

The Evolving Context and Dynamics of the WTO Joint Initiative on E-commerce

The fifth-year stocktake and prospects for 2023

March 2023

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Abstract

This brief provides a state of play of the Joint Statement Initiative (JSI) on Electronic Commerce as of December 2022, focusing on developments in its fifth year, 2022, while situating it in the evolving e-commerce governance landscape at the national, regional, and multilateral levels.

At the national level, reports on increased policy activity related to e-commerce have warned against increased fragmentation. Regionally, Digital Economy Agreements emerged as more flexible arrangements that may be more suitable for capturing technological trends and innovations impacting e-commerce, such as artificial intelligence. At the multilateral level, and in the aftermath of COVID-19, bridging the digital divide became the core objective for discussions on reinventing the WTO Work Programme on Electronic Commerce.

Recent literature on e-commerce and global trends of e-commerce governance, the dynamics of the JSI negotiations in 2022, and the changes in the updated consolidated negotiating text circulated by the JSI co-conveners on December 22, 2022, point to the likelihood of JSI participants opting for a less ambitious agreement focusing on the lower-hanging fruit of e-commerce facilitation by the 13th Ministerial Conference while leaving contentious market access focus issues to potentially dealing with them later.

Note: This brief represents a substantive update of two earlier publications covering developments in the WTO JSI negotiations in 2021¹ and 2020.²

¹ See Ismail, 2021.

² See Ismail, 2020.

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List of Abbreviations

AI	artificial intelligence
ASEAN	Association of Southeast Asian Nations
CPTPP	Comprehensive and Progressive Agreement for Transpacific Partnership
DEA	Digital Economy Agreement
DEPA	Digital Economy Partnership Agreement
DPA	Digital Policy Alert
e-commerce	electronic commerce
EU	European Union
GTA	Global Trade Alert
ICT	information and communication technology
JSI	Joint Statement Initiative
LDC	least developed country
MC	Ministerial Conference
RCEP	Regional Comprehensive Economic Partnership
RTA	Regional Trade Agreement
SADEA	Singapore-Australia Digital Economy Agreement
UKSDEA	United Kingdom–Singapore Digital Economy Agreement
USMCA	US–Mexico–Canada Agreement
WTO	World Trade Organization
WP	Work Programme

1.0 Introduction

In December 2022, the Joint Statement Initiative (JSI) on electronic commerce³ (e-commerce) entered its sixth year since the launch of exploratory work among a group of 71 World Trade Organization (WTO) members announced at the Eleventh Ministerial Conference (MC11) in Buenos Aires (WTO, 2017). But the end of January 2023 represents the beginning of the fourth negotiating year of the WTO JSI on e-commerce to “achieve a high standard outcome that builds on existing WTO agreements and frameworks with the participation of as many WTO Members as possible” (WTO, 2019). As of December 2022 at the time of this writing, 87 WTO members⁴ are officially participating in the JSI on e-commerce negotiations, Mauritius being the latest to join in September 2022 (WTO, 2022m). The participation of African and least developed countries (LDCs) remains marginal.⁵

The co-conveners have set up around small groups run by facilitators from delegates of participating missions to facilitate progress. Small groups are assigned specific articles as per the consolidated negotiating text, and their role is to gear up technical negotiations toward “convergence” (WTO, 2023) on “cleaned” articles (WTO, 2022a). At MC12, ministers of the co-conveners reported progress in the negotiations and their objective to “forge convergence on major issues by end-2022” (WTO, 2021a).

On December 22, 2022, the co-conveners circulated a third revision of the updated consolidated negotiating text, INF/ECOM/62/Rev.3 (WTO, 2022a). Unlike the 2021 and 2020 consolidated negotiating texts, the December 2022 text (INF/ECOM/62/Rev.3) witnessed changes in its structural organization and a dilution of its policy coverage, reflecting changes in the JSI dynamics in 2022 and perhaps in the ambitions set for 2023 as well. The December 2022 updated consolidated text may also be considered a reflection of recent trends in the global landscape of

³ The terms “e-commerce” and “digital trade” are often, but not always, used interchangeably. There is no single agreed definition and/or use of both terms. The WTO Work Programme on E-commerce was established in 1998, and for its purposes, e-commerce is defined as “the production, distribution, marketing, sale or delivery of goods and services by electronic means” (WTO, 1998b).

⁴ The 87 WTO members participating in the e-commerce JSI as of this writing are: Albania; Argentina; Australia; Austria; Bahrain, Kingdom of; Belgium; Benin; Brazil; Brunei Darussalam; Bulgaria; Burkina Faso; Cameroon; Canada; Chile; China; Colombia; Costa Rica; Côte d’Ivoire; Croatia; Cyprus; Czech Republic; Denmark; Ecuador; El Salvador; Estonia; Finland; France; Georgia; Germany; Greece; Guatemala; Honduras; Hong Kong, China; Hungary; Iceland; Indonesia; Ireland; Israel; Italy; Japan; Kazakhstan; Kenya; Republic of Korea; Kuwait; Lao People’s Democratic Republic; Latvia; Liechtenstein; Lithuania; Luxembourg; Malaysia; Malta; Mauritius; Mexico; Republic of Moldova; Mongolia; Montenegro; Myanmar; the Netherlands; New Zealand; Nicaragua; Nigeria; North Macedonia; Norway; Panama; Paraguay; Peru; the Philippines; Poland; Portugal; Qatar; Romania; Russian Federation; Saudi Kingdom of Saudi Arabia; Singapore; Slovak Republic; Slovenia; Spain; Sweden; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; Türkiye; Ukraine; the United Arab Emirates; the United Kingdom; the United States; and Uruguay.

⁵ Only seven African WTO members are participating in the JSI on e-commerce (Benin, Burkina Faso, Cameroon, Côte d’Ivoire, Kenya, Mauritius, and Nigeria); among them are two African LDCs (Benin and Burkina Faso), in addition to two Asian LDCs (Myanmar and Lao People’s Democratic Republic).

e-commerce policy debates and rulemaking at national, regional, and multilateral levels, which have been increasingly impacting the JSI negotiations.

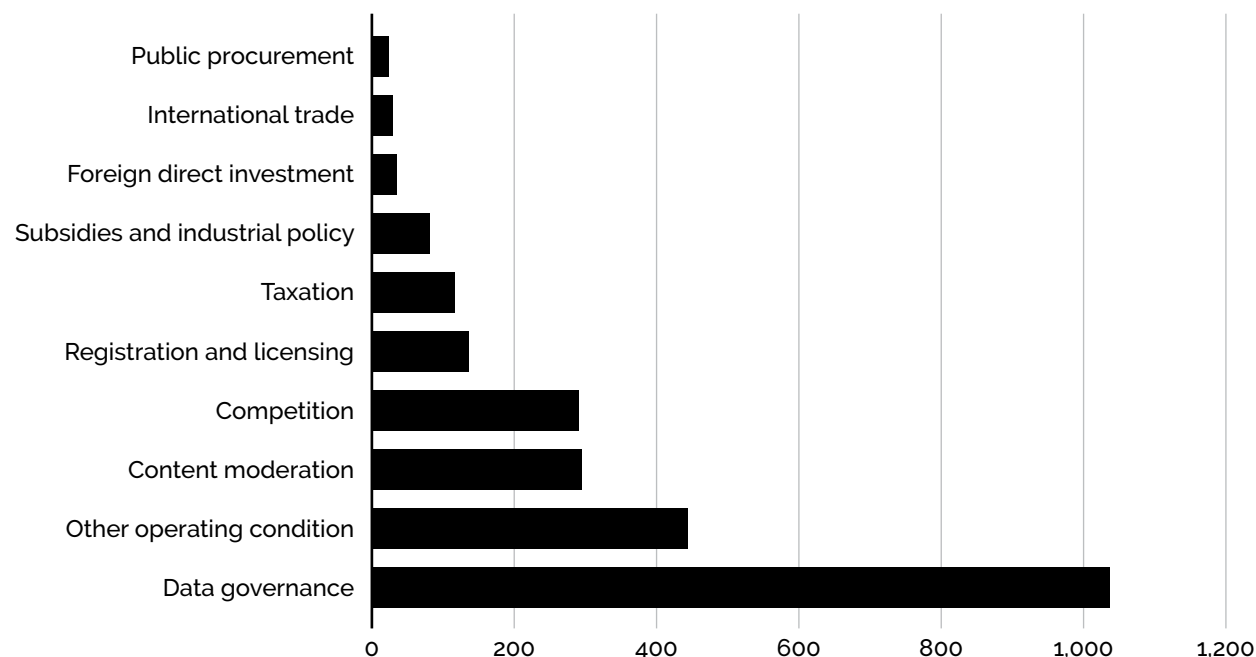
This brief aims to give a stocktake of the JSI on e-commerce as of December 2022 while focusing on dynamics and developments throughout the year and considering recent trends in the e-commerce policy activity and governance landscape at the national, regional, and multilateral levels. It starts by shedding light on three e-commerce trends (Section 2): the increased policy activity relevant to e-commerce at the national level (2.1), the increasing influence of Regional Trade Agreements (RTAs) and the emergence of Digital Economy Agreements (2.2), and the increased focus on bridging the “digital divide” in the WTO Work Programme (WP) on Electronic Commerce (2.3). It then gives a state of play of the negotiations of the JSI on e-commerce (Section 3) based on the mapping of changes and progress in the December 2022 updated consolidated negotiating text (INF/ECOM/62/Rev.3) and changes reported by the co-conveners in the dynamics of the negotiation in 2022, including initiation stocktake discussions and resulting changes in the negotiating text framework structure (3.1), progress in small groups and cleaned texts (3.2), new initiatives and proposals addressing data flows (3.3), and development and inclusion (3.4). The brief concludes with key takeaways and prospects of the e-commerce JSI workings and progress in 2023.

2.0 Beyond the JSI: Recent trends in the global e-commerce governance landscape

Despite a global rise in restrictive measures targeting digital trade in recent years (Evenett & Fritz 2022), reformers continue to push back by seeking to develop new disciplines, appropriate regulation and facilitation measures via RTAs and the WTO Work Programme on E-Commerce. — Lippoldt, 2023, p. 10

2.1 Increased National Policy Interventions and Increased Heterogeneity

Figure 1. 10 Key policy areas of states' interventions on e-commerce



Source: Author, using data from Digital Policy Alert Activity Tracker by St. Gallen Endowment for Prosperity through Trade, 2023 (accessed January 26, 2023).

According to the Digital Policy Alert (DPA) Activity Tracker, a database providing regular updates on public policy interventions related to e-commerce since January 2020, and the Global Trade Alert (GTA) database, hyper-regulatory activity can be observed in digital sectors. The DPA activity tracker reports 2,460 policy or regulatory changes in European Union (EU) and G20 governments between January 2020 and January 2023. Around 50% of these steps have

already translated into state action. Figure 1 shows the 10 most active areas of e-commerce-related state interventions globally: data governance; other operating conditions, which cover consumer protection and algorithm designs, among others; online content moderation; competition; registration and licensing; taxation; subsidies; foreign direct investment; international trade; and public procurement.

Based on earlier analysis of DPA and GTA inventories, Evenett and Fritz (2020) found that the risk of digital fragmentation is increasing with the accelerated pace of unilateral consideration or adoption of policies. This risk is particularly evident in data storage, use, and transfer, in the face of the divergent regulatory approaches of China, the EU, India, Russia, and the United States. Many other unilateral state actions in the digital sector lack coordination without a multilateral rule book on digital trade; among these are corporate taxation and competition law.

2.2 The Influence of RTAs and the Emergence of Digital Economy Agreements

Negotiating preferential trade agreements has proven to be an effective method for exploring the best regulatory approaches to addressing emerging policy issues on e-commerce and incrementally aligning policies and regulations. Burri (2021) considers that “the regulatory environment for digital trade has been shaped by PTAs [Preferential Trade Agreements],” particularly recent agreements with comprehensive chapters on e-commerce or digital trade, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), comprising 11 countries from the Pacific rim; the US–Mexico–Canada Agreement (USMCA), and the Regional Comprehensive Economic Partnership (RCEP), comprising 15 countries, including members of the Association of Southeast Asian Nations (ASEAN) and China. Together, the three regional blocks currently influence e-commerce rules considered in the JSI on e-commerce. The RCEP and CPTPP, as “mega-regional agreements,” have put Asia–Pacific at the centre of the e-commerce governance architecture (Frank, 2020). And with the United Kingdom’s starting negotiations to accede to the CPTPP and requests for accession sent by China and Chinese Taipei (Taiwan), the geopolitical influence of CPTPP e-commerce governance models may be expanding (Burri, 2021).

Apart from e-commerce chapters in RTAs, a new form of regional agreement has been gaining traction: Digital Economy Agreements (DEAs). Warren and Fan (2022) define DEAs as “comprehensive –‘digital-only’ agreements.” According to them, the Digital Economy Partnership Agreement (DEPA) between Chile, New Zealand, and Singapore, signed electronically in June 2020, represents the first digital-only RTA open to all WTO members. DEPA’s and subsequent DEA approach differs from traditional trade agreements, which often opt for rigid commitments, particularly in market access (Burri, 2021). They are designed to tackle broader issues of the digital economy through a wider scope that captures emerging trends and technologies and a flexible approach to cross-border regulatory cooperation (Warren & Fan, 2022). The DEPA modular approach provides a menu of more than one option for countries to choose what is

suitable. Hence, it is “very different from the ‘all-or-nothing’ approach of conventional trade treaties” (Burri, 2021).

Singapore is one of the countries at the forefront of promoting DEAs. Following DEPA, Singapore signed the Singapore–Australia Digital Economy Agreement (SADEA) in August 2020, the United Kingdom–Singapore Digital Economy Agreement (UKSDEA) in February 2022, and the Korea–Singapore Digital Partnership Agreement (KSDPA) in November 2022.

The Ministry of Trade and Industry of Singapore (2020) explains that “DEAs seek to establish common frameworks and rules” that will enable seamless cross-border trade and has three key objectives:

- “Align digital rules and standards and facilitate interoperability between digital systems;
- Support cross-border data flows and safeguard personal data and consumer rights; and,
- Encourage cooperation between ... partners in nascent areas such as digital identities, artificial intelligence, and data innovation.” (Ministry of Trade and Industry Singapore, 2020)

Hence, other than covering most of the e-commerce-related rules in CPTPP and similarly negotiated under the JSI for enabling and facilitating e-commerce, DEAs are tackling issues not yet found in traditional trade agreements. Among these are emerging Industry 4.0 technologies, such as artificial intelligence (AI) and digital identities.

2.3 Increased Emphasis on the Digital Divide in the WTO Work Programme on Electronic Commerce

It is important to note that the WTO had not been silent on the rise of e-commerce up to the JSI launch in 2017. In September 1998, the General Council adopted Decision WT/L/274 (WTO, 1998a), establishing the WTO WP on E-Commerce. The decision mandates four relevant WTO bodies “to examine (in their respective domain and WTO agreements) all trade-related issues relating to global electronic commerce” (WTO, 1998a). These designated bodies are the Council for Trade in Services (CTS), the Council for Trade in Goods (CTG), the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the Committee for Trade and Development. Lippoldt (2023) emphasizes that “while progress on the work program has been slow and halting, it has nonetheless kept e-commerce on the member-agreed multilateral agenda.”

One can argue that the WTO WP has recently contributed to ensuring that e-commerce-related development concerns and interests are on the multilateral agenda. Ismail and Mwangi (2022) mapped key issues raised under the WTO WP post-MC11 in 2017 until April 2022 based on members’ submissions and reported discussions under the four designated bodies. They found that apart from discussing impacts and sharing experiences during COVID-19, members’ top issues raised were the digital divide, capacity building, aid and assistance, technology transfer, and supporting small and medium enterprises. Hence, they concluded, “the COVID-19 pandemic

impacts and its revelations of the digital divide ... have given the floor for developing Members and Groups to make a case for a reinvigorated Work Programme that focuses more on the development-related challenges and opportunities.”

Hence, on June 17, 2022, at MC12, members adopted Ministerial Decision WT/L/1143 (WTO, 2022o), where they agreed to “reinvigorate the work under the Work Programme on Electronic Commerce, based on the mandate as set out in WT/L/274 and particularly in line with its development dimension.”

On December 19, 2022, the facilitator of the WTO WP reported to the General Council on the first dedicated discussion meeting held on November 18 to identify cross-cutting issues to address under the WP as per the MC12 decision. They re-emphasized members’ interest in focusing on development dimensions, naming various issues that were grouped in the following non-exhaustive list of broad categories: (a) the digital divide; (b) legal and regulatory frameworks; (c) consumer protection; (d) issues related to digital trade facilitation and facilitation of electronic transactions; (e) economic empowerment and inclusion of the underrepresented and marginalized groups and geographically remote countries; (f) cooperation with other intergovernmental organizations and relevant stakeholders; and (g) other issues, including special and differential treatment and policy space, sharing of experiences and best practices, and data-related issues.

Based on further consultations with small groups of delegates, the facilitator identified a tentative work plan for 2023, focusing discussions on consumer protection, the digital divide, and legal and regulatory frameworks, as well as the moratorium on electronic transmissions. These are in line with the following submissions to the WP following an MC12 decision: a proposal by Indonesia on Customs Duties on Electronic Transmission (WTO, 2022c), a proposal by India on Consumer Protection (WTO, 2022d), and a proposal by a group of developed and developing countries sharing ideas for the reinvigoration of the WP (WTO, 2022e).

According to the WTO (2022b), the facilitator identified the following tentative meeting dates for the Work Programme discussions during the first semester of 2023:

- Thursday, January 26
- Tuesday, February 21
- Wednesday, March 22
- Thursday, April 20.

3.0 The JSI Dynamics in 2022 and Changes in Updated Consolidated Negotiating Text

“We are marking this new phase with a step-up of our convergence efforts that’s going to require a couple of different ways of working.” — Ambassador George Mina of Australia (WTO, 2022n)

3.1 Stocktake Discussions and Changes in the December 2022 Updated Consolidated Text

On December 22, 2022, the e-commerce JSI co-conveners circulated among participating members a third updated consolidated negotiating text (INF/ECOM/62/Rev.3) (WTO, 2022a). The consolidated text gathers proposals submitted by JSI participants; reflects advancements in the thematic small groups’ negotiations, stocktake, and plenary discussions; and forms the basis for the negotiations and the future agreement. The co-conveners have shared earlier versions of the text, represented in INF/ECOM/62/Rev.2 (WTO, 2021b) and INF/ECOM/62/Rev.1 (WTO, 2020a). These texts included the following six sections and an Annex on “scope and general provisions”: a) enabling electronic commerce; b) openness and e-commerce; c) trust and e-commerce; d) cross-cutting issues; e) telecommunications; and f) market access.

It is worth noting that the third revision of the consolidated text adopted the same drafting approach as previously communicated drafts. It merged texts with similar effect and used square brackets and alternatives (Alt.) to indicate where divergence still dominates. Table 1 represents the altered e-commerce JSI policy framework structure as per the latest revised text of December 22, 2022, forming the basis of negotiation in 2023. The main changes in the text are summarized below.

Table 1. E-commerce JSI policy framework and structure as per the December 2022 updated consolidated text (INF/ECOM/62/Rev.3)

Sections/issues	Sub-issues	
A. Enabling e-commerce	A.1 Facilitating electronic transactions	(1) Electronic transactions frameworks (2) Electronic authentication and electronic signatures (3) Electronic contracts (4) Electronic invoicing
	A.2 Digital trade facilitation and logistics	(1) Paperless trading

Sections/issues	Sub-issues	
B. Openness and e-commerce	B.1 Customs duties on electronic transmissions	
	B.2 Access to internet and data	(1) Open government data (2) Access to and use of the internet for [electronic commerce/Digital Trade]
C. Trust and e-commerce	C.1 Consumer Protection	(1) Online consumer protection (2) Unsolicited commercial electronic messages
	C.2 Privacy	(1) [Personal information protection/ Personal data protection]
	C.3 Business trust	(1) Source code (2) ICT products that use cryptography
	C.4 Cybersecurity	
D. Cross-cutting issues	D.1 Flow of information	(1) [Cross-border transfer of information by electronic means/ Cross-border data flows] (2) Location of computing facilities (3) [Financial information/ Location of financial computing facilities for covered financial suppliers]
	D.2 Transparency, domestic regulation and cooperation	(1) Transparency (2) Cooperation (3) Cooperation Mechanism
	D.3 Capacity building	(1) Options for capacity building and technical assistance
	D.4 Implementation Periods for developing and least developed country members	(1) Implementation Periods for developing and least developed country members
	D.5 Special and Different Treatment Provisions for Developing Country Members and Least Developed Country Members	(1) Options for capacity building and technical assistance

Sections/issues	Sub-issues	
E. Telecommunications	E.1 Disciplines relating to Telecommunications Services	<ul style="list-style-type: none"> (1) Scope (2) Definitions (3) Competitive safeguards (4) Interconnection (5) Universal service (6) Licencing and Authorisation (7) Telecommunications Regulatory Authority (8) Allocation and use of scarce resources (9) Essential Facilities (10) Resolution of Disputes (11) Transparency
Annex	<ul style="list-style-type: none"> (1) Logistics services (2) Enhanced trade facilitation for cross border e-commerce (3) Use of technology for the release and clearance of goods (4) [Electronic payments services/Electronic payments] (5) Single windows data exchange and system interoperability/Unique Consignment Reference Numbers (6) Non-Discriminatory treatment of digital products (7) Access to online platforms/ Competition (8) Domestic regulation (9) Electronic commerce- related network products (10) Services market access (11) Temporary Entry and Stay of Electronic Commerce-Related Business Persons (12) Goods market access 	
Scope and general provisions	<ul style="list-style-type: none"> (1) Preamble (2) Definitions (3) Principles (4) Scope (5) Relation to other agreements (6) General exceptions (7) Security exception (8) Indigenous peoples (9) Prudential measures (10) Taxation (11) Dispute settlement (12) Committee on trade-related aspects of electronic commerce 	

Notes: ICT = information and communication technology. Co-conveners used square brackets to indicate texts where divergence still prevails and additional efforts are required.

Source: Author, based on WTO, 2022a.

Three visible changes in the main sections of the December 2022 updated consolidated negotiating text compared to the earlier versions:

- SECTION F: MARKET ACCESS is no longer included.
- ANNEX 1: SCOPE AND GENERAL PROVISIONS in earlier versions is only titled SCOPE AND GENERAL PROVISIONS.
- A new section appears, titled ANNEX.

Some articles were moved from their original section in the 2020 and 2021 consolidated negotiating texts to another section in the December 2022 revision, as follows:

- Articles related to the free flow of data, represented in: “[Cross-border transfer of information by electronic means/Cross-border flow of information],” “Location of computing facilities and financial information/ Location of financial computing facilities for covered financial service suppliers,” were moved under “SECTION D. CROSS-CUTTING ISSUES.” Together they form subsection “D.1. Flow of information.” In earlier negotiating text versions, they appeared under “SECTION B: OPENNESS AND ELECTRONIC COMMERCE.”
- Some articles from various sections, including the omitted “SECTION F: MARKET ACCESS,” were moved under the new “ANNEX” section. The December 2022 text mentions that these articles have not yet been subject to small group negotiations (excluding “SECTION D: CROSS-CUTTING ISSUES” articles). These are: “(1) Logistics Services; (2) Enhanced trade facilitation for cross-border e-commerce; (3) Use of technology for the release and clearance of goods; (4) [Electronic payments services / Electronic Payments]; (5) Single windows data exchange and system interoperability / Unique Consignment Reference Numbers; (6) Non-discriminatory treatment of digital products; (7) Access to Online Platforms / Competition; (8) Domestic regulation; (9) Electronic Commerce-Related Network Products; (10) Services market access; (11) Temporary Entry and Stay of Electronic Commerce-Related Business Persons; (12) Goods market access.”

However, it is worth noting that among the articles moved under the “ANNEX” is the article on “services market access,” which was assigned to a small group in 2020 and then stopped reporting progress in 2021 due to challenges advancing in the negotiations without agreeing on the legal architecture of the future agreement (Ismail, 2021). In fact, many of the articles moved under the new ANNEX may, like the services market access one, mean changing participating members’ obligations under existing WTO agreements, which requires consensus and the application of the most favoured nation (MFN) principle. These are two requirements that are very hard to achieve in the context of the e-commerce JSI negotiations.

One of the key developments in the JSI e-commerce dynamics in 2022 that resulted in major changes in the future agreement policy framework reflected in the December 2022 negotiating consolidated text is the establishment by the co-conveners of a small group on stocktaking

announced in July (WTO, 2022n). Ambassador Mina of Australia explained that the objective of stocktake talks is to extend the convergence-building efforts by looking “at proposals that had not attracted enough support from the rest of the participants” and assess whether their proponents “should step up their engagement or withdraw their proposals” (WTO, 2022n).

Among proposed texts discussed in the stocktake small group were “Enhanced trade facilitation on cross-border electronic commerce; Logistics services; Electronic Payments” (WTO, 2022l) and “Temporary Entry and Stay of Electronic Commerce-Related Business Persons; Electronic Commerce-Related Network Products” (WTO, 2022h). As previously indicated, these are shown in the December 2022 consolidated text ANNEX following the submission of revisions by their proponent, China (WTO, 2022l, 2022h).

In his concluding remarks at the last cluster of 2022, Ambassador Mina of Australia encouraged proponents of proposals with low traction and not yet discussed in small groups to use the few weeks before reconvening cluster meetings in February 2023 to “build support, refine proposals and hold information sessions” (WTO, 2022g).

As the new Annex gathers proposals that are gaining less traction or complicating the integration of the future agreement into the WTO framework, it may point to the possibility this move is a preliminary step toward excluding the ANNEX or some of its articles or postponing it to a later phase. Such a step could help speed up the process for a thinner agreement around lower-hanging fruit represented in articles where small groups reached or are more likely to achieve cleaned or converged texts under sections A, B, and C (see Section 3.2).

The stocktake discussions in September, October, and November 2022 negotiating clusters also resulted in members withdrawing several proposals from the earlier versions of the negotiating text (WTO, 2021b). These are eliminated from the December 2022 updated consolidated negotiating text.

Withdrawn articles are:

- **Under SECTION A: ENABLING ELECTRONIC COMMERCE:** De minimis; Customs procedures; Improvements to trade policies; Provision of trade facilitating and supportive services.
- **Under SECTION B: OPENNESS AND ELECTRONIC COMMERCE:** Interactive computer services (limiting liability); Interactive computer services (infringement).
- **Under SECTION C: TRUST AND ELECTRONIC COMMERCE:** Electronic availability of trade-related information.

3.2 Progress in Small Negotiating Groups and Converged Texts

In early 2022, seven small groups reported the conclusion of their negotiations and reaching “clean texts” on the following articles: i) Electronic Transactions Framework; ii) Electronic Signatures/Authentication; iii) Electronic Contracts; iv) Paperless Trading; v) Open Government

Data; vi) Online Consumer Protection; vii) Unsolicited Electronic Messages (Spam); and viii) Transparency (WTO, 2021a).

During 2022, nine thematic small groups proceeded with technical negotiations aiming to reach “cleaned” or “converged” provisions. Six small groups pre-existed in 2021: i) electronic transactions frameworks, ii) access to and use of the Internet for [electronic commerce/ digital trade], iii) electronic invoicing, iv) customs duties on electronic transmissions, v) source code, and vi) cybersecurity. In addition, three small groups were newly created in 2022 to tackle: i) ICT products that use cryptography, ii) privacy/personal information protection, and iii) telecommunications (updating the *WTO Reference Paper on Telecommunications Services*).

By the end of the year, three additional small negotiating groups reached converged texts appearing in the December 2022 updated consolidated text: i) access to and use of the Internet, ii) electronic transactions frameworks, and iii) cybersecurity. As of this writing, clean texts have been reached on 10 articles, as presented under the column “Small group (concluded)” in Table 2.

The December 2022 updated consolidated text also shows progress in the small group on electronic invoicing, which indicates a converged text is within reach in the first six months of 2023 or less. As for the small group on source code, it did not report further progress toward a converged text.

The small group on customs duties on electronic transmissions also held discussions in preparation for MC12 held in June 2022. At MC12, WTO members agreed, per Decision WT/MIN(22)/32, to maintain their current practice of not imposing customs duties on electronic transmissions until MC13 (to be held in Abu Dhabi in the week of February 26, 2024) and to intensify discussions between members on the topic.

Table 2 gives an overview of the progress of technical negotiations in small groups of the JSI as of December 2022 and points to cleaned or converged articles they achieved.

Table 2. Progress in small negotiating groups and converged cleaned texts as of December 2022

Sections, subsections, and articles	Small group (concluded)	Small group (ongoing)	Latest update
Section A. Enabling electronic commerce			
A.1. Facilitating electronic transactions			
(1) Electronic transactions frameworks	X (2022)		Small group discussions concluded in October 2022. A converged text is reached with remaining minor differences.
(2) Electronic authentication and e-signatures	X (2021)		Cleaned text was reached in the small group and endorsed at the April 20, 2021, plenary.
(3) Electronic contracts	X (2021)		Cleaned text was reached in the small group and endorsed at the July 22, 2021, plenary.
(4) Electronic invoicing		X	The text in INF/ECOM/62/Rev.3 shows progress. Divergent positions remain on the definition of e-invoices and relationships to international or open standards. It can be expected that a converged text will be within reach in 2023.
A.2. Digital trade facilitation and logistics			
(1) Paperless trading	X (2021)		Cleaned text was reached in December 2021 by the small group and "parked" at the January 28, 2022, plenary, subject to finalizing the scope and legal architecture.
Section B. Openness and electronic commerce			
B.1. Customs duties on electronic transmissions			
B.1. Customs duties on electronic transmissions		X	Limited discussions ahead of MC12 were reported. In a statement on January 20, 2023, at Davos, ministers from Australia, Japan, and Singapore indicated JSI participants "hope to reach an agreement on a permanent ban on customs duties on electronic transmissions" (WTO, 2023).

Sections, subsections, and articles	Small group (concluded)	Small group (ongoing)	Latest update
B.2. Access to Internet and data			
(1) Open government data	X (2021)		Cleaned text was reached in the small group and endorsed at the September 13, 2021, plenary.
(2) Access to and use of the internet for [electronic commerce/digital trade]	X (2022)		A converged text was reached in September 2022 with remaining minor differences.
Section C. Trust and electronic commerce			
C.1. Consumer protection			
(1) Online consumer protection	X (2021)		Cleaned text was reached by the small group in August 2021, then endorsed at the September 13, 2021, plenary.
(2) Unsolicited commercial electronic messages (Spam)	X (2021)		Cleaned text was reached in the small group, then endorsed at the February 5, 2021, plenary.
C.2. Privacy			
(1) Personal information protection/Personal data protection		X	The establishment of a new small group on privacy was announced at a meeting on May 19, 2022. The consolidated negotiating text for this article in INF/ECOM/62/Rev.3 includes 18 paragraphs based on various text proposals of a significant number of proponents, among them, the EU, Canada, the United Kingdom, the United States, China, and Brazil. Negotiations in the small group are expected to intensify in 2023 to facilitate convergence.

Sections, subsections, and articles	Small group (concluded)	Small group (ongoing)	Latest update
C.3. Business Trust			
(1) Source code		X	The small group on source code is one of the earliest formed small groups—it has been around since 2020. INF/ECOM/62/Rev.3 shows many persistent differences in the level of commitment of not requiring the transfer of or access to the source code, its coverage, and exceptions. No intense discussions were reported in 2022; however, in their statement on January 20, 2023, at Davos, ministers of co-conveners indicated their intent to maximize efforts for greater convergence on source code (WTO, 2023).
(2) ICT products that use cryptography		X	Proposed provisions in the December 2022 negotiating text do not reflect progress, despite intensified discussions in the dedicated small group discussions since October 2022 and recent text revisions communicated in September. Intensified discussions in small groups are expected to proceed in 2023 to reach a clean text as soon as possible (WTO, 2022k).
C.4. Cybersecurity			
C.4. Cybersecurity	X (2022)		Small group discussions were concluded in the late October 2022 cluster. Cleaned text with minor differences remaining appears in the December 2022 updated consolidated negotiating text.
Section D. Cross-cutting Issues			
D.2 Transparency, domestic regulation, and cooperation			
(1) Transparency	X (2021)		One of the first concluded small group discussions. The converged article was parked at the July 22, 2021, plenary meeting. It will be subject to finalization once the scope and legal architecture of the future agreement are clarified.

Sections, subsections, and articles	Small group (concluded)	Small group (ongoing)	Latest update
Section E. Telecommunications			
E.1. Disciplines related to telecommunications services			
Update of the WTO Reference Paper on Telecommunications		X	A new small group was formed in late summer of 2022 to seek a convergence of views. The proposals are mainly submitted by developed-country members and encompass many elements, such as scope, definitions, competitive safeguards, interconnection, universal service, licensing and authorization, telecommunications regulatory authority, allocation and use of scarce resources, essential facilities, resolution of disputes, and transparency. Deliberations will intensify in 2023, especially as many developing countries and LDCs have not yet committed to the regulatory principles in the Reference Paper.

Source: Author, based on WTO, 2020b, 2022a, 2022k, 2022n, 2022q, 2022r, 2022s, 2023.

3.3 A Minor Convergence on Cross-Border Data Flows

Minor convergence in positions can be observed in the December 2022 updated consolidated negotiating text. It is based on a new joint text proposal, INF/ECOM/73, based on which South Korea joined a group of six other members in limiting exceptions to cross-border data flows to “legitimate public policy objectives” (LPPO). The six other proponents of the proposal are Australia; Canada; Japan; Singapore; the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu; the United Kingdom; and the United States (WTO, 2022f).

However, significant differences remain between the EU proposal for a privacy/personal data protection exception and Nigeria’s proposal to allow exceptions for developing and least developed countries for development and policy space purposes (WTO, 2022a).

3.4 New Initiatives and Proposals Addressing Development and Digital Inclusion

On the sidelines of MC12, ministers of the JSI co-conveners announced the launch of the E-commerce Capacity Building Framework (WTO, 2022p). The initiative reflects the increased recognition of the challenges faced by developing-country members and LDC members to

participate in the negotiations and harness the benefits of the future agreement. According to their statement, the framework brings together efforts from the following organizations and programs: the Digital Advisory and Trade Assistance Fund (DATA Fund) pilot program under the Umbrella Facility for Trade managed by the World Bank with fund contributions from Australia and Switzerland; the Japan International Cooperation Agency; the Japan External Trade Organisation; and the Singapore–WTO Third Country Training Programme. Scoping work took place in 2022.

Regarding text proposals within the e-commerce JSI negotiations, two new proposals were submitted in late November 2022. Together, they open a door for more intense discussions on development and inclusion in 2023. The first, INF/ECOM/70, is a nine-page comprehensive proposal submitted by Côte d’Ivoire (WTO, 2022j). It has integrated a new sub-section under Section D on cross-cutting issues: D.5. Special and Different Treatment Provisions for Developing Country Members and Least Developed Country Members. The proposed articles replicate almost the same text under the Trade Facilitation Agreement (TFA).

The second proposal, INF/ECOM/71, submitted by New Zealand, proposes text under various articles while focusing on cooperation to support the digital inclusion of Indigenous Peoples, as well as women, rural communities, and small and medium-sized enterprises (WTO, 2022i).

4.0 Conclusions and Expected Trends in 2023

With rising unilateral adoption of digital policies and contentious issues, such as data flows and competition laws, the rapidly evolving technologies, and future worries of policy space, countries started turning to flexible forms of cooperation and integration, such as Regional Economic Agreements. A similar tendency seeking to simplify the policy ambition of the future agreement was observed in the recent developments and dynamics of the JSI on Electronic Commerce. In their statement in Davos on January 20, 2023, ministers of the JSI co-conveners expressed their objective “to work towards substantial conclusion by end of 2023” (WTO, 2023).

Against this backdrop, one or more of the following trends can be expected in 2023 e-commerce JSI negotiations:

- Intensified deliberations in small groups remaining from 2022—privacy, ICT products that use cryptography, source code, e-invoicing, telecommunications, and customs duties on electronic transmission—with a view to completing their work by the end of the year. Together with the 10 clean texts as of December 2022—paperless trading, electronic contracts, electronic authentication and electronic signatures, unsolicited commercial electronic messages, online consumer protection, open government data, open Internet access, transparency, cybersecurity, and electronic transactions frameworks—they can represent a “lower-hanging fruit” deal to facilitate an agreement on e-commerce by MC13. A deal on issues requiring more effort can constitute a second phase of negotiations for a deeper agreement.
- Proceeding with stocktake discussions of provisions with limited traction, particularly under the new Annex section. This practice can allow accelerating progress toward the “substantial” conclusion of the negotiations by the end of 2023 by i) incentivizing proponents to exert their maximum effort for generating support; ii) assigning proposals that succeed in generating support by mid-year to new small groups to boost convergence in the second half of the year and conclude technical deliberations; and iii) eliminating provisions that fail to garner support, which contributes to the third trend.
- Seeking to simplify the future agreement, reduce the complexity of its legal architecture and increase the chances of its adoption within the WTO framework.

The below indicative time plan has been tentatively set for eight JSI Negotiating Clusters in 2023 to continue building on the momentum created in 2022:

- Monday–Thursday, February 13–16, 2023
- Monday–Thursday, March 27–30, 2023
- Monday–Thursday, May 22–25, 2023
- Monday–Thursday, June 19–22, 2023
- Wednesday– Fri, July 26–28, 2023

- Tuesday–Friday, September 26–29, 2023
- Monday–Thursday, October 23–26, 2023
- Monday–Thursday, November 27–30, 2023

E-commerce JSI negotiations have reached a critical stage, where an agreement on “lower-hanging fruit” may be in sight by MC13. The current year will see intense negotiations among the participants. It will be important for JSI signatory developing and least developed countries to intensify their efforts to secure broader support for their development and capacity-building proposals, as well as to participate fully and effectively in the negotiations to advance their interests (Ismail, 2020). It will also be of interest for non-signatory developing and least developed countries to monitor the progress of these negotiations and assess the possible implications for them.

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