

Negotiating Services Market Access under the E-commerce Joint Statement Initiative:

A development perspective

June 2021

Yasmin Ismail

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Written by Yasmin Ismail

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Abstract

This brief is the second this year on the E-commerce Joint statement Initiative under the Trade and Investment Advocacy Fund (TAF2+) WTO Umbrella Grant project. The first brief was published in April 2021 and gave a stocktaking of the developments in the E-commerce Joint Statement Initiative in the context of COVID-19 and towards the WTO’s Twelfth Ministerial Conference (MC12), now planned to be held in Geneva at the end of November this year.¹ Among 52 sub-issues included in the latest negotiating text, dated December 2020, 10 sub-issues—including services market access—are being negotiated in small groups, with the objective of reaching a “clean text” by MC12. Among these 10 sub-issues, services market access stands out as “challenging,”² particularly for developing countries—whether they are part of the JSI or not. The complexity of the issue is exacerbated by the fact that the architecture of the Joint Statement Initiative outcome remains unknown.

This policy brief aims to help developing countries establish a more comprehensive understanding of the ongoing trade in services market access negotiations under the E-commerce JSI. The brief starts by providing a general view of the requests submitted for liberalizing trade in services, their proponents, and the concerned sectors and modes of supply. It unpacks challenges impacting the progress of the negotiations. The brief then explores the opportunities and challenges associated with further commitments by developing countries under the JSI. Finally, the brief provides some guiding questions to help developing countries assess their interests and formulate their negotiating positions.

¹ The first brief is entitled *E-commerce Joint Statement Initiative Negotiations Among World Trade Organization Members: State of play and the impacts of COVID-19*.

² Ambassador Yamazaki (Japan) described data and market access issues as “challenging areas” in the co-conveners’ news update on the first meeting on e-commerce negotiations, held on February 5, 2021.

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Acronyms

B2C	business to consumer
COVID-19	coronavirus disease 2019
CPC	United Nations Provisional Central Product Classification
EU	European Union
ICT	information and communication technology
ICTSD	International Centre for Trade and Sustainable Development
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
JSI	Joint Statement Initiative
MFN	Most Favoured Nation
MC	Ministerial Conference
RTA	Regional Trade Agreement
STRI	Services Trade Restrictiveness Index
TFA	Trade Facilitation Agreement
TiSA	Trade in Services Agreement
TiSMoS	Trade in Services by Mode of Supply
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UPU	Universal Postal Union
US	United States
WTO	World Trade Organization

1.0 Introduction

For the past three decades, information and communication technology (ICT) innovations have been transforming goods, services, and information, as well as the means to exchange all three. “More cross-border trade is now digital in nature” (Bekkers et al., 2021). The coronavirus disease 2019 (COVID-19) pandemic has given further impetus to digital trade and electronic commerce (e-commerce)—a trend that is likely to accelerate and expand (Bekkers et al., 2021; Banga, 2021; Ismail, 2021). Pandemic prevention measures, such as lockdowns and enforced social distancing, saw digital solutions and e-commerce play a critical role in ensuring access to daily necessities and continuing social and economic activities (Banga, 2021 and Ismail, 2021). Notably, the pandemic also triggered a “catching-up” phenomenon, whereby countries with less developed e-commerce capacity witnessed higher growth rates in the sector, according to a recent regression analysis study (Alfonso et al., 2021).

Nonetheless, the pandemic also exposed the significant digital divide that is preventing developing countries from fully harnessing the potential of e-commerce, which would allow for a faster and more resilient recovery. Moreover, gaps in critical e-commerce enablers, mainly the lack of digital infrastructure and limited access to the internet and connectivity, slowed down the recovery of developing countries (Banga, 2021) and exacerbated inequalities among and within countries (Ismail, 2021). Table 1 below shows the wide regional differences in the latest figures from the UNCTAD Business to Consumer (B2C) E-commerce Index that measures an economy’s preparedness to support e-commerce, based on four indicators: individuals using the internet (percentage of the population); account ownership at a financial institution or with a mobile-money-service provider (percentage of population aged 15 and older); secure internet servers (per 1 million people); and Universal Postal Union (UPU) postal reliability index.

Table 1. Regional values for the UNCTAD B2C E-commerce Index, 2020

	Share of individuals using the Internet (2019 or latest)	Share of individuals with an account (15+, 2017)	Secure Internet servers (normalized, 2019)	UPU postal reliability score (2019 or latest)	2020 Index value	2019 Index value (2018 data)
Africa	30	40	28	21	30	31
East, South & Southeast Asia	57	60	54	58	57	58
Latin America and the Caribbean	64	53	50	29	49	48
Western Asia	77	58	45	50	58	59
Transition economies	71	58	60	59	62	63
Developed economies	88	93	84	80	86	87
World	60	60	53	47	55	55

Source: UNCTAD, 2021e, p. 7.

As shown in Table 1, the African continent is lagging behind and striving to catch up on all policy fronts (UNCTAD, 2021e), while all developing countries intensify their efforts to boost digital ecosystems and close their digital gaps.

At the same time, 86 World Trade Organization (WTO) members (EU-27 plus 59 countries) are negotiating rules on trade-related aspects of e-commerce. These negotiations are in the framework of the January 25, 2019 Declaration on the “Joint Statement Initiative (JSI) on E-Commerce.” At the time, 76 WTO members indicated their intention 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, 2019a). Later, on December 14, 2020, the JSI co-conveners Australia, Japan, and Singapore circulated a consolidated negotiating text among the participants and announced that in 2021 the work “will intensify... to further narrow differences and find potential landing zones” (WTO, 2020a).

The consolidated text forms the basis of the negotiations in 2021 and consists of six sections and an annex on the scope and general provisions. The six sections mirror the six main themes advanced in members’ proposals (WTO, 2020b). These are: enabling electronic commerce, openness and e-commerce, trust and e-commerce, cross-cutting issues, telecommunications, and market access. There are as many as 52 sub-issues being negotiated under the six themes. However, ten sub-issues have been considered as particularly promising and have been subject to intensive work in small groups to reach “clean texts” in the run-up to the WTO’s Twelfth Ministerial Conference (MC12) (WTO, 2020a). These ten sub-issues are: consumer protection, spam, e-signatures and electronic authentication, paperless trading, digital trade facilitation, source code, open government data, customs duties on electronic transmissions, open internet access, and services market access (Ismail, 2021). As of mid-May 2021, three plenary meetings of the e-commerce JSI negotiations have taken place. The small group facilitator on spam announced that members had reached a clean text (WTO, 2021c) and progress has been made towards a clean text on electronic signature and authentication (WTO, 2021a).

On the other hand, among the ten small group topics, progress on services market access negotiations has been described as “challenging” by Ambassador Yamazaki of Japan, one of the co-conveners of the initiative (WTO, 2021c). He stressed that “the initiative needs to address market access issues in order to achieve a high standard outcome...[and] should continue to give attention to developing countries which are facing challenges related to capacity building and the digital divide” (WTO, 2021a).

This policy brief aims to explore the development opportunities and challenges associated with the ongoing trade in services market access negotiations under the E-commerce JSI with a view to helping developing countries establish a more comprehensive understanding of the issue and its implications. The brief starts with an overview of the requests submitted for liberalizing trade in services, their proponents, and the scope. It outlines the concerned sectors and modes of supply, as well as offering an overview of the levels of commitments listed by participating members under the General Agreement on Trade in Services (GATS), as well as relevant recent global trade trends. The brief then explores the opportunities and challenges associated with

further commitments by developing countries under the JSI. It aims to identify sectors and modes of supply that may be of particular interest to developing countries in terms of bridging their digitalization and connectivity gaps. Finally, the brief provides a checklist of key questions to help developing countries undertake a comprehensive assessment and stakeholder consultation process to identify their interests and possible negotiating positions.

2.0 Services Market Access Negotiations: The state of play

2.1 Proponents and Scope of Services Market Access Requests

The Consolidated Negotiating Text of December 14, 2020 (INF/ECOM/62/Rev.1) included Section F.(1) on services market access, consisting of a compilation of requests for commitments under the GATS submitted in the E-commerce JSI framework and previously circulated by the facilitator in July 2020 (INF/ECOM/55) at the request of the proponents: China, Chinese Taipei, the EU, and the US (WTO, 2020b). According to the facilitator, proponents requested limitation levels of “none”³ on market access and in national treatment, or a level of “make/improve”⁴ commitments in 37 specific sectors, under 13 sub-sectors among five broad services sectors for Modes of Supply 1, 2 and 3,⁵ while they requested keeping Mode 4 “unbound”⁶ (Banga, 2021; Chacon, 2021). See Table 2 below outlining the services sectors and sub-sectors subject to proponent requests at the time of this writing.

Other than the market access and national treatment commitments, the EU proposal INF/ECOM/43 seeks to replace the WTO Reference Paper on Basic Telecommunication Services⁷ with a list of disciplines to form an updated regulatory framework (WTO, 2020e). It emphasizes the need for all JSI participants to adopt this framework “to ensure a fair, predictable and competitive environment for the provision of telecommunications services,” mainly services that promote business and consumer access to the internet and connectivity.

³ “None” means that the market access and national treatment commitments in the committed sectors are without any conditions.

⁴ “Make/improve commitments” means that the participants either make market access commitments under these if they have not already done so under the WTO GATS agreement or improve the existing commitments.

⁵ GATS modes of supply consist of: Mode 1 “cross-border trade: from the territory of one member into the territory of any other member”; Mode 2 “consumption abroad: in the territory of one member to the service consumer of any other member”; Mode 3 “commercial presence: by a service supplier of one member, through commercial presence, in the territory of any other member”; and Mode 4 “presence of natural persons: by a service supplier of one member, through the presence of natural persons of a member in the territory of any other member”.

⁶ “Unbound” means that the participants will remain free to introduce or maintain measures inconsistent with market access or national treatment commitments.

⁷ Besides specific commitments to liberalize telecommunications markets, many countries have adopted the Reference Paper as an additional commitment under the GATS. The Reference Paper becomes part of a country’s legally binding obligations only when it is included in its schedule.

Table 2. Sectors, sub-sectors and specific sectors* subject to E-commerce JSI negotiations to date (May 2021)

SECTORS	SUB-SECTORS	SPECIFIC SECTORS
1. Business sector	1.B. Computer and related services The commitments in this sector are scheduled in accordance with the understanding on the scope of coverage of CPC 84 - Computer and Related Services (TN/S/W/60 and S/CSC/W/51)	a. Consultancy services related to the installation of computer hardware (CPC 841); b. Software implementation services (CPC 842); c. Data processing services (CPC 843); d. Database services (CPC 844), maintenance and repair (CPC 845) and e. Other computer services (CPC 849).
	1.F. Other business services	a. Advertising services (CPC 871) and e. Technical testing and analysis services (CPC 8676)
2. Communication services	2.B. Courier services - (CPC 7512)	
	2.C. Telecommunication services (additional commitments) This sector is scheduled in accordance with the chairman's notes on Notes for Scheduling Basic Telecom Services Commitments (S/GBT/W/2/Rev.1) and on Market Access Limitations on Spectrum Availability (S/GBT/W/3)	Facilities-based: a. Voice telephone services; b. Packet-switched data transmission services; c. Circuit-switched data transmission services; d. Telex services; e. Telegraph services; f. Facsimile services; and g. Private leased circuit services. Resale (non-facilities based): a. Voice telephone services; b. Packet-switched data transmission services; c. Circuit-switched data transmission services; d. Telex services; e. Telegraph services; f. Facsimile services; g. Private leased circuit services; h. Electronic mail; i. Voice mail; j. Online information and database retrieval; k. Electronic data interchange; l. Enhanced/value-added facsimile services (including store and forward, store and retrieve); m. Code and protocol conversion; n. Online information and/or data processing (including transaction processing); and o. Other.

SECTORS	SUB-SECTORS	SPECIFIC SECTORS
4. Distribution Services	4.A. Commission agents' services - (CPC 621, 61111, 6113, 6121)	
	4.B. Wholesale trade services - (CPC 622, 61111, 6113, 6121)	
	4.C. Retailing services - (CPC 631, 632, 61112, 6113, 6121, 613)	
7. Financial Services	7.B. Banking and other financial services (excluding insurance)	(viii) All payment and money transmission services, including credit, charge and debit cards, traveller's cheques and banker's drafts (CPC 81339)
11. Transport Services	11.A. Maritime transport services	b. Freight transportation (CPC 7212, less cabotage transport services)
	11.C. Air transport services	d. Maintenance and repair of aircraft (CPC8868), - Selling and marketing of air transport services - Computer reservation system (CRS) services
	11.E. Rail transport services	b. Freight transportation (CPC 7112)
	11.F. Road transport services	b. Freight transportation (CPC 7123)
	11.H. Services auxiliary to all modes of transport	a. Cargo-handling services (CPC 741); b. Storage and warehouse services (CPC 742); c. Freight transport agency services (CPC 748); and d. Other (CPC 749).

Source: Author's adaptation of WTO (2020b).

*The sectors and subsectors in this schedule are defined by the corresponding items in the United Nations Provisional Central Product Classification, 1991 (CPC), unless otherwise indicated.

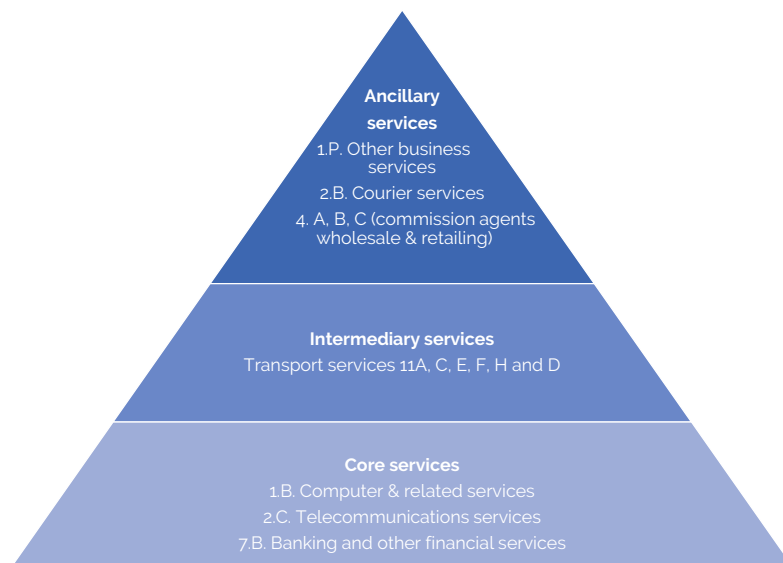
The E-commerce JSI proposals attempt to make it mandatory for participants, particularly from developing countries, to take binding obligations, under Modes 1, 2 and 3, in five service sectors out of 11 GATS sectors (Banga, 2021), while “the GATS, in its design and architecture, takes into account the need to retain regulatory autonomy to pursue national policy objectives” (UNCTAD, 2020a). Thus, the GATS adopts a positive list approach and grants members the flexibility to adopt commitments or not. On the other hand, the JSI proposals keep Supply Mode 4, where developing countries have offensive interests, commitment-free (Banga, 2021).

2.2 Challenges of Scope

According to the facilitator’s note on services market access negotiations (INF/ECOM/55), “proponents agreed that they wanted to limit the scope to only those services that were directly relevant to e-commerce” (WTO, 2020c). It is unclear, however, how liberalization can be limited to electronically supplied services if the GATS is in principle “technologically neutral.”⁸ Hence, the supply of services through electronic means is not distinct from all other means of supply (UNCTAD, 2020a). A market access commitment implies the right for other members’ suppliers to supply services through all means of delivery, whether in person or by telephone, mail, and so on, unless members specify it in their schedules (UNCTAD, 2020a).

A debate is ongoing among the JSI negotiators on the possibility of distinguishing between e-commerce “core” and “ancillary” services sectors (Chacon, 2021; WTO, 2020c.). “Core” sectors consist of tech-intensive necessary services for enabling connected businesses and cross-border e-commerce. Based on the sectors set out in Table 2 above, core services would include 1.B. computer and related services; 2.C. telecommunications services; and 7.B. banking and other financial services. In comparison, ancillary services would be those facilitated by e-commerce business models, such as wholesale and retail. A third “intermediary” category of e-commerce related services can be identified to include transport and logistics services (air, maritime, road, and so forth). See Figure 1 for a pyramidal view of e-commerce related services from core (base) to ancillary (top) services.

Figure 1. Pyramidal classification of e-commerce relevant service sectors: Core, intermediary and ancillary services



Source: Author, inspired by Chacon, 2021.

⁸ There is no provision in the GATS which states that the agreement is “technologically neutral.” The GATS principle of technological neutrality has been endorsed by jurisprudence. For example, the Panel Report, *United States–Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/R.

2.3 Challenges of Architecture

The ambiguity concerning the architecture of the E-commerce JSI's anticipated outcome and its interaction with current WTO rules and scheduled commitments has been overshadowing the market access negotiations (Ismail, 2021). After more than two years of negotiations, on March 16 the co-conveners announced that “members intend to work in further detail on the question... before the summer break” (WTO, 2021a).

In a recent communication to the WTO General Council (GC) (WT/GC/W/819), dated February 18, 2021, India and South Africa criticized the “contradiction between JSIs and the fundamental principles at the WTO.” They pointed particularly to suggestions that if their negotiated outcomes are offered on a Most Favoured Nation (MFN) basis, no multilateral consensus is required to modify schedules (WTO, 2021b). They explain:

Negotiations on modifications or improvements to schedules are expected to arise either as the outcomes of consensual multilateral negotiations pursuant to Article XXVIII of GATT or Article XXI of GATS or reached through a bilateral request and offer process, or as a result of a dispute. In contrast, changes to rules and the amendment procedures are not premised on agreements amongst a subset of interested or affected Members. In fact, even changes to schedules cannot be made unilaterally, as other Members have the right to protect the existing balance of rights and obligations. (WTO, 2021b)

Hence, a key question that confronts JSI negotiators is: What legal outcome would not jeopardize the existing balance of rights and obligations for non-participants and still allow them to harness the potentials of e-commerce? According to Hoekman and Wolfe (2021), the EU would like for these provisions to become a reference paper for participants to include in their General Agreement on Tariffs and Trade (GATT) and GATS schedules on an MFN basis, while China and the US are in favour of a plurilateral agreement restricting the JSI benefits to the participants. Procedurally, seeking a plurilateral agreement within the WTO framework can be a “poison pill” (Hoekman and Wolfe, 2021) since it requires consensus, including from WTO members not participating in the JSI (UNCTAD, 2021a). A plurilateral Regional Trade Agreement (RTA) outside the WTO framework is another scenario. But it does not necessarily provide an incentive for multilateralism, which is stated as an objective for the JSIs (ICTSD, 2017; UNCTAD, 2021a).

India and South Africa suggest a third option of initiating an amendment process for Article X of the Marrakesh Agreement to allow for a “Flexible Multilateral Trading System” (WTO, 2021e). While it preserves multilateralism prospects, it lacks clarity on what exactly a Flexible Multilateral Trading System is. It is also very likely for such a process to stall for years, given that it depends on consensus, a formal acceptance process and a quorum required before the amendment enters into force (WTO, 2021e). Table 3 compiles various possible options and scenarios for the E-commerce JSI participants with their anticipated advantages and limitations.

Table 3. Options and scenarios for the E-commerce JSI negotiated outcome

OPTIONS	SCENARIO	ADVANTAGES	LIMITATIONS
Within the WTO Framework	Waiver-based plurilateral	Would retain the outcomes within the WTO system. More realistic prospect of multilateralization.	Limited participation is likely.
	Critical mass plurilateral	In principle, would retain the outcomes within WTO system. Creates an incentive for future multilateralization.	Uncertainty on the scope and nature of the outcomes and on the level of participation. Uncertainty on the parameters defining the critical mass.
	Reference paper	No consensus or waiver required. Large scope and depth. High trade value of additional commitments.	Additional commitments would be subject to the application of the Most Favoured Nation obligation, which creates a mass of “free riders.” Limited participation. It is likely to attract a group of high-income and high-middle-income countries.
Outside the WTO Framework	Trade in Services Agreement (TiSA) format; bilateral or plurilateral Regional Trade Agreements (RTAs).	Large scope and depth of provisions. Incorporation of sophisticated rules/disciplines. Attractive to business providers and users of e-commerce technologies.	Limited participation. Would take discussion outside the WTO. Increased fragmentation of trade rules. Increased marginalization of developing and least developed countries. Would not necessarily create an incentive for multilateralization. Difficulties in agreeing on still-divisive trade disciplines (localization, data flows, data protection/privacy).
Amendment to Article X of the Marrakesh Agreement to allow for “Flexible Multilateral Trading System”	The procedures for amendment require the requirement for consensus (or voting) (Art. X.1); a formal acceptance process of depositing an instrument of acceptance (Art. X.7); and attainment of the quorum required before the amendment enters into force (various Art. X provisions).	Would retain the outcome in the WTO. May improve prospects of multilateralism.	Lack of clarity on the parameters of a “Flexible Multilateral Trading System” Long period for the amendment process to be completed.

Source: Author, based on ICTSD (2018) and WTO (2021b).

2.4 Absence of Gender Equality and Social Inclusion (GESI) Considerations

Finally, an important issue that is missing in the proposals and discussions involving services market access is Gender Equality and Social Inclusion (GESI). According to Ismail (2021), the latest Consolidated Negotiating Text of December 14, 2020 (INF/ECOM/62/Rev.1) included only two gender-inclusive provisions. These were advanced by Canada for consideration under the preamble and the subsection on protecting personal information and adopt a general non-discrimination approach. The E-commerce JSI negotiations are missing substantive discussions about the GESI implications of the proposed rules and market access commitments. According to Thystrup (2020), sector-specific market access negotiations and the resulting scheduled commitments can affect women differently than men, according to the size of the firms and businesses involved and the labour and gender equation in those sectors.

Such different implications should not be ignored when negotiating furthering market access commitments in the above-mentioned 37 specific sectors in the GATS. In fact, being conscious of these implications, and adapting appropriate approaches from the beginning, may be helpful in strengthening the inclusivity aspects of the final outcome of services market access.

3.0 Implications for Developing Countries

3.1 Likely Market Access Imbalance

In general, developed country members of the JSI are net exporters of all the services sectors subject to E-commerce JSI negotiations. In contrast, most developing countries (with the exception of certain Asian economies) that have joined JSI are net importers of the identified services (Banga, 2021; UNCTAD, 2020c). Therefore, further market access commitments in these services will benefit developed country members more, given their competitive advantage in this area (Banga, 2021). Table 4 shows the balance of trade and the predominance of developed economies in the JSI services identified for services market access negotiations via Mode 1, Mode 2, and Mode 3 compared to developing countries participating in the JSI.

Table 4. Global trade in e-commerce-related identified service sectors* via Mode 1, Mode 2, and Mode 3 of participating countries (2017)

		Exports in USD million	Imports in USD million	Balance of trade in USD million
JSI members—developed countries		5,063,775	4,362,552	701,223
1	EU (27)	2,618,765	2,355,723	263,042
2	Australia	110,548	79,763	30,785
3	Japan	476,826	199,637	277,189
4	Switzerland	374,649	144,713	229,936
5	United States	1,048,485,485	885,357	163,128
	Others (4)	434,501,501	697,358	-262,857
JSI members—developing countries		1,509,955	1,881,287	-371,332
1	Argentina	21,224	29,610	-8,386
2	Brazil	55,099	111,960	-56,861
3	China	243,700	446,659	-202,959
4	Ecuador	1,498	6,356	-4,858
5	Indonesia	21,945	45,326	-23,381
6	Kenya	2,865	3,857	-993
7	Malaysia	25,645	37,184	-11,539

		Exports in USD million	Imports in USD million	Balance of trade in USD million
8	Nigeria	5,274	29,506	-24,233
9	Singapore	243,034	192,935	50,099
10	Thailand	30,809	60,583	-29,774
11	Turkey	34,766	43,207	-8,441
	Others (39)	824,096	874,102	-50,006

Source: Author's adaptation of Banga (2021) calculations based on trade in services by mode of supply (TiSMOS), WTO, 2017.

*Identified services include trade-related services (distribution); transport; financial services; telecommunications, computer, information, and audiovisual services; advertising, market research, public opinion polling; and technical, trade-related, and other business services.

3.2 Possible Opportunities from Increased Telecommunication Services Access

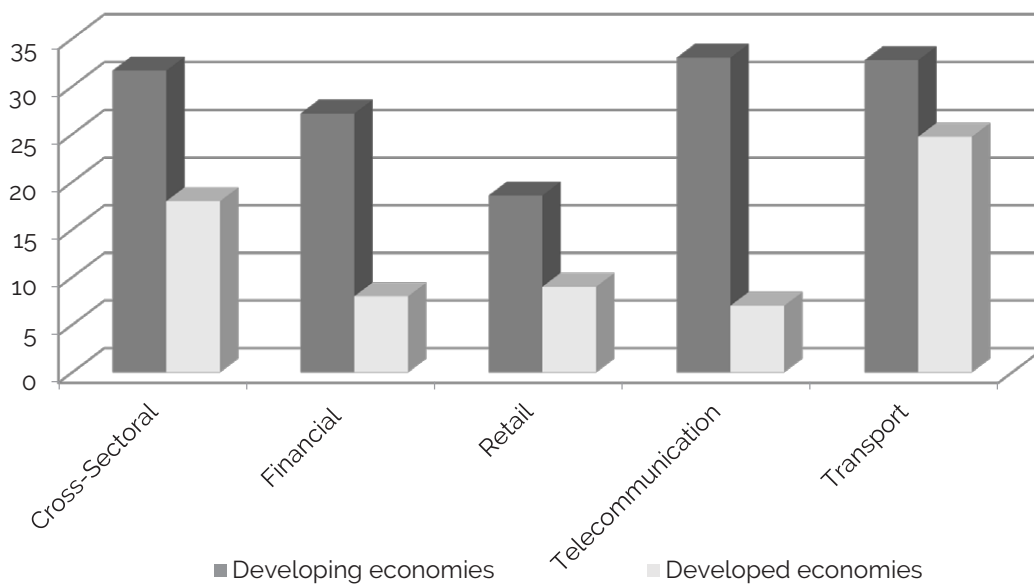
For developing countries (whether participating in the JSI or not), COVID-19 emphasized the urgent need to build digital capabilities and bridge the digital divide (Ismail, 2021). According to the WTO (2017), telecommunication and computer services are critical enablers for a range of services to grow and be provided over digital networks and for the exchange of goods through the web. “Indeed, without the lower communication costs brought about by improvements in telecom and computer services, the sale of goods online as it stands today, including inventory management, would not be possible” (WTO, 2017). The internet together with financial services and online payment solutions constitute the backbone for cross-border e-commerce. That is why they are considered “core” among e-commerce-related services, as mentioned in section 1.

In line with globally intensified digitalization efforts in recent years, as mentioned in section 1, trade in telecommunications, computer, and information services grew by 8.7% in 2019 (UNCTAD, 2020c). According to UNCTAD (2020c), the telecommunications sector was the fastest to grow among services in 2018 and 2019. However, with 69% of global telecommunication services exports, developed economies continue to dominate the sector; meanwhile, African and Latin American developing economies accounted for only 2.4% (UNCTAD, 2020c).

These service sectors remain more restricted in developing countries. Figure 2 shows higher scores for developing countries than for developed countries in e-commerce-relevant service sectors according to the Services Trade Restrictiveness Index (STRI). Gaps are notably wider in the financial and telecommunication sectors. As noted before, the GATS is designed to allow flexibility to formulate commitments and restrictions at levels considered suitable to national interests. In the post-COVID-19 “new normal” context, some developing countries may consider

a different approach that strikes a balance between protecting infant industries and achieving urgent progress in digitalization by removing restrictions on the “core” services for e-commerce.

Figure 2. STRI scores for developing and developed economies by sector (OECD, 2017)



Source: Author's adaptation of WTO (2017). Computed on the basis of the World Bank's Services Trade Restriction Database, <http://iresearch.worldbank.org/servicetrade/home.htm>.

4.0 Conclusion: Towards a Built-in Development Dimension

According to UNCTAD, “for developing countries, irrespective of whether they are participating in the JSI negotiations or not, the formulation of adequate national regulatory frameworks to build digital capabilities should remain an essential component of a broader national development agenda” (UNCTAD, 2020a).

While the negotiations’ legal outcome architecture is still undecided, JSI participants should consider ways and means to adapt certain GATS provisions that can contribute to embedding a development dimension in the JSI outcome. These GATS provisions include Article IV, “Increasing Participation of Developing Countries,” and Article XIX, “Negotiation of Specific Commitments,” which can be employed through progressive liberalization with due regard to the level of development of members. Hence, participants may consider examining how commitments by developing countries and LDCs can be progressive, while taking into account their levels of development. A mechanism inspired by the Trade Facilitation Agreement (TFA), where progressive liberalization is linked to the provision of assistance, may also be considered in E-commerce JSI negotiations, given the wide digital gaps between participants (ICTSD, 2017; UNCTAD, 2020a).

The proposal by Côte d’Ivoire (INF/ECOM/49) is a concrete example in this regard that seems to be inspired by the TFA mechanism for special and differential treatment and by the progressive liberalization concept of the GATS. Côte d’Ivoire’s proposal suggests that liberalization under the E-commerce JSI outcome should “establish the principles that developing countries should adopt on opening up their markets, while allowing them the freedom to choose the level of access they are prepared to grant. Their market access offer will define the conditions of access, as well as the timetable for progressive liberalization, and will be recorded in their schedules of concessions” (WTO, 2019b). The submission proposes that

developing countries—and low-income developing countries in particular—should define three categories of liberalization: market access that they are willing and will be able to grant once the agreement enters into force; market opening that they are willing and will be able to provide according to a gradually established schedule; and market access that they are not currently in a position to provide. They should nonetheless commit to proposing a schedule of liberalization within 10 years. (WTO, 2019b)

Finally, for those participating in the E-commerce JSI but lagging behind in terms of digital capacity and connectivity, services market access negotiations may be viewed within the framework of their comprehensive digitalization and e-commerce development strategies and related policies and regulations. This approach should help the countries assess the extent to which they are ready to improve the level of their GATS commitments, or make new commitments in the selected service sectors. Ideally, this examination process should involve all

relevant stakeholders, including concerned government ministries, regulatory bodies, the private sector, chambers of commerce, and think tanks. To facilitate the process for consultation, and to make it objective and outcome-oriented, a checklist of key questions is proposed in Table 5.

Table 5. Checklist of questions for an informed process and position on services market access in the E-commerce JSI negotiations

1. Does the participant have a digitalization or e-commerce promotion strategy? If so, what are its key components related to the service sectors under negotiation?
2. Which service sectors or sub-sectors are key to the successful implementation of its digitalization or e-commerce promotion strategy?
3. What is the status of development of these services sectors/sub-sectors in the country, and what are their needs for investment and technological upgrades?
4. What is the status of the regulatory framework related to these services sectors/sub-sectors?
5. What is its trade balance (exports and imports) in these services sectors/sub-sectors?
6. What vertical commitments (national treatment, market access, additional) are undertaken by the participant in the computer services sector under the GATS or RTAs?
7. Has the participant adhered to the understanding on the scope of coverage of computer and related services (S/CSC/W/51) in scheduling its relevant commitments?
8. What vertical commitments (national treatment, market access, additional) are undertaken by the participant in the communications services sector (in particular, with respect to telecommunications) under the GATS or RTAs?
9. What vertical commitments (national treatment, market access, additional) are undertaken by the participant in the logistics services sector under the GATS or RTAs?
10. What vertical commitments (national treatment, market access, additional) are undertaken by the participant in the financial services sector (in particular, for electronic payments) under GATS or RTAs?
11. Has it recorded any MFN exemptions for these services sectors under the GATS?
12. What are its horizontal commitments under GATS?
13. Has the participant incorporated the Reference Paper on Basis Telecommunications into its GATS schedule in full or in part?

Indeed, services market access negotiations under the E-commerce JSI are complex and critical. It is also important that the interests of participating developing and least-developed countries are taken into account therein. As this policy brief demonstrates, there are possible ways to do that, including through adaptations of the relevant GATS and TFA provisions/models. The participating developing and least-developed countries would also benefit from national assessments and multi-stakeholder consultations to determine their offensive and defensive interests in these negotiations. Finally, the participants may consider looking at the gender equality and social inclusion implications of furthering their commitments under the 37 sub-sectors currently subject to E-commerce JSI services market access negotiations.

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