

# WTO Joint Statement Initiative: Conflicts Analysis and the Impact on Future Negotiations

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**Abstract.** The increasing digitalization of economic activities has created new electronic commerce operations, and the development of digital trade has created new demands for international trade rules. However, these developments also generated trade conflicts and regulatory issues between countries in the world. In response to the new demands and the need to resolve conflicts and issues, many countries from the World Trade Organization (WTO) initiated a Joint Statement Initiative (JSI) on e-commerce, aiming to achieve a consensus on e-commerce-related global trade topics. Due to the difference in economic development and policy concentration, the proposals from each signatory face economic, safety, and cultural value disputes. Developed economies are competing for a dominant position in the digital world to set the rules for e-commerce. Thus, a deep insight into the process of JSI negotiation and an analysis of several large debatable topics, such as cross-border data flow, market access, and intellectual property protection, need to be provided for future reference. Under such a situation, opportunities are also created for countries and enterprises to gain a competitive edge, and detailed future considerations can be explored as new topics for the signatories to include in the negotiation process in order to produce a comprehensive agreement.

**Keywords:** WTO; joint statement initiative; e-commerce negotiation.

## 1. Introduction

With the rapid development of the digital economy and expansion of globalization, digital trade based on information and communication technologies, networks, and electronic commerce is fastly expanding, bringing enormous challenges to the existing system of international trade rules. The role of e-commerce in international trade will become increasingly important in the future, and countries will need to address the relationship between trade policy and internet governance. However, as a new business method, the unique nature of electronic commerce, which can easily and invisibly cross geographically-set borders and include a wide range of sectors such as goods, services, and intellectual property, provides significant obstacles to the idea of national territory and jurisdiction, making it impossible to coordinate policies. The World Trade Organization (WTO) is the most significant international organization in charge of creating and upholding laws governing commerce, and it has a significant impact on the development of laws governing international trade in the digital world. In 2017, a number of WTO members filed a Joint Statement Initiative (JSI), reaffirming the important role that e-commerce holds in inclusive trade and development and driving WTO negotiations on problems involving e-commerce and trade. In the absence of a widely accepted definition, these initiatives might be broadly defined as an effort by a group of members to initiate discussions concerning a particular topic area without making use of the consensus decision-making that predominates in the WTO [1]. In 2019, the second JSI was filed, confirming the launch of negotiations on trade-related electronic commerce, seeking the participation of as many member states as possible and the establishment of high standard international rules for electronic commerce based on current WTO agreements and structures. However, due to the differences in the level of digital economic development of the negotiating parties and the different directions of regulatory focus, the interests of the parties are divergent, and the search for common ground is bound to be a huge challenge, so the negotiations may take years to complete.

This paper includes a comprehensive case description of the Joint Statement Initiative since 2017, serving as an information section that assists the detailed analysis of the refined negotiation topics. The analysis, divided into subtopics, focuses on the technology and industry development

characteristics with an emphasis on the reasons for disagreements and conflicts raised between developed and developing countries during the negotiation. The last section focuses on the WTO JSI on e-commerce negotiations' future influences, challenges, and opportunities created in the process that can be captured by countries and enterprises. The final result of this negotiation will hugely impact the digital world and the progression of e-commerce.

## **2. Case Description: The History and Current Progress of the Negotiation**

Due to the growing need for governance in electronic commerce and the lag of multilateral rules, electronic commerce provisions are increasingly being incorporated into Regional Trade Agreements (RTAs). As of May 2017, out of all the RTAs notified to the WTO, 75 of them contained electronic commerce clauses, representing a large proportion of 27.3%. There have been an increasing number of RTAs with particular electronic commerce provisions over time. Between 2014 to 2016, the proportion of electronic commerce-related RTAs increased to more than 60% [2]. While the emerging regional electronic commerce rules are helping to fill the gaps in multilateral rules, they inevitably exacerbated the fragmentation of global digital trade government, resulting in regulatory conflict and negatively affecting the world's economic growth. As the most central multilateral trading mechanism, the WTO attaches great importance to this emerging field and wants to adapt to the continuous development of the world economy. Therefore, at the 11th Ministerial Conference in Buenos Aires on December 13th, 2017, 71 members of the WTO decided to issue a Joint Statement Initiative (JSI), aiming to negotiate business aspects on both traditional trade topics and electronic commerce. Signatories include developing nations, transitioning economies, and developed nations such as the United States, Japan, and the EU. Members also include Myanmar and Cambodia, which are the two least developed countries (LDCs), and the only African country, Nigeria. The signatories intend to begin collaborative research in preparation for upcoming WTO discussions on trade-related issues of e-commerce. [3].

The JSI strives to reach consensus on common issues in a variety of areas, such as allowing electronic commerce, encouraging openness in e-commerce, e-commerce businesses' market access, and more. On March 14th, 2018, a first meeting was conducted to examine members' perspectives and outlooks on e-commerce-related concerns. The inaugural JSI on e-commerce participants met every month during this year. Both developing countries, such as Costa Rica, Brazil, and Argentina, and developed countries, such as Canada, Australia, and New Zealand, submitted new issues that need to be discussed during the negotiation. The proposed issues include electronic payment and paperless trading infrastructure, an open trading environment, domestic regulation, intellectual property, source code privacy protection, internet safety, and more. By the time of December 2018, a total of nine meetings were conducted where every member's statements and proposals were examined in order to establish and agree upon the plan for the negotiations phase [4].

The discussion period in 2018 was officially ended by launching a second Joint Statement during the 2019 World Economic Forum Annual Meeting in Davos. Compared to the country members in 2017, Cambodia and Guatemala left the group, but new members such as China, Thailand, El Salvador, and the United Arab Emirates joined the statement group [5]. Therefore, the number of members increased to 76, constituting 90% of the global trade economy. The members stated their interest in starting negotiations on trade-related electronic commerce at WTO with the involvement of as many participants as feasible. The signatories intend to establish high-standard international rules for e-commerce on the basis of existing WTO agreements and frameworks [6]. The number of members increased continuously to 82 as of December 2019, after six rounds of negotiations were concluded. Some major categories of the topics discussed include but are not limited to electronic transactions such as frameworks, contracts, and authentications; consumer protection such as unsolicited commercial spam; and access to the internet and data such as open access to the internet and online platforms. The greatest challenge encountered in the process of reaching consensus during the second JSI negotiation was to ensure the agreements have the same obligations for all parties

regardless of their countries' economic and developmental status. Apart from negotiating on issues closely related to electronic commerce, the meeting agenda also emphasized addressing jurisdiction and international collaboration to minimize disagreements [5].

As of 2020, a total of 38 developed countries and 45 developing countries joined the Joint Statement Initiative. Structurally, the number seems equal, but when further analyzing the participation rate of these two types of economies, the participation rate of developed countries was much higher. Among the world's developed countries, only a minority of them, such as Greenland and Bermuda, did not participate. In comparison, most of the developing economies did not join, including countries with great international influence, such as India, South Africa, Saudi Arabia, and more [6]. During this year, the digital change has accelerated due to the Coronavirus Disease (COVID-19) pandemic, and electronic commerce has become more important to aid the recovery of the stagnant global economic growth. As of December 2021, 86 members of the WTO have signed the Joint Statement Initiative and joined e-commerce negotiations related to digital trade. Australia, Singapore, and Japan are the co-conveners of JSI and announced that substantial progress had been made in achieving convergence on issues such as open government data, paperless trading, transparency, and more. However, all members are still unceasingly promoting the improvement and final formulation of the negotiation agreement, aiming to expand their international influence in the digital world and maximize their own strategic economic interests [7].

### **3. Analysis: Conflicts between Proposals**

Reaching consensus on the Joint Statement Initiative on electronic commerce is crucial for the future development of the digital economy. Not only the 86 current signatories are closely paying attention to the progress, but countries that did not join the initiative are also hoping that they will be properly considered during the negotiation process with the inclusion of their core concerns in an appropriate manner in the agreement. After rounds of negotiations, all parties have reached certain consensus on topics such as enhancing e-commerce's accessibility and openness, safeguarding online customers, and encouraging the participation of small and medium-sized businesses. However, there are still obvious disputes on many key controversial issues [8]. It should be emphasized that most of the developing countries that submitted proposals are high-income economies, and middle to low-income developing countries rarely submitted proposals. In addition, the proposals from developed countries have more specific and rich content, while developing countries tend to have relatively simpler proposals. The topics of the proposal also vary based on the economic pursuit of each country. For example, the proposals from economies that advocate a high degree of openness, such as the United States, mainly involve cross-border data flow and internet opening, and proposals from economies that advocate intense supervision, such as China, mainly involve personal privacy protection and consumer rights protection [6]. Therefore, the difference in each member's proposal and claims means that concessions and modifications must be made during the negotiation process in order to resolve complex issues in electronic commerce.

#### **3.1 Cross-border data flow**

In the current rapidly developing digital world, data has become a core strategic resource. Businesses that provide search engine services, social networking services, and web content services are highly dependent on data collection, data mining, data analysis, and data processing. Internet-based services affect data flows into and out of the country, but they are subject to regulations, not customs tariffs [9]. With the aid of global data resources, developed countries can achieve high-speed development in the digital industry, which will also indirectly drive the development of other related domains and bring economic benefits. Therefore, developed countries tend to emphasize the importance of the cross-border free flow of data in their proposals, claiming that countries should not prohibit, restrict or discriminately manage cross-border data transfers of individuals and enterprises. However, developing countries bear greater costs and risks. In developing countries, due to the lack

of a data transaction system, the export of data is often free, and countries cannot obtain any economic benefits from it and may even face economic loss. Also, due to the differences in technology and industrial development, developing countries can only become data exporting countries and passively accept digital services provided by developed countries, which leads to a lack of protection for some critical data and other sensitive issues [6]. Though developed countries emphasize the topic of cross-border data flow, the viewpoints of different developed economies, such as Japan, the United States, and the European Union (EU), are dissimilar in some ways. While the United States has not proposed any personal privacy protection claims as it believes that this idea may lead to the obstruction of data free flow, the EU and Japan believe that measures to limit cross-border data flow can be taken to some extent in order to protect personal information and privacy. In addition, in the network environment, the EU upholds strict privacy regulations, making it clear that any agreements relating to the cross-border flow of data should not prioritize privacy rights [10]. On the other hand, developing countries did not mention much about data flows as some of them believe that data issues are sensitive and complex, which require more exploratory discussions [11]. Thus, it is important for the signatories to understand the insights and impacts of cross-border data flow in order to reach a final consensus on this topic.

### **3.2 Market access and market opening**

The main disputes on market entry are related to market opening and access, as well as other related non-tariff barriers such as network opening, technology, and uniforming standards. During the negotiation process, developed countries, such as the United States and Japan, focus on the commitment to lifting the ban on telecommunications and computer services to create a predictable business environment that is beneficial to the digital trade world. Nevertheless, the developing countries, such as Costa Rica and Argentina, put an emphasis on the implementation of a flexible and inclusive open market policy, allowing them to freely choose the degree of market opening or set a specific time range for market opening. In addition, developing countries also want to expand the scale of trade in goods and services that are directly related to e-commerce. In terms of market entry barriers, in order to protect national security and domestic industries, developing countries prefer to establish financial restrictions, data restrictions, trade restrictions, and other barriers. However, developed economies oppose various forms of market entry barriers and vigorously promote the liberalization of digital trade in order to enter more markets and obtain trade benefits [11]. Furthermore, the digital market created by the opening of digital trade and e-commerce cannot be equally divided in every country due to the different levels of development. The trade opening among developed countries is reciprocal because countries with similar preferences and technologies can gain from opening international trade and entering each other's market due to increasing economies of scale and return to scale. However, the trade opening of the digital service markets between developed and developing countries is unilateral. Due to the development differences between countries, trade models that emphasize the variances and divisions of labor among countries, such as comparative advantage theory and factor endowment theory, have stronger explanatory power. When developed countries and developing countries open up digital trade with each other, the division of labor in developed countries will focus on the production and creation of new digital services, while the division of labor in developing countries will focus on the manufacture of traditional goods and commodities. Due to such differences in the market opening, trade emphasis, and fierce external competition, it will be difficult for developing countries' digital service industries to thrive and grow. The purpose of market access and opening negotiation is to solve the issue of what industries to open and when to open, and how to open. To ensure a better negotiation process for both types of economies, the degree of market opening and appropriate domestic industry protection is important, which requires further discussions to reach a consensus [6].

### 3.3 Intellectual property protection and technology development

Intellectual property protection and privacy issues are important parts of the progression and improvement of e-commerce, and thus they are crucial negotiation topics. The intellectual property system promotes the production, creation, and diffusion of new knowledge and technology through the protection and stimulation of innovation. However, there are still conflicts of interest between technology leaders and latecomers in the intellectual property rights system. In the JSI on the e-commerce negotiation process, the developed economies advocate a more stringent intellectual property protection system as they want to secure exclusive rights, while developing countries propose exceptions such as public safety regulation and others as they want to enjoy better the right to innovate with existing knowledge [11]. The most debated issues are the protection of source code, proprietary algorithm, and business confidentiality. Out of these issues, the most notable one is source code. Source code is essential for the operation of computer applications. In a text file utilizing a particular programming language, a programmer creates instructions that are understandable by humans. On these negotiation topics, countries such as Canada, Singapore, and Japan, propose that countries should not make market access conditional on the sharing or transfer of technology, source code, algorithms, and more, as this may lead to a leak in the information of major corporate technologies to competitors. However, it is important to notice some exceptions. For example, the European Union highlighted a variety of general security exceptions, voluntary traders and authorization situations, military and national interest-related issues, and more. Developing countries also proposed that over-protection of intellectual properties may lead to program duplication and waste, which will raise the cost of obtaining information and knowledge and impede the expansion of digital trade [6].

## 4. Suggestions and Future Influence

As international digital trade policy discussions and electronic commerce negotiations progress, national characteristics, and dissimilarities will be further amplified. The Joint Statement Initiative on electronic commerce is still in process, and there are a lot more issues waiting to be resolved. It is expected to see a consensus reached through this multilateral and plurilateral negotiation where signatories and also non-signatories will all be benefited, and the negotiating deadlock will be broken. Undoubtedly, the JSI on e-commerce will have a significant impact on future e-commerce negotiations and will lead to more opportunities and challenges in the digital world's outlook.

The rising demand for digital economy integration will lead to the emergence of regional trade rules, and in the current digital trade world, Europe and the United States are still in a dominant position. Firstly, it is unlikely that either multilateral or plurilateral negotiations will result in the ambitious e-commerce agreement that the United States expects. The next phase of the trade policy agenda will shift more toward post-border measures, and restrictions on a country's economic sovereignty and policy flexibility must be perceived as necessary and proportional; otherwise, it will be difficult to gain support at the domestic level. If the need and proposals of developing countries are ignored, there are risks and challenges that may lead to the refusal to cooperate. Secondly, a limited plurilateral agreement will be reached in a more pragmatic path in the short term, but in the future, a full, comprehensive, and more detailed agreement needs to be put into action. Since the negotiations, the United States has proposed several times to exclude China in order to achieve a high standard of negotiation. However, it is clear that this proposal is not realistically feasible. China has a very large e-commerce market, so it is not in the best interest of other members to exclude China from the agreement network, as it would be taking the risk of losing some of China's market share. Other developing economies are also more inclined to adopt more restrictive digital trade and e-commerce policies, so it is not enough to exclude China if the United States wants to uphold high standards as the center of the global economy is shifting towards developing economies. Also, the European Union will face challenges as some EU members with high international and political status, such as Germany and France, have a high Digital Trade Restrictiveness Index, leading to a potential

conflict between the EU and the United States [12]. Therefore, for the goal of reaching more future consensus on digital trade and e-commerce, the basic norms need to be established first in less divisive areas and topics. In addition, a longer, more flexible transition period for compliance and more room for negotiation may be given to developing countries to increase the likelihood of bridging the differences with developed countries under the circumstances that developed economies agree to such flexibility [8].

Though the JSI negotiation is still in progress, the debates and feasibility of the implementation of the negotiated agreement rules cannot be ignored. From a political standpoint, it first seems to be less controversial if JSI Members agree to provide advantages to non-signatories. In theory, consensus would not be a major worry as signatories could file new rules that only apply within themselves. However, in the long term, the scenario still offers a number of political issues when looking at the adoption of new regulations via dynamic lenses. Particularly in India and South Africa, emerging members have voiced their general opposition to the notion of JSI. Even though they have not been as outspoken, several developing countries have expressed concerns about the JSI now being discussed at WTO headquarters, which may be spending administrative funds that were not intended for this. In addition, depending on the unique characteristics of each nation, the JSI may have different economic effects on its signatories and non-signatories. Members must consider the cost-benefit analysis before deciding whether to join the JSI, and participants also have an impact on whether or not the JSI can achieve its efficient economic outcome. The marginal bureaucratic cost of participating in the negotiation discussions will be minimal if the country has made sufficient investments in developing the necessary competence to participate in the WTO system. On the other hand, joining the JSI would be challenging for a nation with little experience and a low trade ministry, especially if its proposal contradicts with other dominant ministries. Therefore, these are, firstly, some problems that need to be considered for future e-commerce negotiations or need to be added as new JSI negotiation topics, and secondly, some realistic complications for developing economies [1].

Internet usage for both business and leisure increased as a result of protracted lockdowns and confinements due to COVID-19. In comparison to the time before the pandemic, the digitalization of business processes, supply networks, and customer communications has accelerated at a fast rate. Due to the epidemic, major e-commerce businesses reported a significant spike in online sales and demand. Though the market is saturated, a future opportunity for countries to gain advantage from e-commerce and the digital world is to promote the growth of LDCs in order to drive a larger global growth and demand. By the end of 2021, the only JSI signatories to submit proposals on clauses regarding capacity building and technical support for developing nations and LDCs are China and Indonesia. The proposal suggests that countries who are able to provide assistance to others should do so to guarantee that LDCs can implement the agreed e-commerce standards. In addition, by providing aid to LDCs and assisting them to have an improved e-commerce infrastructure and technical capabilities, it can assist digital businesses and help the global citizens to recognize digital transition [13].

## 5. Conclusion

In conclusion, the JSI on e-commerce negotiation is an important milestone in the development of the digital world. The negotiation is still in progress and there are several obvious conflicts, especially between developed economies and developing economies with different goals and pursues. However, as the negotiation further progresses, an optimum outcome that satisfies the interest of the majority will be produced and implemented, overcoming all the challenges and taking advantage of the opportunities. The JSI on e-commerce negotiation has a large impact on future e-commerce-related negotiations as it changed some perspectives of countries and also created new norms in the digital world. Future negotiations can refer to the process of JSI negotiations to resolve possible conflicts between members. Countries can also benefit from the final result of the JSI negotiation and take rapid reactions and adjustments to strategic e-commerce policies in order to maximize their interests

and growth. E-commerce-related companies may experience a surge in company income expansion if they pay close attention to every round of the negotiation and sequel to adjust their business strategy and match the interest of the mass market. However, this research is not a fully comprehensive one; there are more minor conflicts during the negotiation that will be addressed in future rounds of JSI negotiations that can further impact political policies and create more opportunities for countries and businesses to grasp.

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