The Case for Ambitious Services Market Access Commitments as Part of the WTO Joint Statement Initiative on E-Commerce

Industry applauds the work of the co-convenors and all participating WTO Members to actively drive work toward the prompt conclusion of an ambitious and commercially meaningful Joint Statement Initiative (JSI) Agreement on E-Commerce. As participating governments seek to advance text-based outcomes ahead of the Twelfth WTO Ministerial Conference (MC12), **we strongly encourage negotiators to prioritize progress on advancing services market access commitments across key sectors as a means to complement and give full effect to strong, rules-based provisions, including those related to data**.

Ongoing negotiating efforts have only gained in importance since the outset of the COVID-19 pandemic as businesses and individuals across developed and developing economies have increased their reliance on a range of digital technologies and services. In a recent report, the Organisation for Economic Co-operation and Development (OECD) found that e-commerce orders increased 50 percent in Europe, 70 percent in the Asia-Pacific region, and 120 percent in the United States year-on-year, providing firms – most notably small and medium-sized enterprises (SMEs) – access to customers across existing and new markets during this particularly challenging period.[1] More broadly, access to telecommunications networks, cloud processing, and digital communication is helping businesses maintain key operations and communicate with employees and clients while adhering to physical distancing requirements. Indeed, one survey found that throughout the pandemic, digitalization and automation accelerated across 85 percent of companies,[2] while one in three U.S. SMEs reported that their businesses would not have survived the pandemic without digital tools.[3] Digital services, have also been critical to the development of vaccines, therapeutics, and other products that are essential to ending the pandemic, as well as the delivery of healthcare.

At the same time, alongside this growing international reliance on digital technologies and services, in 2020 governments implemented twice as many restrictive policy changes impacting cross-border trade in services as compared with 2019, with the greatest restrictions in areas including computer and related services. In a recent report identifying trends in services trade restrictiveness, the OECD identified the reduction of barriers on digital infrastructure and connectivity – which account for close to two-thirds of barriers to digital trade across all countries – as a key outstanding challenge. These barriers may include regulations that limit access to high-quality communications services as well as measures that inhibit the seamless transfer of data across borders, impose localization requirements, and impose limitations on online content providers.[4] Even where certain barriers to digital trade have been lowered, the global regulatory environment for digital trade continues to be diverse and complex across countries, a reality that derives in large part from a lack of consistent application of good regulatory practices.

[1] OECD (2020), "Leveraging Digital Trade to Fight the Consequences of COVID-19," https://read.oecd-ilibrary.org/view/?ref=135_135517-02bikxyksj&title=Leveraging-Digital-Trade-to-Fight-the-Consequences-of-COVID-19
[2] Chakravorti, Bhaskar (2021), "Did Big Tech Save the World from an Even Bigger Economic Meltdown?," Foreign Policy, https://foreignpolicy.com/2021/02/08/big-tech-economic-meltdown-pandemic/
[3] Connected Commerce Council (2020), "Digitally Empowered: How Digital Tools Power Small Businesses Amid Covid-19": https://digitallyempowered.connectedcouncil.org/pdf/3C-DigitallyEmpowered-52720v2.pdf
[4] OECD (2021), "OECD Services Trade Restrictiveness Index: Policy Trends up to 2021," https://issuu.com/oecd.publishing/docs/oecd-stri-policy-trends-2021?fr=sMGVlMjI5ODk2NDE

The evolving nature of digital services, along with the digital and physical infrastructures enabling the provision of such services suggests that even the most forward-looking, horizontal rules-based commitments – which remain essential to countering and preventing the emergence of damaging barriers to digital trade – must be accompanied by robust market access commitments that provide necessary certainty to businesses and individuals alike. To that end, we respectfully offer this paper as a means of informing and demonstrating support for the advancement of services market access negotiations as part of the JSI.

The Growing Benefits of Expanding Services Market Access Commitments

Technological advances have not only greatly enabled trade in an increasing range of services sectors, but reliable services have become essential inputs to enable trade in goods. However, despite the growing economy-wide importance of global services trade, a wide gap remains between applied regimes and international commitments on services market access, while meaningful market access restrictions persist in important sectors. Beyond creating a necessary underpinning for modern rules-based digital trade, the establishment of binding market access commitments in the context of JSI negotiations that expand upon those in the General Agreement on Trade in Services (GATS) would directly contribute to the broader and more equitable distribution of benefits stemming from policies that promote open digital trade, and, in many cases, is necessary for firms to realize any benefit from rules-based commitments.

Services market access openings disproportionately benefit SMEs. When services trade restrictions are eased, micro-, small- and medium-sized enterprises (MSMEs) are the first to gain.[5] Even where digital trade has created immense new opportunities for small and "born global" firms to directly engage with customers in new markets, high costs to entry stemming from divergent services regulation disproportionately harm SMEs, and in many instances may simply be prohibitive. Recent OECD analysis found that a country undertaking even moderate services access openings increases by as much as 12 percent the probability that a firm with no established trade relationship there will start exporting to that country. Conversely, OECD analysis has shown that in relatively more restrictive services markets, new exporters confront costs as much as 53 percent greater than those faced by incumbent exporters. As MSMEs predominantly operate in the services space and frequently have limited to no export experience, coordinated reductions in barriers to services market access would disproportionately promote the success of new and emerging firms by generating new opportunities to export to other markets.

Coordinated services liberalization benefits developing economies and least developed countries (LDCs). In addition to direct effects, services provide inputs to all sectors and, in the case of telecommunication and information and communication technology (ICT) services in particular, create linkages in productive value chains – boosting value, output, and exports in all industry sectors. While direct exports of services were 13 percent of total exports in least-developed countries (LDCs), services accounted for 39 percent of total value added in the LDCs' exports.[6] Put simply, increased trade in services is a value multiplier. Many developing countries are taking greater advantage of direct export opportunities offered by new technologies that enable digital supply, as evidenced in part by their share of global trade in services increasing from 28 percent in 2005 to 34 percent in 2017.[7]

[5] OECD (2017), Services Trade Policies and the Global Economy, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264275232-en
[6] UNCTAD (2020), "Effective Market Access for Least Developed Countries' services market access exports," https://unctad.org/system/files/official-document/ditctncd2019d1_en.pdf
[7] Roy, Martin (2019), "Elevating Services: Services Trade Policy, WTO Commitments, and Their Role in Economic Development and Trade Integration," WTO (Working Paper), https://www.wto.org/english/res_e/reser_e/ersd201901_e.pdf

Moreover, as the United Nations Conference on Trade in Development (UNCTAD) has underscored in a recent analysis, services are playing an increasingly important role for LDCs not only as a source of export diversification but also as a source of competitiveness for the economy as a whole by increasing productivity writ large. Coordinating the liberalization of services – and particularly those services most integral to digital trade and e-commerce – stands to benefit developing economies through greater output and productivity in domestic commerce, the creation of new business models and increased export opportunities for local firms.

Increased services trade opportunities make for a more inclusive trading system. Services sectors in which women occupy a disproportionate share of the workforce, such as education, health, and social care services, are experiencing a rapid expansion thanks to digitalization as well as trends in areas like medical tourism. The WTO and World Bank concluded that policies promoting traditional cross-border supply of services are of particular importance for enhancing women's economic opportunities.[8]

Further evidence in the United States context has demonstrated that the expansion of access to global digital services technologies will directly help businesses owned by women and Black, Indigenous and People of Color, who benefit disproportionately from engagement in the global marketplace. Bolstered by digital tools, women-owned exporters are 1.2 times more productive on average than male-owned business exporters and 3.5 times more productive than women-owned businesses that do not export.[9] In addition, minority-owned businesses are twice as likely to export than non-minority-owned businesses, while Black-owned businesses drew 45 percent more revenue from overseas markets than non-minority-owned businesses during the pandemic.[10]

Binding services market access commitments secure necessary certainty for all trade in the 21st century. While divergent regulations across countries can create barriers to export (as is explored in more detail below), other sources of added costs stems from the unpredictability of trade regimes and the risk of sudden policy reversals.

This certainty is arguably most important in those sectors experiencing rapid technological development and in which governments are working to develop new policy approaches to achieve their legitimate regulatory objectives.

Notably, for cross-border trade there exists evidence that initial restrictions in even relatively liberal services trade environments are among the costliest.[11] This means that efforts by economies to undertake commitments that engender certainty – even in services sectors that are already relatively open – establish the confidence necessary for firms to export across multiple services modes and yield positive externalities for the global services trade ecosystem.

[8] The World Bank and the World Trade Organization (2020), "Women and Trade: The Role of Trade in Promoting Gender Equality," Washington, DC: doi:10.1596/978-1-4648-1541-6, https://www.wto.org/english/res_e/booksp_e/women_trade_pub2807_e.pdf
[9] Inclusive Trade: A Primer, Global Innovation Forum, https://globalinnovationforum.com/inclusive-trade/
[10] Global Innovation Forum (2021), "Global, Digital & Resilient: How digital tools are powering U.S. small businesses' global engagement amid COVID-19," https://globalinnovationforum.com/reports/global-digital-resilient/
[11] OECD, 2017

Where to focus:

Key sectors and the benefits of binding and expanding market access

JSI negotiators have been engaged in important conceptual discussions that seek to identify for the purposes of market access negotiations those sectors and sub-sectors that enable e-commerce and best complement the range of commercially meaningful rules-based commitments currently under discussion. Industry strongly supports these efforts, which should serve to strike a balance between the broad-based benefits of expanding services market access across multiple sectors and prioritizing those areas most crucial to enabling digital trade and e-commerce. In that spirit, in this section we identify key sectors for market access negotiations and provide contextual support for their inclusion.

With respect to prioritization of liberalization in modes of supply, we encourage negotiators to be mindful both of areas where existing commitments are lacking (including where JSI participants may maintain "water" in key enabling sectors of their existing schedules), and where current trends point to the potential emergence of barriers to trade in sectors that support e-commerce. In other words, JSI participants should cement current practices and look to future-proof their work by thinking ahead.

As is the case for many services sectors, the business models for supplying e-commerce-enabling services are complex, often involving a combination of modes, a bundle of goods and services, or a mix of digital products and face-to-face interaction. In line with best practices, policies should avoid distortions based on business models, specifically by adopting a balanced approach towards the different modes of supply through trade and investment.[12]

JSI participants should adopt a negotiating framework that seeks the broadest possible coverage of commitments, maximizes clarity in the scope of commitments, and minimizes the number and scope of exceptions. In doing so, industry encourages participants to take on commitments at the highest level possible (e.g., the CPC 2-digit level) to ensure the openness of the sector to allow digital technologies to work at scale and generate across-the-board benefits. Finally, participants should promote certainty in future trade in digital services by ensuring that commitments in no way prejudice or limit trade in "new services" that have yet to be explicitly considered or defined.

Priority sectors for liberalization

Telecommunications Services, including digital infrastructure services necessary for the provision of digital services. Telecommunications services underpin access to digital networks and form the base and infrastructure on which all digital economic activity takes place. For digital solutions to operate effectively, access to high-quality telecommunications services is essential, and even more so in circumstances in which physical interaction is limited. Yet barriers impacting trade in modern telecommunications services remain widespread and impactful: the OECD has found that for foreign affiliates, the average level of trade restrictiveness imposes costs equivalent to a tariff of 18 percent for standard services, and up to 73 percent for more specialized services.[13] The digital divide among well- and less well-connected countries is largely a product of a lack of connectivity and/or sufficient bandwidth to facilitate the delivery of innovative digital services.

[12] OECD, 2017
[13] OECD, 2017

An open and pro-competitive telecommunications sector is key to attracting investments that facilitate higher speeds and more connections in developing economies, providing greater access to productivity-enhancing digital services.

Computer and Related Services (CRS), including hosting and IT infrastructure provisioning services (e.g., consultancy services related to the installation of computer hardware), software implementation services, data processing services, and database services. The suite of services that comprise CRS is foundational to digital trade, enabling every digitally delivered service, including those in areas like remote education and telehealth which have proven essential for resilience during the COVID-19 pandemic. Market access for CRS will be key to ensuring that, as new technologies are developed, there is greater opportunity for comprehensive adoption across countries of varying levels of development. As noted in the introduction above, CRS have seen among the greatest number of emerging restrictions to trade of any sector.[14]

Electronic Payment Services (EPS). EPS are key enablers of all e-commerce activity and are essential drivers of financial inclusion, often serving as the first point of entry for consumers into formal financial services. Their relevance is enhanced in the COVID environment: as consumers shift to no contact or online commerce in the pandemic, there is heightened demand from MSMEs to become digitally enabled in order to meet new customer preferences. However, many WTO members have scheduled few or incomplete market access and national treatment commitments for EPS.[15] As the ICC has underscored in detail, transitioning to open and competitive EPS markets would increase consumption and economic growth, enable economic success of SMEs and MSMEs, promote transparency and cybersecurity in payments, and empower local innovation. While agreement on strong, rules-based commitments is important to reducing barriers to innovative payment services, clear, expanded services market access commitments for EPS are necessary to facilitate digital payments in developed and developing countries alike.[16]

Logistics and Delivery Services, including **express delivery services** and **distribution services**. Digitally-enabled trade in goods relies on shipping and physical connectivity, and logistics and delivery services are the driving force for global e-commerce of this kind. Alongside the advent of a wide array of digital services, express delivery services in particular have enabled MSMEs to participate in global commerce in ways that were previously only available to larger companies.[17] According to the OECD, these services help to enable "[w]ider access to more products at more affordable prices [which] can be especially important in the context of reductions in purchasing power arising from the economic fallout from the COVID-19 crisis."[18] Furthermore, "digitally enabled cross-border trade in parcels" can help MSMEs "trying to survive access more customers across a wider set of markets."[19] In addition, as the WTO and World Bank have noted, e-commerce is particularly important for women because selling goods through digital channels can alleviate some of the constraints that women face when exporting, including time and mobility constraints.[20]

[14] OECD, 2021
[15] Roy, 2019
[16] See International Chamber of Commerce Issues Brief No. 4 (2020), "Electronic payment services and e-commerce," https://iccwbo.org/publication/icc-issues-brief-no-4-electronic-payment-services-and-e-commerce/
[17] See Global Express Association Position Paper (2019), "Market Access and Disciplines for Logistics Services," https://global-express.org/assets/files/Trade/GEA%20Trade%20in%20Services%20position%20paper%20for%20JSI%20(F).pdf
[18] OECD, Connecting Businesses and Consumers During COVID-19: Trade in Parcel (2020).
[19] OECD, 2020.
[20] The World Bank and the WTO, 2020

Moreover, trade in these services sectors is susceptible to burdensome and at times prohibitive barriers to trade: for courier services, the average degree of trade restrictiveness represents trade costs that are among the highest of any sector (OECD 2017). We therefore see services liberalization within logistics and the global supply chain as a crucial complement to more digitally-focused liberalization efforts in other sectors.

"Marketing services," including **advertising services**. One prominent economist has argued that "digital trade has the potential to be one of the most dynamic and innovative platforms for creative entrepreneurs and small enterprises to develop international marketing networks and increase sales."[21] For its part, digital advertising has made it easier and cheaper for firms of all sizes to reach both domestic and international markets. It is a central component of increasing cross-border e-commerce as well as digital exports in the creative sector, including in developing economies.

"Creative Services Sectors," including **audiovisual services**. A recent WTO report noted that, from a trade perspective, the creative sector has become increasingly valuable in terms of supporting global competitiveness and generating new sources of employment and entrepreneurship. Developing economies directly contribute to this trend, experiencing an annual growth rate of five percent in creative industry exports between 2002 and 2015.[22] However, in these sub-sectors – and particularly in audio-visual services – WTO members have taken relatively few commitments, and existing and potential measures limit potential growth for this essential segment of the digitalizing economy.

Research and development services, including **life sciences**. The innovation enabling both the content and the means of digital services is increasingly global. Underlying that innovation are research and development services that depend on cross-border market access. Without the wide availability of these services, collaboration, sharing of data and conduct of research would be significantly constrained. For example, clinical trials are conducted globally to develop safe and effective new therapies and vaccines. This involves the cross-border provision of research and development services regarding the design and conduct of clinical trials, the processing and scientific analysis of clinical trial data and subsequent submission of the data to government regulatory authorities. Unfortunately, these services are often subject to many of the same market restrictions experienced by the above enabling service sectors.

[21] Maskus, K. (2018), "Fostering innovation in digital trade", in Seuba, X., Geiger, C. and Penin, J. (eds.), Intellectual Property and Digital Trade in the Age of Artificial Intelligence and Big Data, Global Perspectives for the Intellectual Property System, CEIPI ICTSD, Issue No. 5: 19-28.
[22] WTO Chairs Programme (2021), "Adapting to the digital trade era: challenges and opportunities," Maarten Smeets (ed.), Geneva, Switzerland: https://www.wto.org/english/res_e/booksp_e/adtera_e.pdf

Looking ahead: Enshrining good regulatory practices for digital services

While liberalizing trade in the services sectors above is particularly important to the ability of businesses to benefit from the e-commerce ecosystem, additional measures that support all modes of services trade, including measures that promote regulatory transparency, are important to ensure that market access commitments can be effectively realized.[23]

Even where services markets are relatively open, foreign suppliers may be most severely hampered by their unfamiliarity with regulation and their being required to confront heterogeneous approaches across the markets in which they seek to supply services. The need to comply with different requirements across markets adds significantly to business costs, and disincentivizes exports, especially for MSMEs. This reality highlights the importance of extending good regulatory practices as a means of enabling equitable growth in digital trade hand-in-hand with market access commitments.

Such efforts play an essential role in complementing and giving effect to services market access liberalization and rules-based commitments. Research has found that, in certain services sectors, transparency and other regulatory-related measures can account for more than 50 percent of trade restrictiveness.[24] As the OECD has noted, "[harmonising] the rules of the game brings by far the largest gains when the countries undertaking regulatory co-operation have already brought down their trade barriers."[25]

More concretely, emerging regulatory approaches to new technology bear significant trade implications for digital services. This is apparent where governments are transposing to services regulatory frameworks that have traditionally applied only to goods. For instance, governments have developed, or are in the process of developing, certification requirements in areas such as cybersecurity (including with respect to cloud services), AI, and privacy.

As a component of broadening the application of good regulatory practices to key services sectors, we encourage negotiators to develop and expand provisions that extend technical barriers to trade (TBT)-style commitments to digital services, including as regards regulatory reliance on international standards and the promotion of interoperable frameworks. Such efforts, whether in the development of discrete digital trade provisions or a new class of services disciplines, will facilitate cross-border regulatory compatibility and enable the largest gains possible from services market access liberalization, all without detracting from governments' abilities to regulate in the public interest.

Absent such commitments and the broadened adherence to good regulatory practices, a wide range of emerging regulatory approaches could, either incidentally or by design, create new market access barriers that are not currently disciplined under existing international obligations.

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[23] OECD, 2017
[24] OECD (2015), "Water in the GATS: Methodology and Results", https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/TC/WP(2014)19/FINAL&docLanguage=En.
[25] OECD, 2017

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