should be maintained</p>	<ul style="list-style-type: none"> • Internet should remain free and open • Public/open data and government statistics should be accessible internationally and in usable form • Encryption technology constitutes a barrier to foreign entry in markets • Standardization of regulatory frameworks across borders 		<ul style="list-style-type: none"> • Free flow of information is needed • Fair treatment of digital products • No requirements for the use of national technologies • Intermediaries should not be held liable for Non-IP content • If members choose to make government data available, it should be in an open and usable format

¹⁷ JOB/GC/199

¹⁸ JOB/GC/189

¹⁹ JOB/GC/188, 194

²⁰ JOB/GC/177, 180

²¹ JOB/GC/175

²² JOB/GC/178

	Australia ¹⁷	Canada ¹⁸	European Union ¹⁹	Japan ²⁰	New Zealand ²¹	United States ²²
Electronic Payments and Paperless trading	<ul style="list-style-type: none"> • Paperless trading commitments • Electronic documents will be accepted as legally equivalent to paper 		<ul style="list-style-type: none"> • Electronic contracts should be legally accepted • Electronic signatures should carry the same legal effect as paper signatures • electronic time stamps, electronic registered delivery services, and website authentication should also not be denied legal effect 	<ul style="list-style-type: none"> • Ensure that online paying solutions (credit cards, mobile wallets, etc.) are reliable • Electronic signatures should be given legal validity • Trade administration documents should be electronically available to the public • Legal acceptance of electronic trade administration documents 	<ul style="list-style-type: none"> • Paperless trading should be included as a trade facilitation provision <p>Electronic signature recognition</p>	<ul style="list-style-type: none"> • Electronic signatures should not be denied legal validity
Customs Duties	<ul style="list-style-type: none"> • De minimis threshold for customs duties 	<ul style="list-style-type: none"> • Customs duties should not be imposed 	<ul style="list-style-type: none"> • Customs duties should not be imposed on electronic transmissions • Current moratorium should become permanent 	<ul style="list-style-type: none"> • No customs duties on electronic transmissions between members 	<ul style="list-style-type: none"> • Current moratorium should be extended 	<ul style="list-style-type: none"> • Implementation of a de minimis exemption of customs duties on digital products • Members should not have customs duties on electronic transmissions
Domestic Regulations	<ul style="list-style-type: none"> • Australia makes their e-commerce commitments publicly available 	<ul style="list-style-type: none"> • Customs duty prohibition should not prevent members from having internal fees on electronic transmissions 	<ul style="list-style-type: none"> • Members should have domestic frameworks regarding legality of electronic signatures and protection against 	<ul style="list-style-type: none"> • Domestic regulations should create frameworks for ensuring reliability of payments online • Transparency in domestic regulations is vital, members should 	<ul style="list-style-type: none"> • Ensure “no major differences in regulatory approach”²³ 	

²³ JOB/GC/175

	Australia ¹⁷	Canada ¹⁸	European Union ¹⁹	Japan ²⁰	New Zealand ²¹	United States ²²
			fraudulent business activities	report their rules by the time the rules are into force <ul style="list-style-type: none"> Digital products should not receive discriminatory treatment 		
Intellectual Property and Source Code				<ul style="list-style-type: none"> Ensure protection of intellectual property Protect innovation in encryption, “trade secrets, source code, and proprietary algorithms”²⁴ “No member shall require the transfer of, or access to, source code of software” or algorithms within source code Product manufacturers or suppliers should not be required to “transfer or provide access to a particular technology or production process” except in cases of investigation or supervision in financial institutions²⁵ 		<ul style="list-style-type: none"> Protection of proprietary information to provide incentives for innovation and investment Transfer of or access to source code should not be required except in cases of investigation, enforcement, or judicial proceedings Prohibit forced transfer of technology <p>Enforce copyright laws</p>
Privacy and Consumer Protection			<ul style="list-style-type: none"> Establish “electronic authentication and trust services”²⁶ 	<ul style="list-style-type: none"> “due process in government access to privacy”²⁸ 	<ul style="list-style-type: none"> Personal information of all users should be 	<ul style="list-style-type: none"> Encryption should be used as a tool for privacy and its

²⁴ JOB/GC/180
²⁵ INF/ECOM/20
²⁶ JOB/GC/188
²⁸ JOB/GC/177

	Australia ¹⁷	Canada ¹⁸	European Union ¹⁹	Japan ²⁰	New Zealand ²¹	United States ²²
			<ul style="list-style-type: none"> • Protect consumers against “unsolicited commercial electronic messages”²⁷ and give access to redress • Members should implement any personal data protection mechanisms that they deem necessary 	<ul style="list-style-type: none"> • Members should create legal framework for the protection for consumers online, especially against SPAM • Members should make available their privacy protection information 	<p>protected by legal frameworks</p> <ul style="list-style-type: none"> • Take measures to address SPAM 	<p>use should not be restricted</p> <ul style="list-style-type: none"> • Members should implement and publish information regarding personal information protection measures
Online Security			<ul style="list-style-type: none"> • Measures protecting consumers from false commercial activities • Trust services include stamping electronic documents with date and time • Authorities should cooperate across borders to fight “illegal commercial practices”²⁹ 	<ul style="list-style-type: none"> • Members should implement consumer protection laws • Cooperation among members for cybersecurity is needed 	<ul style="list-style-type: none"> • Members should implement regulations against deceptive business conduct that harms consumers • Online protection should be equivalent to other existing consumer protections 	<ul style="list-style-type: none"> • Governments should build “a risk-based approach to mitigating threats” while avoiding trade distortions³⁰
Data Localization				<ul style="list-style-type: none"> • No imposition of mandatory server location requirements 		

²⁷ JOB/GC/188

²⁹ JOB/GC/188

³⁰ JOB/GC/178

	Australia ¹⁷	Canada ¹⁸	European Union ¹⁹	Japan ²⁰	New Zealand ²¹	United States ²²
				<p>(this constitutes a barrier to entry)</p> <ul style="list-style-type: none"> No requirement for location of computing facilities, but exceptions for public policy purposes may be made 		
Developing Countries and LDCs' interests				<ul style="list-style-type: none"> increase participation of developing countries in value chains globally Aid for trade and technical assistance 	<ul style="list-style-type: none"> Electronic signatures are important for promoting developing countries' and LDCs' e-commerce participation 	
Inclusion (MSMEs and women)			<ul style="list-style-type: none"> WTO rules for electronic contracts would help MSMEs 	<ul style="list-style-type: none"> MSMEs' participation in global trade should be advanced Members should cooperate in advancing opportunities for small and medium-sized enterprises 		<ul style="list-style-type: none"> Customs duties exemption will help small and medium businesses to export
Past Agreements				<ul style="list-style-type: none"> Existing WTO commitments should be made "more relevant to the digital economy"³¹ 	<ul style="list-style-type: none"> Clarification of WTO existing rules 	

³¹ JOB/GC/177

Table 3. Proposals from Other Countries

	Chinese Taipei ³²	Russia ³³	Ukraine ³⁴
Infrastructure for electronic trade			<ul style="list-style-type: none"> • There exists a gap in infrastructure that should be addressed
Open trading Environment/Trade Facilitation			<ul style="list-style-type: none"> • There should be public open data available to facilitate e-commerce • Develop portals with open data
Electronic Payments and Paperless trading		<ul style="list-style-type: none"> • Paperless trading should be facilitated • Electronic payments must be made secure 	<ul style="list-style-type: none"> • Future e-commerce growth depends on recognition of electronic contracts and authentication • Paperless trade should be promoted as it will lower costs and time spent
Customs Duties		<ul style="list-style-type: none"> • Imposition of customs duties should be clarified 	<ul style="list-style-type: none"> • Current moratorium should be made permanent
Domestic Regulations	<ul style="list-style-type: none"> • Members should not implement policy that interferes with cross-border information transmission • In the case of cross-border transmission of information regulations, they should be minimal, non-discriminatory, and transparent 		<ul style="list-style-type: none"> • A permanent moratorium should not affect Members' ability to put in place domestic fees or taxes
Intellectual Property and Source Code			<ul style="list-style-type: none"> • Increase transparency regarding copyright issues • Trade secrets, source codes, and proprietary algorithms should not be disclosed
Privacy protection		<ul style="list-style-type: none"> • Protect consumers' rights, including right to reliable information 	<ul style="list-style-type: none"> • "Spam must be clearly identifiable"³⁵

³² JOB/GC/182

³³ JOB/GC/181, 190

³⁴ JOB/GC/198

³⁵ JOB/GC/198

		<ul style="list-style-type: none"> • SPAM protection 	<ul style="list-style-type: none"> • Consumers must be able to opt-out from spam messages
Online Security			<ul style="list-style-type: none"> • Trust services should be provided to ensure confidence in e-commerce • Cooperation in cybersecurity issues
Data Localization			
Developing Countries and LDCs' interests			<ul style="list-style-type: none"> • Infrastructure gaps can pose a barrier to these countries
Inclusion (MSMEs and women)			
Past Agreements		<ul style="list-style-type: none"> • Clarification of issues within existing frameworks such as "rules of origin, import licensing, certification, labelling, SPS measures"³⁶ 	

³⁶ JOB/GC/181



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