

WTO PLURILATERAL NEGOTIATIONS ON TRADE-RELATED ASPECTS OF ELECTRONIC COMMERCE

ICC BASELINE POSITION



BACKGROUND

Recent years have witnessed remarkable developments in the digital economy, creating unprecedented opportunities for cross-border trade. The digital environment is enabling micro, small and medium-sized businesses (“MSMEs”) to access global markets unlike ever before. Studies show that MSMEs that use on-line platforms are around five times more likely to export than those in the traditional economy using traditional channels. Empirical research also finds that companies connected to the global economy are more productive and contribute to the development of global trade and more prosperous communities. Many small businesses and entrepreneurs in developing economies are already at the forefront of this emerging trend.

But digital-led changes to the composition, nature and speed of global trade are raising increasing policy frictions. Today’s trade rules—which largely reflect 20th Century patterns of trade—are not always well-suited to supporting the growth of MSME e-commerce, and in key areas have not kept up with the growth of the digital economy.

What’s more, fragmented national rules on data governance, privacy, consumer protection and a lack in availability of online information can act as major impediments to trade—creating new market barriers and pushing up costs for MSMEs looking to enter global markets. One precondition for the success and viability of e-commerce is the ability for information to flow freely and efficiently across borders—without being limited by technical barriers or anti-competitive bottlenecks, while abiding by privacy and security rules.

THE OPPORTUNITY

Traditionally, commerce over long distances has come with significant costs—limiting the ability of MSMEs and businesses in developing economies to benefit from global trade. In a digitally-enabled environment this does not need to be the case.

We believe that with the right global policies in place there is an opportunity to unleash a new era of “inclusive trade”: one in which all companies—regardless of size, sector or location—can benefit from equal and easy access to the global trading system; one in which MSMEs are empowered to drive the transition to a fairer, more inclusive and robust world economy. This requires a significant and ambitious upgrade to the existing multilateral access regimes and trading rules that currently govern e-commerce, to match the current and anticipated developments in the digital economy.

TOWARDS A HIGH STANDARD OUTCOME ON E-COMMERCE

ICC commends the 77 WTO Members who committed to launch WTO negotiations on trade-related aspects of e-commerce. We believe that these negotiations provide a tremendous opportunity to establish a holistic package of trade disciplines, rules and assistance to boost MSME e-commerce—with an overriding objective to promote inclusive growth through sustainable economic development. The agreement should be comprehensive and include the broadest number of WTO members possible around shared principles.

Such a high standard outcome should build on existing WTO agreements and frameworks and would not need to confer an inherent bias towards companies of any size within the global trading system, but rather establish a global system that better enables small businesses to access global markets by leveraging new technologies. Rules that create a level playing field allow all innovative firms to benefit.

Since MSMEs operating online often rely on larger service providers to deliver products and services, an effective e-commerce environment must level the playing field for all businesses—including global enterprises. The latter, in turn, offer opportunities to MSMEs by integrating them into their global supply chains or by providing platforms that enable them to reach international markets and new customers.

We also recognize the need—and endorse efforts—to ensure that digital technologies and e-commerce work for everyone, every day, everywhere. In this connection, we recommend that the outcome of the WTO plurilateral trade talks should encompass capacity building resources for developing economies—including targeted assistance to ensure that MSMEs can get online and expand their business through e-commerce. It should recognize that there is a development dividend to harness through trade, and ensure that outcomes help all countries leverage trade to stimulate sustainable development. Development should not be relegated to a chapter alone; rather, it should be a common thread throughout the commitments the outcome contains.

We recognize further that WTO rules on trade-related aspects of e-commerce need to be enforceable to ensure compliance and realization of the intended benefits for consumers and businesses.

ICC respectfully proposes that a high standard outcome be built around three pillars:

- (i) enhancing connectivity and capacity building for e-commerce;**
- (ii) enabling businesses, especially MSMEs, to get goods and services sold online to consumers and to participate in global value chains more efficiently (“Trade Facilitation 2.0”); and**
- (iii) digital rules to support online growth, prevent localization barriers, build consumer trust, facilitate trade compliance and increase safety and security of global e-commerce.**

Specific recommendations for measures under each of these three pillars follow below.

RECOMMENDATIONS FOR A WTO E-COMMERCE AGREEMENT



PILLAR 1

Connectivity and capacity building for e-commerce

Enhancing connectivity. WTO disciplines have already played an important role in supporting enhanced access to the digital environment through the development of competitive telecommunications markets. Given rapid technological changes over the past decade, the time to consider upgrading these WTO disciplines in support of digital trade is now.

To take one important issue: information access management and data security are essential for inter- and intra-corporate transactions, whether at national, regional or global scale. However, in some developing countries, the deployment of essential digital infrastructure and/or services is frustrated by problems with the supply of business-grade data networks at the local level.

The global use of company-wide ICT applications and e-commerce must therefore be supported by better conditions of access to high quality data networks. A new WTO e-commerce agreement should therefore:

- > Work towards the removal or reduction of regulatory non-tariff impediments to trade in telecommunications services by upgrading the WTO telecommunications rules and its reference paper.
- > Include measures such as: (i) removing barriers to the construction of new networks; (ii) enabling deployment of new technologies to enhance international connectivity; (iii) promoting use of unlicensed spectra; (iv) increasing availability of both licensed and unlicensed wireless spectra; (v) promoting efficient utilization of spectrum allocations and extending the use of LTE in the 5-GHz unlicensed band; (vi) encouraging an investment-friendly and progressive light-touch approach to regulation that enables the entrance of new players in the ICT ecosystem, increases competition,

reduces transit data charges for landlocked developing countries, and reduces tariff and non-tariff barriers to broadband essential goods; (vii) facilitating fair and transparent market access for public telecommunication services; and (viii) providing for the allocation and use of scarce resources, including frequencies, numbers and rights of way, in an objective, timely, transparent, proportionate and non-discriminatory manner.

- Encourage the development and use of international and interoperable standards for ICT products.

Capacity building. The WTO and its partners, such as the ITC, UNCTAD, and regional development banks, should establish access to resources to help MSMEs in developing economies grow through e-commerce, encompassing:

- A significant scaling-up and enhanced coordination of existing trade-related capacity building programs with an MSME/e-commerce nexus. This should include targeted capacity building programs for MSMEs looking to expand through e-commerce, including through the use of global digital platforms and online educational tools. Under such an approach the WTO should be positioned as a global hub for e-trade related capacity building, working in synergy with UNCTAD's eTrade for All initiative and existing donor-funded schemes, and leveraging private sector resources.
- A commitment by WTO Members to aggregate trade, customs and other applicable rules. Such information should be made publicly available on the Internet to allow third party developers to create user-friendly tools to help e-traders to better understand—and to suggest improvements to—existing trade rules.
- Incentives by WTO Members to ensure sustainable development through e-commerce in social, economic and environmental dimensions, which are significant for businesses and consumers.



PILLAR 2 Trade Facilitation 2.0

There is an opportunity to build on the WTO's landmark Trade Facilitation Agreement to further simplify and expedite the clearance of e-commerce shipments through targeted customs, tax, and market access measures. Such measures would aim to support the growth of self-employed entrepreneurs and MSMEs by facilitating the delivery of small shipments direct to consumers. Possible measures proposed by International Chamber of Commerce members include:

- New disciplines to enable simplified processing of low value shipments— including through establishment of a commercially meaningful baseline de minimis threshold for low value/ low risk goods. (See also: Box 1).
- Establish higher thresholds for informal clearance procedures for shipments above de minimis levels but below what is required for formal clearance.
- Provisions to enable electronic submission of customs documents prior to arrival to allow for an automated risk assessment and pre-arrival processing and immediate release/clearance.
- Provisions to encourage the use of electronic payments for customs duties and other charges in multiple currencies, without mandatory currency conversion, in an account-based, periodic manner.
- Government-created customs and duties application and programming interfaces (APIs) that can be incorporated into any e-commerce website.
- New measures to simplify and digitise returns processes, certificates of origin and duty drawback procedures.
- Provisions to mandate the timely provision of advanced rulings on any applicable treatment for duties and taxes.

- Disciplines to simplify the collection of duties and indirect taxes (including GST/VAT) by providing multiple options (including seller, buyer, vendor) around account-based periodic payments. The collection of indirect taxes should match the account-based systems in-country.
- Disciplines that align de minimis thresholds between customs and indirect taxes (VAT, GST)
- Disciplines to ensure that data captured by Customs and other Regulatory bodies is restricted to only that necessary to carry out the required activity. Once such a need is established through an open and transparent process, such provisions should focus on the way that data is captured and transmitted in the commercial world and look to leverage existing commercial practice to minimise costs all-round.
- Provisions to encourage the establishment of national “centres of excellence” within customs agencies with dedicated resources to focus on e-commerce, e-sellers, and buyers, including MSME shipments. This initiative should be based on a multi-stakeholder model, making full use of private sector resources and expertise.
- Establishing a globally consistent programme for “trusted e-commerce shippers” incorporating customs facilitation.
- Developing rules on transparency to provide businesses, especially MSMEs, information they need to sell online, including on certification/licensing, registration and standards requirements.
- Establishment of market access and national treatment commitments for e-commerce service providers, including: retail, on-line platforms, transportation, logistics, warehousing, delivery, electronic payments and other related services.
- Development of rules on competition between private and public delivery service suppliers.
- Establishment of a new WTO committee to enhance cooperation with the Universal Postal Union to discuss how national postal services can become part of the global transportation infrastructure of the new package-based trade.
- Encouraging information sharing between government agencies and the private sector, at a local as well as global level, to better manage trade compliance and mitigate the risk of trade-based money laundering.

BOX 1: RETHINKING DE *MINIMIS* THRESHOLDS—MODALITIES AND CAPACITY BUILDING

A first step towards a multilateral effort to raise the de *minimis* threshold could take the form of a ministerial decision and associated guidance.

This effort would represent a “package-based trade” equivalent of traditional efforts to reduce tariffs to promote world trade: a de *minimis* change promotes package-level trade which is almost exclusively a form of MSME trade, whereas traditional tariff cuts have promoted trade by large international enterprises.

With a higher de *minimis* threshold, government agencies will no longer expend resources to assess the low value parcels. One effect is that they will no longer collect taxes and duties on low value parcels, and as a result will receive less revenue. However, these agencies may benefit from freed-up resources. Research suggests that the net effect on government revenues from raising the de *minimis* threshold largely depends on what agencies decide to do with these new resources.

To support particular developing countries in this transition to a commercially meaningful de *minimis* threshold, the WTO could provide recommendations and technical support to assist countries in utilising these additional resources to protect government revenues.



PILLAR 3 Digital rules

Market access. We believe there is an opportunity for WTO members to establish a balanced package of measures to promote an open, trusted and secure digital environment, as well as non-discriminatory access to the e-commerce market, which would drive down transaction costs and frictions for businesses trading online. International data flows are critical to all trade in goods and services, and to the success of e-commerce. Barriers to intra- and inter-company data flows undermine trade commitments and significantly curtail e-commerce potential and stifle innovation. The efforts to tackle impediments to e-commerce should focus on both business-to-business transactions and business-to-customers barriers.

- A prohibition on customs duties for digital products and electronic transmissions to ensure that customs duties do not impede the supply of digital products (whether classified as goods or services).
- Improvement to and clarification of existing WTO rules, which currently ensure the free flow of data for services for which Members have existing commitments, such that it extends horizontally to all economic activity the agreement covers in both goods and services. New rules are also necessary to prevent Members imposing obligations for the hosting of data or infrastructure domestically. Any exceptions to these obligations should be limited as per GATS Article XIV. Further, all parties should agree to be bound by the Telecommunications Services Reference Paper to ensure a level playing field for all companies.
- We believe that an obligation for each party to have an effective, transparent legal framework for data protection would be an important value addition of the agreement, given that many countries worldwide still do not have such a framework. That framework could build on the APEC Cross Border Privacy Rules system, the OECD Guidelines on the Protection and Privacy of Trans-border Flows of Personal Data and other regional policy frameworks, as appropriate. (See also: Box 2, below).
- Commitments to promote the growth of open, competitive digital markets across borders, including appropriate limitations on liability for online platforms that handle digital user content and transactions.
- Disciplines to promote a free, open and globally-interoperable digital environment that enables competition, consumer choice and unhindered access to digital content, thus preventing geo-blocking or other types of undue discrimination.
- Provisions to embed technological neutrality online, in that all technologies are given the chance to compete equally with one another in the marketplace—subject to legitimate security or privacy exceptions.
- National treatment in licensing regimes for financial services, with relevant regulatory provisions to ensure that innovative services leveraging mobile devices can develop nationally and compete internationally in support of reducing the financial inclusion gap as well as supporting trade transactions.
- Provisions that establish and recognize the benefits for consumers of access to digital services and applications, subject only to reasonable network management and legal and security requirements.
- Support for a conducive trading environment on online trading platforms, such as ensuring transparency requirements, fairness clauses, and protection against unfair commercial practice in platform-to-business relationships.

BOX 2: DATA LOCALIZATION REQUIREMENTS AND THE IMPACT ON THE COST OF DOING BUSINESS FOR MSMEs

Research shows that the impact of disrupting cross-border data flows should not be ignored.

Forced localization requirements always discriminate against foreign companies and significantly increase the cost of doing business online, all the more for MSMEs. Forced localization of storage and data processing and other restrictions on data transfers hinder the access and distribution of information

at a global scale. Furthermore, it makes it difficult to benefit from the increased economies of scale that global data centers provide. It is often the product of a one-sided economic analysis, with the underlying objective of keeping foreign competitors out of local markets. Although this may create a small number of “national winners” in the short term, the overall impact is to significantly increase the cost of doing business online for MSMEs.

This is because businesses, and MSMEs in particular, rely on a non-discriminatory, efficient, reliable and cost-effective digital environment enabled by global online platforms and services providers. Data localization measures add significant costs for additional data management, administration and compliance, for local facilities and power—and in practice can undermine data security.

For example, some localization requirements mandate that social networks and search engines must store information on servers within their jurisdictions. Such data storage requirements are anathema to the “global platform” business model that most digital services suppliers apply to achieve greatest efficiency and to keep costs low for MSME users.

Moreover, data localization policies are not only ineffective in enhancing cybersecurity, but also create a “single point of failure” that increases the risk of data compromise. Artificial intelligence and machine learning capabilities are optimized and effective when more data sets are available for analysis, enabled by cross border data flows.

Studies to assess the economic impact of data localization requirements have pointed to significant GDP and welfare losses in a number of major economies, far in excess of any gains attributed to data localization.

Trust and security. New WTO disciplines could also play a significant role in strengthening consumer trust in e-commerce, while promoting an online ecosystem in which businesses, especially MSMEs, can thrive.

- Commitments on cross-border consumer protection standards, product safety requirements, data protection standards and dispute settlement to build consumer trust and confidence in cross-border e-commerce.
- Disciplines to promote technological innovation to enhance online security and reliability based on broadly agreed industry guidelines.
- Prohibition of mandatory disclosure of encryption keys, algorithms and source code and forced transfer of technology
- Commitments to address cybersecurity challenges utilizing a risk management framework approach.

Long-term cooperation. Given the rapidly developing nature of the digital environment, we believe that a forward-looking cooperation agenda is required, with mechanisms to encourage dialogue on regulatory issues on an ongoing basis, beyond the duration of the Joint Statement Initiative negotiations. Such a process might also be broadly applicable to other issues within the framework of any future e-commerce agreement.