COALITION OF SERVICES INDUSTRIES

CSI Priorities for the
WTO Joint Statement Initiative (JSI)
on Trade-Related Aspects of Electronic Commerce
June 2023

We strongly support the ongoing efforts of co-convenors and negotiating parties engaged on the WTO's JSI on e-commerce. We commend the work completed so far to finalize language in a range of important areas facilitating digital trade, from electronic contracts to consumer protection and open government data. With a growing volume of global commerce and data flows enabled by digital goods and services, there's an urgent need to set ground rules.

Consider how digitally enabled services trade is transforming the way people around the world do business and innovate:

- Agriculture. In Africa, Asia and Southeast Asia, precision agriculture solutions are using digitally enabled services and technologies such as cloud services and AI to reduce dependence on pesticides and allow for more efficient use of water. Digitally enabled services and technologies facilitate data connectivity that helps dairy farmers keep better tabs on the health of their livestock. By accessing market data on mobile phones, women farmers in Africa can broaden their market reach and get higher prices for their crops.
- Science and climate remediation. In the US, a woman-owned life sciences lab has used AI to develop a non-invasive kidney transplant. Another woman-owned small business relies on global satellites and remote sensing AI to analyze flood risk in almost 20 countries, without using any ground equipment.
- Manufacturing. Manufacturers of jet engines, autos, farm equipment, electronics, and pharmaceuticals, just to name a few items, all rely on data flows -- from the software and services used in the manufacturing process to big data analytics to project sales and adjust inventory levels.
- Remittances and financial transfers. Mobile phone applications now allow for secure exchanges of data that let migrant workers send money back to their home countries at low cost. These services have had an especially big impact in Africa and Asia, where local economies sometimes depend on income earned abroad.

The adoption of digitally enabled services has rapidly gained momentum for small companies as well as bigger firms, and in developing countries and developed markets alike. As a case in point, a survey in Indonesia in 2021 found more than 90% of MSMEs are already using digital products or services in their operations. Respondents said they wanted to expand their customer base, improve operational efficiency, and aid in delivery of goods or services. By using digital tools, respondents reported an average 20% decrease in marketing costs and 17% decline in delivery costs.

As illustrated in the examples above, a high-standard digital trade framework would promote greater inclusivity and spread the benefits of digital advances in developing and developed countries, including to small business and marginalized communities. Improved access to technology would be of particular benefit to women, who are estimated to own nearly 40% of MSMEs. In 2022, only 50% of women in developing countries used the internet, and only 19% of women in least developed countries did (compared to 86% in the developed world). By providing greater predictability and transparency in digital trade policy, a strong e-commerce agreement would bolster efforts to improve access to technology and digital skills building. That could help more low-income women gain access to a smartphone or other digital tools to aid in entrepreneurship.

Yet barriers to cross-border data flows and services and digital trade investment are also on the rise, as documented by the OECD and other researchers. These obstacles threaten to undermine efforts to promote economic growth and to bridge the digital divide between developed and developing countries. Such findings underscore the urgency to craft a robust and durable global digital framework though the JSI on e-commerce.

It is important to recognize that such a framework would be fully compatible with the well-established government right to regulate. Policies to promote digital growth and innovation are consistent with – and indeed benefit from – government measures to create strong protections for personal privacy and cybersecurity, develop frameworks for the ethical use of artificial intelligence, and address other emerging digital issues.

The trade issues that remain to be negotiated in the e-commerce JSI will be some of the most complex, including in areas such as data flows, source code, a permanent moratorium on e-commerce duties, and cybersecurity. Yet high-standard outcomes in these areas will ensure the agreement succeeds in setting lasting rules to promote the growth of digital trade and expand access to digitally enabled products and services.

While we understand and appreciate the push to intensify negotiations, the goal must be to finalize a high-ambition, meaningful agreement. We believe the provisions below are necessary for a WTO digital trade agreement to deliver on the promise set forth in the original joint statement to "further enhance the benefits of electronic commerce for businesses, consumers and the global economy."

Priority trade disciplines for the JSI on E-commerce

Promotion of cross-border data flows, and discipline on data localization, for all sectors.
For the digital economy to prosper, it must be possible for consumers and companies to access and freely share commercial data. Digital flows of data knit together the many actors within a global value chain, integrating developing and developed economies within trade networks.

Data transfers allow small business to access digital marketing and logistics services, making it easier for them to export. They enable foreign investment, letting overseas offices communicate with headquarters to share revenue numbers and human resources info. And data is essential for social welfare purposes, too, facilitating international collaborations in areas such as science, medicine and climate research.

Conversely, measures that impose undue burdens on routine commercial data transfers stand to weaken trade flows and make it harder for a given country to strengthen its standing in global value chains – digital and physical. A digital trade agreement must include strong commitments enabling data flows and prohibiting data localization, subject to legitimate public policy exceptions.

Permanent ban on duties on electronic transmissions.
The moratorium on duties on electronic transmissions is a long-standing foundation of digital trade. Reflecting its widely acknowledged importance, it has been regularly renewed within the WTO ever since it was established 25 years ago. The JSI on e-commerce must now act to make the ban on duties permanent. The moratorium has served to integrate developing economies into global value chains and open up new consumer markets. It has enabled the seamless growth of new digital businesses, trade in digital goods, services, scientific and commercial data, and communications.

In a worst-case scenario, a potential lapse of the duty ban, followed by new customs formalities and the imposition of duties by some governments, could lead to major bottlenecks for the digital economy and a series of tit-for-tat reciprocal tariffs on digital trade. Such an outcome would be especially damaging to small businesses in developed and developing countries alike. It would needlessly rupture and fragment the multilateral trading system.

Prohibition on mandatory transfer of source code and algorithms.
To promote innovation and enhance the business climate, governments should commit to disciplines regarding the forced transfer of source code or algorithms as expressed in USMCA.

Non-discriminatory treatment of digital products.
A core element of any digital trade agreement is a guarantee against unfavorable treatment of digital goods and services. Non-discrimination is a key principle of the multilateral, rules-based trading system.

Risk-based approach to cybersecurity.
To be effective over time, cyber policies should be premised on relative risk, considering the context and environment in which a product or service is used, and be open to updating. In addition, the agreement should ban restrictions on cybersecurity technologies, including requiring the transfer of private keys, for commercial products that use cryptography.

Procedural safeguards on standards and conformity assessment for digitally enabled services.
The agreement should promote the use of international standards. Standards used for digitally enabled services and employed in conformity assessment procedures should be developed through transparent, non-discriminatory, industry-led processes.

In addition, as part of joining the JSI on e-commerce, governments should agree to sign onto and fulfill the commitments contained in the JSI on Services Domestic Regulations.

Ban on performance requirements.
The agreement should ban government requirements that a service supplier must purchase, use or show preference for a given technology, service or digital product.

Trade facilitation.
Governments should streamline and simplify customs processes beyond the Trade Facilitation Agreement (TFA) baseline by establishing and/or increasing de minimis and informal clearance thresholds in commercially meaningful amounts.

Capacity building for small business.
The agreement should include provisions supporting technical capacity building for SMEs engaged in services and digital trade.

Services market access.

The agreement should ensure that market access commitments cover both existing services and new services that may emerge in the future.

Market access provisions should provide national treatment and commitments across all modes of supply for e-commerce related services, including computer and related services, telecommunications, advertising, distribution, logistics, electronic payment services and other financial services, repair and maintenance of e-commerce related products, and software and services.

If a government permits the supply of a digitally enabled services, such as cloud services, it should allow all service suppliers to use the service.

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