KOMMERSKOLLEGIUM
NATIONAL BOARD OF TRADE SWEDEN

The E-Commerce Negotiations in the WTO

Understanding non-participation

2023

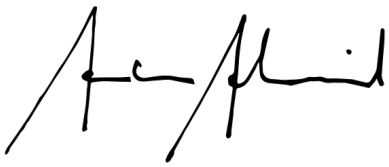
Preface

Technological advancements have not only changed how and what we trade, but also how we think about trade, trade policy and economic development. Digital trade has proven to be an effective tool for promoting inclusion. However, there is a need for updated and adequate global trade rules to ensure that the benefits of digital trade are realised and shared inclusively.

In this report, we take a closer look at the Joint Statement Initiative on e-commerce and examine possible reasons why so few African countries have chosen to participate in the negotiations. We hope to contribute to broadening the discussion on what can be done to further facilitate the inclusion of African countries specifically and developing countries more generally. We emphasise that the reasons for non-participation vary widely, but many of them stem from a lack of resources. This may cause countries to prioritise other negotiations or be disproportionately affected by the ad hoc negotiation structure. Many of these issues are not unique to the e-commerce negotiations and could be beneficial to discuss further in a broader Joint Statement Initiative context.

The study has been written by Emma Sävenborg, with valuable advice and comments from Kristina Olofsson, Karin Atthoff, and Åsa Sandström. We also wish to extend our special thanks to all the policy makers, scholars, and experts who have generously shared their experiences and knowledge on these issues with us.

Stockholm, September 2023



Anders Ahnlid
Director-General
National Board of Trade Sweden

Summary

The international trade landscape has fundamentally changed due to digitalisation. Trade is to a larger extent both more digitally ordered and digitally delivered and almost all trade is underpinned by the movement of data. This new reality poses a major challenge to the current global trade framework.

The ongoing e-commerce negotiations within the World Trade Organisation is the most comprehensive initiative in this regard. Nevertheless, participation from African countries remains low. Without meaningful representation in these negotiations there is a risk that digital legal frameworks will continue to diverge rather than become harmonised. It is therefore important to develop a better understanding of the concerns and priorities of African countries to create more incentives for countries to join.

This report aims to broaden the discussion on the underlying factors for the limited participation and discuss how to facilitate engagement and inclusion in these negotiations. By examining previous literature, policy documents and conversations and interviews with policy makers, this report identifies and analyses commonly cited reasons for non-participation.

In this report we have highlighted that the reasons for non-participation vary widely but many of them stem from a lack of resources that may make them prioritise other negotiations, trade issues or make them disproportionally affected by the ad hoc negotiation structure. The report emphasises the need for a greater focus on creating the right foundation for developing countries to actively participate in the negotiation. To do this, the report suggest the following policy recommendations:

- Improving inclusiveness and the deliberative function in the Joint Statement Initiative structure.
- Ensuring that policy priorities from African countries are accommodated in the negotiations.
- Making sure capacity building and technical support are given to countries also before and throughout the entire negotiation process.

Table of contents

Preface 2

Summary 3

1 Introduction 5

1.1 Objective 6

1.2 Scope and methodology 6

2 Why we need new global rules for digital trade 7

2.1 Rapid development of digital rules and regulatory fragmentation 7

2.2 The need for updated multilateral trade rules 8

2.3 The Joint Statement Initiative on e-commerce 9

3 Possible reasons for non-participation and how to address them 11

3.1 Lack of digital readiness 11

3.2 Diverging policy priorities 16

3.3 Concerns around the JSI structure 20

4 Conclusions and policy recommendations 24

References 27

Annex 1 29

Annex 2 31

Sammanfattning på svenska Summary in Swedish 32

1 Introduction

Technological advancements have fundamentally changed the way we trade and what we trade.[1] These technological shifts create opportunities for developing countries to leapfrog, but the dynamics of the digital economy also make them more likely to fall behind. Policy makers are regulating at an increasing pace to both manage the risks arising from digital disruption and to ensure that the opportunities and benefits of digital trade are realised and shared inclusively.[2] To prevent regulatory fragmentation, it is necessary to establish global rules that promote shared approaches and standards for digital trade.[3] The Joint Statement Initiative on e-commerce (JSI) is the most comprehensive effort to establish global rules in the field of e-commerce. JSIs are plurilateral negotiation mechanisms initiated by a group of WTO Members who aim to advance discussions on specific issues without requiring consensus decision-making from the entire WTO membership. The focus is on encouraging countries to adopt sound regulatory practices for e-commerce and promoting the use of internationally recognised regulatory standards.[4]

Although sound regulations and enhanced harmonisation are advantageous for developing countries as they assist their firms in realising digital trade opportunities, the involvement of developing countries in this area remains relatively low. The participation of African countries is particularly limited.

The non-participation of African countries is a significant issue for several reasons. Without meaningful representation and a voice in setting global rules and standards, there is a risk that the adopted rules do not represent a global agreed solution. Countries that are not participating may then at a later stage have to accept frameworks that are inappropriate for their circumstances and implementation capacity if they choose to join. There are also benefits for the global community in having more African countries participating in the negotiations. A broad representation across regions could increase the legitimacy of the JSI as well as promote interoperability in rules and frameworks between all different regions. The economic impacts on countries joining the JSI on e-commerce is difficult to estimate but the positive opportunities of digital trade rules are well established by the OECD among others.[5]

The lack of participation by developing countries in the e-commerce negotiations has been acknowledged by both the policy makers and scholars.[6] The reasons for the limited participation of African countries are diverse. Nevertheless, the discussions in policy circles and possible solutions so far have focused on the lack of capacity to implement commitments. However, less attention has been paid to other potential causes of non-participation and how to address them, something that could facilitate the inclusion of more countries. As it is still possible for countries to join the JSI throughout the negotiation and after it is concluded, it remains relevant to identify and discuss ways forward to facilitate further participation. In addition, some of the reasons may not be unique to the e-commerce JSI and could be relevant for other JSI negotiations as well.

1 OECD (2023)
2 Turbulence induced by digital innovation that leads to the erosion of boundaries and approaches that previously served as foundations for organising the production and capture of value
3 Fulcrum (2023)
4 Mekonnen, T. (2022)
5 OECD (2023)
6 Pittet (2022), Pittet (2021), Phillips et.al (2020), Tavengerwi, R., Mumbo, V. and Kira, B. (2022), Banga et.al (2021), Arnold S (2021), Fiama, A., Roy, R., Yarina,Y., (2020), Foster, C., Azmeh, S., (2018), Diplo (2022)

1.1 Objective

The objective of this report is twofold. Firstly, this study aims to expand the discussion on the reasons for the limited participation of African countries in the plurilateral negotiations on e-commerce within the World Trade Organisation. Secondly, it seeks to identify potential actions that could facilitate greater engagement and inclusion in these negotiations.

1.2 Scope and methodology

The report focuses on Africa because it is one of the most underrepresented regions in digital trade negotiations, particularly in the context of the JSI on e-commerce. Only seven out of 43 African countries are part of the negotiation (Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Kenya, Mauritius, and Nigeria). The regional group known as "The Africa Group" in the WTO has also adopted a firm stance against the JSI on e-commerce. At the same time, the low participation and limited engagement in e-commerce negotiations may seem counterintuitive, given the strong push for digitalisation and digital trade at the domestic, regional, and continental levels. So far, the discussion around reasons for non-participation has focused on the lack of capacity and the level of development. However, while only two out of seven participating African countries are Least Developed Countries (LDC) there are also several countries in the region with relatively high digital trade readiness who have opted not to participate. This demonstrates the need to examine the reasons for non-participation more closely.

This report is a desk study in which we rely on previous literature to identify and analyse various reasons for non-participation. Many of the studies we use are based on interviews with and questionnaires addressed to African policymakers. To complement the desk study, a number of digital and trade policy strategies from African countries were collected and analysed to identify priorities in the digital trade area. The selection of documents was limited to those available in English and with online accessibility. As some countries address e-commerce issues in their trade policies while others include them in their digital agendas or development plans and some are on regional level, the selection of relevant documents is mixed. Common themes and issues were identified to see which topics these countries emphasised in the area of digital trade and e-commerce and whether this corresponded to the topics in the JSI. The report does not go into the thematic topics of the JSI in detail to analyse the approach African countries have towards them but rather takes a more general approach. In total, 12 trade and digital policy documents were analysed, and a number of different themes were identified (see Annex 1). Our selection of policy documents cannot be considered a representative selection, but rather gives an indication of the thematic topics that African countries prioritise in relation to digital trade.

In this report we discuss possible reasons for non-participation and suggest actions to increase participation and engagement from African countries in the negotiations. To further explore possible reasons for the lack of participation, we have conducted conversations and interviews with policymakers and experts from African countries, European countries and international organisations. The report and its policy recommendations contribute to several of the Sustainable Development Goals, in particular 8, 9 (b, c), 10 (a) and 17.

E-commerce is often defined as "digitally enabled trade" while the "exchange of digital assets" is often defined as digital trade. However, in digital trade agreements or e-commerce chapters these two concepts often entail similar issues. Hence, these two concepts will be used interchangeably throughout this report.

2 Why we need new global rules for digital trade

2.1 Rapid development of digital rules and regulatory fragmentation

Digitalisation and e-commerce can have a positive impact on developing countries as they strengthen economic resilience and advance socio-economic growth and a growing youth ready to adapt to new forms of digital work and entrepreneurship. It has been shown that companies that are integrated into the global economy are more productive and contribute significantly to the development of global trade. E-commerce can also assist women in overcoming structural barriers they face in traditional trade.[7]

On the other hand, a digitally integrated global market is also much more dynamic and competitive, which creates new challenges for exporters in developing countries. The new demands brought about by digital integration risk excluding smaller firms in less connected areas from participating in modern global value chains.[8] Digitalisation also creates challenges related to privacy, cybersecurity, and consumer protection that often require regulatory responses. Overall, regulations are necessary to encourage digital innovation while managing issues that arise from digital disruption. They also ensure that opportunities and benefits from digital trade can be realised and shared inclusively.

In recent years, there has been a rapid increase in policy interventions and regulations in the digital domain.[9] Although regulation of digital trade is necessary, ineffective regulation can impede commercial innovation, hinder the implementation of digital technologies, and restrict economic growth. Efficient regulation on the other hand provides certainty, stability, and builds trust in the online environment. It also enables innovation, interoperability, and supports participation in the digital economy.

Digitalisation affects a broad range of policy areas, which is why trade rules alone cannot address the challenges surrounding digitalisation, although they play an important role. Agreeing on global rules prevents regulatory fragmentation and promotes harmonisation and policy coherence. Global trade rules can also prevent governments from introducing discriminatory measures and promotes regulatory transparency.

7 UNCTAD. (2021a).
8 Foster, C., Graham, M. (2016).
9 Evenett, S., Fritz, J., (2022)

2.2 The need for updated multilateral trade rules

Box 1. Multilateral and plurilateral negotiations and the role of the Secretariat

The term 'multilateralism' implies in a trade context that all WTO members jointly formulate and agree on common rules and negotiate on trade liberalisation commitments. All WTO members then apply these rules and offer market access in line with their national schedules to all other WTO members. WTO negotiations have also adopted the "single undertaking" approach where virtually every item of the negotiation is part of a whole and indivisible package and cannot be agreed separately. This prohibits free riding, and member states can offset concessions given on one issue by concessions received in another area. The negotiations are driven by the members, but the Secretariat has an important role to coordinate the activities.

The Secretariat's main duties are to supply technical and professional support to the various councils and committees, to provide technical assistance to developing countries, to monitor and analyse developments in world trade, to provide information to the public and the media, and to organise the ministerial conferences. The Secretariat also provides some forms of legal assistance in the dispute settlement process and advises governments wishing to become members of the WTO

A notable exception to multilateralism is plurilateral agreements. There have been several plurilaterals concluded both within the GATT and the WTO. In these agreements not all Members signed on, so the agreement is in that sense not multilateral. Plurilateral agreements within the WTO often have a single focus, differentiating themselves from agreements that cover a broad display of issues, such as regional trade agreements.

There are essentially two types of plurilateral trade agreements, an exclusive and an open variant. While the benefits of the former are shared among participants only, the latter are implemented on an MFN-basis, thus profiting non-signatories as well.

The Joint Statement Initiatives are a sort of plurilateral negotiation tool, but it is not pre-established exactly what the negotiating process will look like or how the outcome will be incorporated into the WTO structure. All members are open to join. The negotiations take place in the WTO facilities, but the role of the Secretariat is not as clear as in multilateral negotiations and exactly what they do differs some between different JSIs.

Source: Wolff, A. (2021) The Future of Multilateralism and the Role of Plurilaterals., Nanyang Technologcal University. Plurilaterals -11-11 CLEAN-FINAL Singapore 11-16-21 (piie.com)

Important aspects of the regulatory environment that support digital trade in goods and services are already addressed by existing multilateral rules and agreements. In terms of international rules that have been ratified, signed, and committed to, those most widely accepted ones are in the areas of trade facilitation, telecommunications, and market access for Information Communication and Technology (ICT) products. Progress has been made mainly within the WTO but also other international organisations.[10]

The membership of the WTO recognised the implications of digitisation for trade early on and acknowledged the need for new regulations. In 1998, they launched a Work Programme on e-commerce and imposed a temporary moratorium on customs duties for electronic transmissions. The main objective was to enhance understanding of the trade-related aspects of e-commerce, without a pre-set objective to take the process

10 OECD (2021a)

further to negotiate new rules. Four bodies within the WTO have been designated to oversee discussions related to e-commerce in their respective areas: the Council for Trade in Services, the Council for Trade in Goods, the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPs), and the Committee on Trade and Development. The General Council reviews the work and recommendations of these bodies. But not much happened during the 20 years that followed.

The current regulations need to be revised to fully address the challenges that arise in the digital age. The main shortcomings of the existing rules are the failure to distinguish between goods and services and determining when something is crossing a physical border. Another challenge in the digital age is the reliance on fast-moving transactions that require the accessibility of data and flow of information across the globe. This has further raised concerns about privacy and cyber security.

There are several initiatives at the multilateral level aimed at creating global approaches to digital trade issues outside the WTO. The UN Commission on International Trade Law (UNCITRAL) has developed legal instruments, including the Model Laws on Electronic Commerce (1996), Electronic Signatures (2001), and Electronic Transferable Records (2017). Technical standards for e-signatures have been established by the International Organization for Standardization (ISO) and UNECE. The OECD has also developed several non-binding recommendations on data privacy and consumer protection. These are only a few examples, and they exist across a range of different e-commerce topics.[11] However, a comprehensive framework with rules on digital trade is still missing.

2.3 The Joint Statement Initiative on e-commerce

Failure to pursue a negotiating agenda in the multilateral context resulted in a plurilateral track, a Joint Statement Initiative (JSI), on e-commerce by 71 members at the 11th Ministerial Conference in Buenos Aires 2017. Australia, Japan, and Singapore were the initiating parties and now serve as coordinators to the negotiations within the JSI.

The negotiation is open to any member of the WTO.[12] Nevertheless, as the negotiations are held outside the WTO framework, the WTO secretariat does not provide assistance or policy support due to restrictions using the budget on JSI negotiations. Since the launch, the number of countries joining has increased to 88, with 38 of them labelled as developing countries (including 3 LDCs). However, only seven are African (Benin, Burkina Faso, Kenya, Côte Ivoire, Nigeria, Mauritius and Cameroon).

The issues covered are diverse and divided into different thematic areas (see Table 1). The negotiations have moved forward relatively quick and the co-conveners of the JSI circulated a third updated consolidated text among participating members in December 2022.[13] The members have agreed on the text on a number of topics, while some of the more challenging issues, such as data flow, source code, and legal architecture, remain unresolved. The development aspects are still being discussed and differences remain regarding how to approach them. The issue of market access also remains very difficult and no substantive discussions on this issue have yet taken place. Eight clusters of meetings will take place during 2023, with co-convenors aiming to conclude the negotiations by the end of the year.

11 OECD (2021a)

12 In total, 18 plurilateral agreements, negotiations, or discussions currently exist in the WTO. Two are suspended, meaning 16 are active to varying degrees.

13 WTO (2022a)

Table 1. Thematic topics covered in the JSI on e-commerce

Enabling electronic commerce	
Facilitating Electronic Transactions	
• Electronic transactions frameworks	
• Electronic authentication and electronic signatures	
• Electronic contracts	
• Electronic invoicing	
Digital trade facilitation and logistics	
• Paperless trading	
Openness and electronic commerce	
• Customs duties on electronic transmissions	
• Access to internet and data	
• Open government data.	
• Access to and Use of the Internet for [electronic commerce/Digital Trade]	
Trust and electronic commerce	
• Consumer Protection	– Online consumer protection – Unsolicited commercial electronic messages
• Privacy	– Personal information protection/ Personal data protection
• Business trust	– Source code – ICT products that use cryptography
• Cybersecurity	
Cross-cutting issues	
• Flow of information	– Cross-border transfer of information by electronic means/Cross-border data flows – Location of computing facilities – Financial information Location of financial computing facilities for covered financial service suppliers
• Transparency, domestic regulation and cooperation	– Transparency – Cooperation – Cooperation Mechanism
• Capacity building	– Options for capacity building and technical assistance
• Implementation Periods for developing and least developed country Members	– Implementation Periods for developing and least developed country Members
• Special and Different Treatment Provisions for Developing Country Members and Least Developed Country Members	– Options for capacity building and technical assistance
Other issues	
Updating the telcommunication reference paper, logistics services, non-discriminatory treatment of digital products, access to online platforms, domestic regulation, market acess for both goods and services.	

Source: WTO Documents INF/ECOM/62/Rev.3

3 Possible reasons for non-participation and how to address them

The lack of participation by African countries in the e-commerce negotiations may seem unexpected, given that digitalisation is a prioritised issue for many African countries and almost all of them have some form of digital agenda. Some countries even outline their digital agendas in their national development plans. Others have dedicated documents that outline their digital agendas in greater detail, and others have policies and strategic plans covering specific items such as e-commerce, cybersecurity, digital privacy, and e-government.[14] This demonstrates the political commitment to the digital economy.

At the same time, African countries are underrepresented not only in the JSI on e-commerce but also as parties to digital trade provisions in bilateral agreements. On the African continent only two countries are parties to a trade agreement that includes a provision on e-commerce (Morocco-US FTA and Kenya-US FTA). However, this is set to change as the e-commerce protocol is about to start being negotiated in the African Continental Free Trade Area (AfCFTA). The e-commerce Protocol, also known as the Protocol on Digital Trade, covers market access, rules and regulations, trade facilitation, and other enabling issues for e-commerce.[15]

The lack of participation from African countries in the JSI e-commerce negotiation has been acknowledged by both policy makers and in previous literature. The lack of capacity to implement the commitments is often the most common explanation for the lack of developing countries including African countries. However, the group of countries participating is heterogenous and with very different levels of e-trade readiness. This narrow focus creates a risk of overlooking important aspects.

In the following sections we explore three reasons for non-participation of African countries identified from the literature.[16]

3.1 Lack of digital readiness

> **"...the work in the JSI appears to be based on the presumption that the necessary e-commerce infrastructure, regulatory framework, and even a certain level of e-commerce consumer culture is already in place in the participants"** [17]

A reason for non-participation that several previous scholars have identified is the lack of technological or physical infrastructure as well as institutional frameworks. The argument is that a certain level of digital readiness is necessary to negotiate and fulfil commitments, as well as to reap the benefits of digital trade. This divide can be caused by a lack of physical infrastructure and connectivity, as well as a lack of skills, knowledge, and regulatory frameworks. This broader concept of digital readiness is used by UNCTAD in their E-trade Readiness Assessment where they evaluate seven pillars which are fundamental for reaping the benefits of the digital economy.[18]

14 Diplo (2022)

15 Afcfta (2023)

16 Pittet, T. (2022), Pittet, T. (2021), Phillips et.al. (2020), Tavengerwi, R., Mumbo, V. and Kira, B. (2022) Banga et.al (2021)., Arnold S (2021). Fiama, A., Roy, R., Yarina,Y., (2020). Foster, C., Azmeh, S., (2018)

17 Banga et.al (2021)

18 E-commerce Readiness Assessment, governance framework and formulation of policies and strategies; ICT infrastructure and services; Trade logistics and trade facilitation; Payment solutions; The legal and regulatory frameworks; E-commerce skills development; Access to financing

3.1.1 Lack of ICT infrastructure

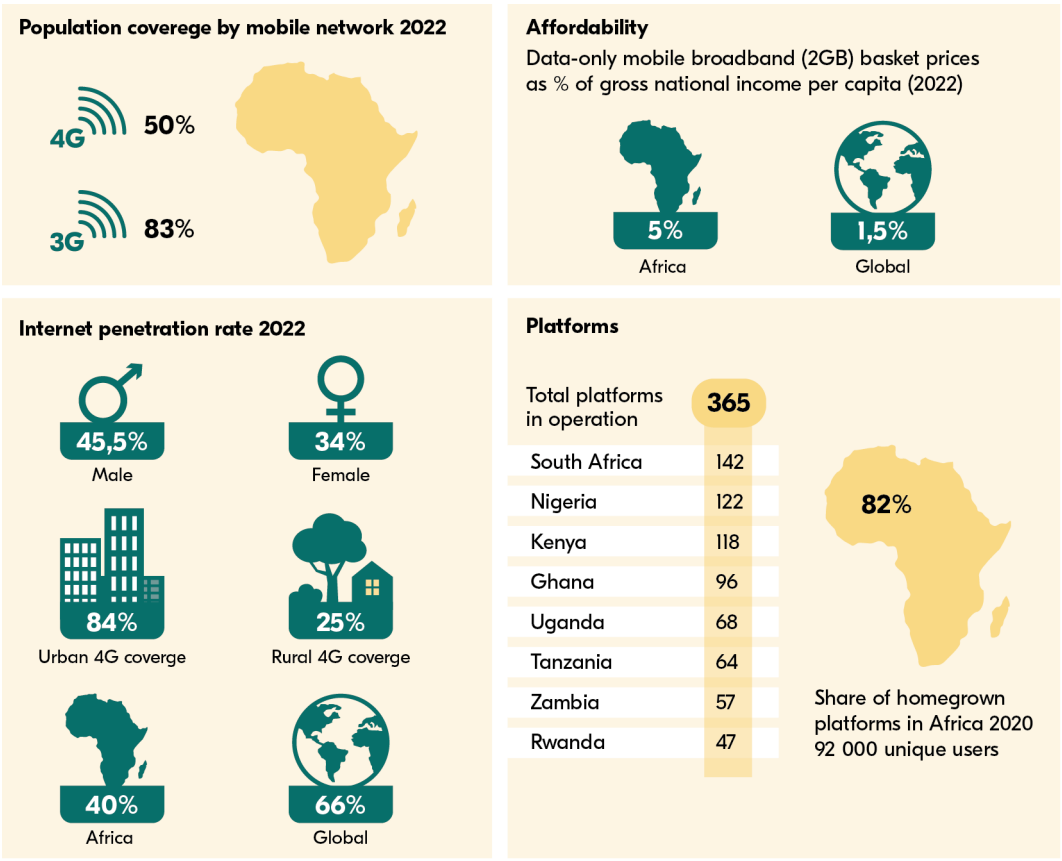
The lack of basic infrastructure will make it harder and more costly to fulfil the commitments of the JSI on e-commerce, especially with regard to issues such as paperless trade and single windows where commitments often require countries to have an infrastructure that allows them to accept digital documents.[19]

Although internet access has been steadily increasing in Africa, the continent still has the lowest fixed broadband penetration in the world. Additionally, the coverage gap for mobile broadband remains the largest globally. 20 per cent of the population in Africa still reside in areas without access to broadband coverage. However, internet coverage remains uneven across various countries. Beyond the challenges of network buildout, there are also various policy issues that affect the accessibility and pricing of this infrastructure, as well as the services that run on top.[20] The problem with access to electricity also still excludes significant parts the population from the internet.

Without an established e-commerce sector, negotiating rules in this area may not be prioritised. At the same time, the development of a thriving domestic e-commerce market depends on the quality of ICT infrastructure and related services.

As the maturity of infrastructure on the African continent is relatively low for some countries, we expect fewer countries will take part in the JSI as priorities lies elsewhere.

Figure 1. Key ICT statistics, Africa region



Source: ITU, 2023

19 WTO (2022a)
20 UNCTAD (2020)

3.1.2 Lack of skills, enabling factors and regulatory frameworks

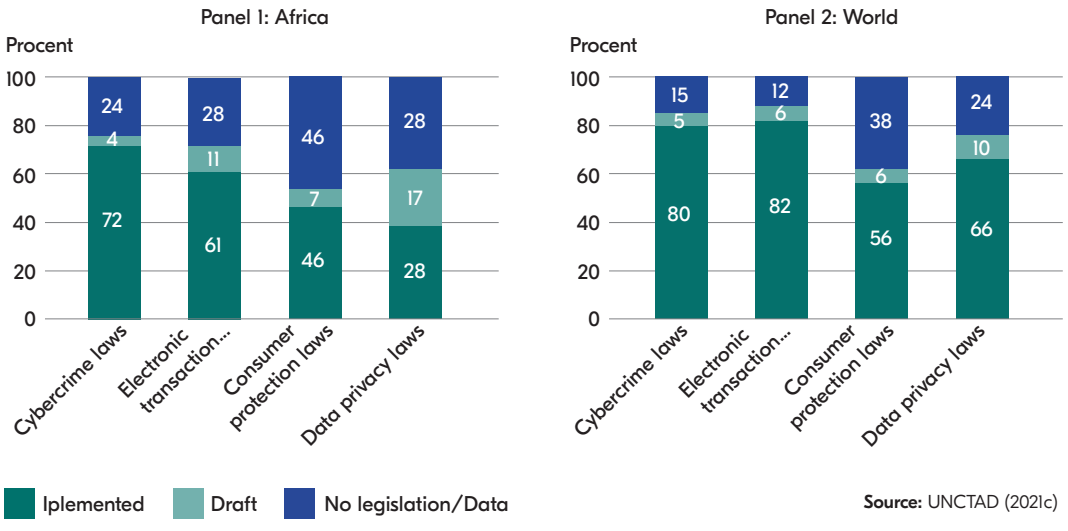
In addition to the technical aspect of the digital divide, there is also a knowledge-based divide that hinders countries from participating in the digital economy and digital trade negotiations.

Even in areas with well-functioning infrastructure, internet usage remains low, making it difficult to establish a thriving e-commerce sector. Some of the key barriers to internet adoption and use are a lack of literacy and digital skills, affordability, the relevance of the services and content provided, as well as concerns about safety and security.[21] UNCTAD's E-commerce index shows that only 30 per cent of people in Africa use the internet, but this per centage varies greatly among countries.[22] Internet usage rates range from more than 60 per cent in the more developed economies to less than 10 per cent in the region's least developed economies.[23]

Trade facilitation, logistics, payment solutions and access to finance also continue to prevent the e-commerce sector to develop in many countries.[24] Without an established e-commerce sector, there are fewer incentives to negotiate ambitious global rules. According to ITU, only 10 African countries are responsible for 94 per cent of all online businesses on the continent. South Africa, Egypt, Nigeria, Algeria, and Kenya together account for 78 per cent of total marketplace traffic.[25]

The knowledge-based digital divide is also reflected in the level of digital literacy and the absence of a legal framework. Fulfilling commitments and reaping the full benefits of the rules in the JSI e-commerce require an adequate legal framework in the digital space. It is widely recognised that many countries are often reluctant to engage on rulemaking for policy areas where their own domestic regulations are still to be developed and their trade opportunities have not yet been fully explored.[26] On issues where there is no domestic regulation in place yet, countries have often not formed a position and are therefore more reluctant to engage globally.[27]

Figure 2. Status of regulation to support digital trade



Source: UNCTAD (2021c)

21 GSMA(2021)
22 UNCTAD (2020a)
23 ITU (2021)
24 UNCTAD (2022)
25 ITC (2020)
26 Pittet, T. (2022)
27 Diplo (2022)

The UNCTAD Cyberlaw tracker examines the laws pertaining to four crucial legal areas for e-commerce: e-transactions, cybercrime, consumer protection, and data privacy. This information shows that in Africa, 72 per cent of all countries have cybercrime laws, which is somewhat lower than the global average. 61 per cent have already implemented electronic transaction laws, and an additional 11 per cent are currently in the drafting stage. The most significant contrast between Africa and the rest of the world is seen in their data privacy laws. Only 28 per cent of African countries have implemented such laws, while another 17 per cent are currently drafting laws in this space (see figure 2).[28] In addition, the World Bank's Digital Trade Regulatory Readiness database indicates that crucial regulations related to personal data protection, online consumer protection, intermediary liability, and licensing requirements for digital firms are either completely absent or only provide general guidelines. Even when laws are in place, there is often a challenge with their diverse implementation and enforcement.[29] This means that it would generally require more resources for countries on the African continent to live up the commitments of the JSI.

This is important since the JSI on e-commerce is discussing provisions that require participants to have some of these laws in place and could be a reason that some are not joining.

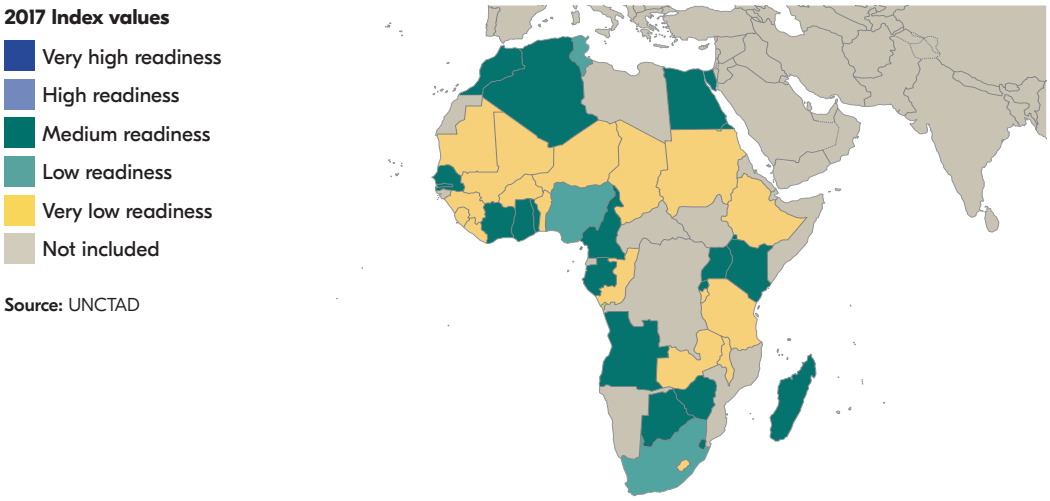
Having a well-established domestic regulatory framework in place will also increase the likelihood of successfully including the same approach in an agreement. Accordingly, it would be expected that a region where digital legal frameworks are less common would be less engaged in global rulemaking. However, engaging in global rulemaking alongside the development of domestic or regional frameworks is important as it can promote harmonisation and interoperability, which is particularly important in a digital economy.

3.1.3 Addressing the lack of digital readiness

If the reason for low participation from African countries is their lack of digital readiness, we would expect the countries that are most "digital ready" to be involved in the negotiations. However, that is not what we are seeing. When comparing the African countries that are participating in the JSI e-commerce negotiations to those that have chosen not to take part, it becomes apparent that some countries are relatively advanced in terms of digital readiness, while others have a very low level of e-commerce readiness. Countries like Kenya score high on several digital trade readiness indexes, while Cameroon and Burkina Faso score relatively low. Nevertheless, all of them have chosen to participate in the JSI on e-commerce. Countries such as Namibia and Rwanda, which have a relatively high level of digital readiness, are not participating in the e-commerce negotiations. This suggests that a lack of digital readiness is not the sole explanation for non-participation.

28 UNCTAD (2023)
29 UNECA (2021)

Figure 3. Map of the UNCTAD B2C E-commerce index 2017 – Africa



Source: UNCTAD

Although it may seem premature to engage in complex e-commerce negotiations without basic infrastructure in place, trade can actually be part of the solution. Trade rules can partially address both the lack of infrastructure and the affordability of internet access. Some examples of this include the Information Technology Agreement (ITA), which reduces tariffs on ICT products, as well as the Annex on Telecommunications, the Fourth Protocol on Basic Telecommunications, and the WTO Reference Paper on Basic Telecommunications. These agreements aim to promote competition and ultimately lower prices. Entering into an agreement that provides market access and establishes rules on competition, which in turn increase incentives to invest, may therefore help to alleviate some of the reasons for not joining.

However, this might take time and it may be necessary to support countries to speed up their digital readiness. One such initiative, launched on the side-lines of the 12th Ministerial Conference in WTO (MC12), is the E-commerce Capacity Building Framework. This was seen as a response to the growing debate surrounding the insufficient participation of developing countries. According to their statement, the framework consolidates the efforts of several organisations and programs, including the Digital Advisory and Trade Assistance Fund (DATA Fund) pilot program under the Umbrella Facility for Trade, which is managed by the World Bank.

The lack of digital readiness continues to be an important factor, and for some countries this is likely to be the main barrier to joining the negotiations. Technical assistance and capacity building are therefore important to include in any future agreement, but the development cooperation also needs to engage more in "Aid for Digital Trade".[30] The E-Commerce Capacity Building Framework is a concrete step in the right direction. However, funding needs to be secured and extending these funds to non-participating members of the JSI is one suggestion that has come up during our discussions and interviews that could be further explored. This would ensure that the funds reach those countries in the most need to speed up their digital readiness to join the JSI at a later stage. UNCTAD e-trade readiness is another important initiative but more needs to be done as we see that offline and online economies continue to diverge.

30 Lacey, S (2021)

It is clear that the level of digital readiness will greatly determine the ability to negotiate and fulfil commitments which the final agreement needs to take into account. A tailored approach, including special and differential treatment and flexible implementation periods, will be needed to promote further participation now and in the future. The exact design of such provisions needs to be further discussed, and some interesting proposals have been put forward by various developing countries.[31]

3.2 Diverging policy priorities

3.2.1 Diverging thematic priorities

Another possible explanation for the non-participation of African countries is that the thematic topics covered in the JSI do not align with the interests of the continent. Non-participation in the JSI negotiations, however, should not be equated with a lack of interest on the part of these countries in addressing the current digital divides and embarking on reforms that support the development of e-commerce. This was also emphasised in a recent publication by UNCTAD.[32]

The thematic topics that the JSI covers were selected based on input from participating members during the first year of the JSI (see table 1). The thematic topics are very similar to what we have seen in recent trade agreements from developed countries, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Digital Economy Partnership Agreement (DEPA). The lack of input from African countries is not surprising, given that only two African countries have negotiated digital trade provisions; Kenya and Morocco.

In the policy documents from different African countries analysed for this report, the most commonly prioritised policy issues were infrastructure, trade facilitation, and market access. Data flows, source code, or data localisation were not mentioned very often. This reflects the priorities for different levels of maturity of the digital economy. If we compare this to what is covered in the JSI we can see that prioritised topics such as market access and trade facilitation are included, which is positive. However, infrastructure, economic development, and structural changes in industry and labour markets are not specific topics covered in the negotiation.

Since there are very few e-commerce agreements involving African countries, it is difficult to determine precisely what countries on the continent would like to include in a trade agreement.[33]

The only African countries that have submitted proposals to the JSI are Côte d'Ivoire and Nigeria. The focus of their interventions has been on capacity building and safe-guarding the developmental perspective, but there have been no concrete text proposals even though the development perspective is a clear priority.[34]

The JSI negotiations acknowledge the importance of development perspectives and have two frameworks for addressing development issues: a cross-sectional framework where development issues are raised in different groups, and a more horizontal framework called "technical assistance and capacity building" within Focus Group D. However, there is still room for improvement as the submissions in the cross-sectional

31 WTO Documents (2021)
32 UNCTAD (2020)
33 UNCTAD (2021)
34 IISD (2020)

track addressing substantive issues only occasionally refer to development concerns and have not yet provided conclusive solutions.[35]

Some indications of how priorities might differ from those of developed countries can be found by examining trade agreements among developing countries in general. Studies show that 85 per cent of these Preferential Trade Agreements lack provisions to prohibit customs duties on digital transactions, and only 23 per cent include provisions on data privacy and data flows. They are all topics covered in the JSI on e-commerce and could be reasons that some countries are reluctant to join. Some of them, such as bans on customs duties on electronic transmissions and data localisation have become heavily politicised and sensitive for African countries, possibly due to the strong critical position of South Africa.[36]

Previous studies comparing policy priorities between developed and developing countries have shown that "jobs and skills" are the most important issues for developing countries, while policy makers from high-income countries prioritise "cybersecurity" and "privacy and data protection".[37] Even where there are overlapping interests, the approaches to these issues are likely to differ. The negotiations will need to balance the pressure for policy with concerns about sovereignty, particularly in regards to data.

In our discussion with policymakers, it has been highlighted that, like all regions, the African continent has unique challenges that influence its priorities in digital trade. The issues of fluctuating currencies, competition policy, taxation and cross-border payments are particularly prevalent in Africa and could be topics that the region wishes to include in an agreement even though they are not typically covered in digital trade agreements. Some of these issues are discussed in other multilateral foras such as OCED, G20 or G7 but with limited success agreeing on binding rules.

In addition to the topics covered, there may also be diverging approaches to the depth of commitment in trade agreements. Studies have found that provisions related to e-commerce, in which developing countries are parties, are far less likely to be legally binding and enforceable. Instead, these countries seem to rely more on "soft"

35 ibid
36 Pittet, T. (2022)
37 Tavengerwi, R., Mumbo, V. and Kira, B. (2022)

e-commerce provisions to express shared policy goals and best endeavours. There are also some highly debated issues such as the ban of customs duties on electronic transmissions that might have led some countries to be more reluctant to join.

It is not yet clear how binding the commitments in the JSI will be as we have not seen any final texts yet, but there is a clear ambition to establish binding commitments on as many topics as possible.[38]

3.2.2 Regional integration before global integration

In previous studies as well as the policy documents we have analysed, there is a clear focus from African countries to consolidate positions domestically and regionally before engaging in multilateral negotiations.[39] Several regional and continental initiatives, such as SMART Africa[40] and The One Network Area[41], support this.

Some studies suggest that regional cooperation and coalitions of like-minded countries might be more useful for developing countries. By first establishing a regional position, countries will have a greater chance to propose a governance model that suits their needs. On the contrary, others argue that JSI negotiations could serve as preparation for African countries to engage in continental talks on e-commerce and act as a valuable learning experience for future continental negotiations.[42] While each country has the right to choose its own digital path, it is important to establish shared norms and rules for governing digital trade.

The Africa group has argued that the JSI on e-commerce could potentially limit policy space, ultimately undermining Africa's ability to integrate regionally.

> "In building the Africa we want, towards the structural transformation and industrialisation of our economies, our African Union Ministers of Trade have pronounced 'that the work we undertake in multilateral trade and rule-making support Africa's continental integration agenda and, at a minimum, not undermine it'..."[43]

The argument could be driven by South Africa, which has a strong influence on the positions of other African countries and the Africa Group.[44] The critique against the e-commerce negotiation follows the more general critique that both South Africa and India have against the current development towards plurilateral negotiations. Even though the current system does have challenges we know that the multilateral trading system especially serves smaller and developing countries. Moreover, there is not much support that the e-commerce rules will limit policy space, as most of the language used in the JSI so far is in "best endeavour" style.

Nevertheless, some African countries have had negative experiences in the past when negotiating trade agreements.[45] The EU's inclusion of a Most-Favoured Nation (MFN) clause in their Economic Partnership Agreements with African countries has arguably

38 IISD (2020)
39 UNCTAD (2021)
40 A partnership among 32 African countries with a goal to accelerate sustainable socioeconomic development on the African continent through usage of ICT.
41 Initiative to promote regional integration by bringing down the cost of mobile roaming within EAC
42 Pittet, T. (2021)
43 WTO Documents (2017)
44 From our interviews and discussions
45 Cuts (2009)

made it more difficult for African countries to establish more favourable trade agreements with each other.[46] This perception might make countries less willing to negotiate on a global level until the continental negotiations on e-commerce are settled.

3.2.3 Addressing diverging policy priorities

Discussions around the digital economy are something that most countries on the African continent engage in even if they have not chosen to be part of the JSI on e-commerce.

Trade agreements involving developing countries, as well as previous studies and policy documents on this topic, suggest that African countries are placing a greater emphasis on industrial policies related to digital trade issues. Market access is seen as an important issue and progress in this area in the JSI negotiations is therefore important. To allow a more topics of interest to African countries in JSIs, more support for countries to submit text proposals should be encouraged.

Even where African countries have overlapping interests to what the JSI covers, the approach to topics such as data flows and privacy often differs. The aim should be to achieve an ambitious outcome. However, the agreement needs to adopt a multifaceted approach that includes provisions on special and differential treatment and identify potential needs for policy space or longer implementation periods. Such an approach would also increase the possibility of countries joining at a later stage.

When it comes to issues where strong voices in the region influence other countries' positions, it is necessary to de-politicise the discussion and have an evidence-based and informed debate.

Whether African countries choose to first establish domestic or regional positions before negotiating on the international level, coordination is key to prevent regulation in isolation and to avoid regulatory divergence. Nevertheless, it is important that the rules and norms developed within the JSI do not impede regional integration.

46 CUTS (2009)

3.3 Concerns around the JSI structure

3.3.1 The JSI setting

Another common explanation for the low level of participation is a general reluctance towards the JSI structure. While India and South Africa have criticised the legality of plurilateral agreements, the most common critique is related to the systemic aspects of the JSI.[47]

The Africa Group stated the following in a WTO document circulated in October 2017.

> "We may be able to agree to continue the exploration of issues under the 1998 WTO Work Programme on Electronic Commerce (Work Programme), however we will not agree to go beyond the current structure or institutional arrangement of the Work Programme."[48]

Côte d'Ivoire states in another communication that

> "Low-income developing countries are concerned that plurilateral negotiations could undermine multilateral negotiations. It is undeniable and understandable that the major trading powers are far more active in digital trade negotiations that are important for their offensive trade interests than in agricultural negotiations in which they have primarily defensive interests. The fear that an outcome in the e-commerce negotiations could undermine matters of key interest to low-income developing countries is therefore not unfounded. An isolated agreement on e-commerce without progress on multilateral issues of importance could compromise the inclusive multilateral system."[49]

As highlighted in the statement from Côte d'Ivoire, the shift towards more plurilateral negotiations puts developing countries at a disadvantage when determining the thematic topics for which a JSI is started. This issue is emphasised by the fact that there are no official documents on how to start a JSI and the process has been largely ad hoc with a number of JSIs started at the 11th Ministerial Conference on issues of interest.[50] There are no legal requirements in the WTO regarding how a JSI negotiating process should be launched, conducted, or concluded. This can create uncertainty and disadvantage for Members with scarce resources.[51]

Members with limited resources are less likely to initiate a JSI, which means that the priorities of more resource-strong members will likely dominate the agenda. Issues of interest to developing countries are therefore less likely to be negotiated within a JSI.[52]

A further consequence of negotiating in a JSI setting is that the deliberative function becomes hampered.[53] Being able to discuss cross-cutting issues with support from the secretariat and without it being a formal negotiation is an important function of the WTO, especially for smaller and resource-weak members. In areas that are highly technical and complex such as e-commerce this is especially important.

47 WTO Documents (2021a)
48 WTO Documents (2017a)
49 WTO Documents, INF/ECOM/49
50 Shamel, A (2022)
51 Mamdouh, H. (2021)
52 Kelsey, J (2022)
53 ibid

This critique differs from the argument that JSI are ill legitimate and rather focuses on the systemic effects of the shift towards negotiations through JSI's.[54] In areas that are highly technical and complex such as e-commerce this is especially important.

3.3.2 The process of the JSI

There are no official documents outlining the procedural rules for the JSI negotiations. The process therefore differs somewhat between the different JSIs that are currently active. In the document released during the 11th Ministerial Conference in Buenos Aires, the signatory members outlined that

> "...our work will build on WTO rules. Our initiative will be undertaken without prejudice to existing WTO agreements and mandates..."[55]

During 2018, the signatory members met on a monthly basis to establish the agenda for the negotiations and decide how the negotiations should be conducted. The following year, at the World Economic Forum Annual Meeting in Davos, a second document was released. It outlined that the members intended to begin negotiations:

> "Seeks to achieve a high standard outcome that builds on existing WTO agreements and frameworks with the participation of as many WTO Members as possible."[56]

Australia, Japan and Singapore were announced as co-facilitators. The process that was established meant that the negotiations within the JSI take place through small groups and monthly plenary sessions that address various thematic issues. New small groups are created as needed. There are over 16 small groups covering different thematic topics which makes it very hard for small delegations to be able to participate in all of them.

Compared to multilateral negotiations, the speed and intensity of the JSI negotiations are much higher. The small groups are assigned specific articles from the consolidated negotiating text, and their role is to facilitate technical negotiations towards agreement on "clean" articles. Plenary sessions are held monthly, during which facilitators from the small groups provide updates on progress and proposals from members are discussed. The small groups work in parallel to increase efficiency and allow certain issues to move forwards when the members' positions align. For each small group, there are facilitators who lead the work and also hold intersessional meetings, if needed, to finalise texts and address any issues that arise. This role is typically held by developed countries due to the smaller delegations' limited human resources. These small groups are often held in an informal setting without interpretation which further complicates participation from developing countries.

Although the process can be considered efficient and ensures that negotiations move forwards quickly, participating in these negotiations requires resources and institutional capacity. Even when developing countries are interested in engaging in e-commerce, the problem of capacity constraints becomes particularly prevalent. What further complicates active participation for the African region is the limited number of African countries taking part in the JSI which makes splitting meetings between each other and sharing the burden more difficult.

54 Shamel, A (2022)
55 WTO Documents (2017b)
56 WTO Documents (2019a)

Côte d'Ivoire confirms this view in a statement to the WTO where they write:

> **"Our countries have rather limited capacities to engage in negotiations: our delegations in Geneva are quite small and our officials have various obligations outside the WTO. We cannot afford to send experts to cover all areas of negotiation. We cannot afford to draw on technical support from our capitals as the more advanced countries are able to do. It is therefore understandable that we focus our limited resources on matters of importance to our countries and that we have difficulty tackling subjects as complex as e-commerce."**[57]

As stated in the communication from Côte d'Ivoire, the JSI on e-commerce is exceptionally complex and technical, requiring additional resources to effectively engage with it. This means that creating an inclusive process and taking steps to promote engagement from members with less bureaucratic capacity is even more important. In some missions there are only one or two people at the mission in Geneva that are responsible for trade issues, so they will have to prioritise between different trade negotiations within the WTO.[58]

It is a positive development that most small group meetings are now conducted in a hybrid format, and that the consolidated texts are made available to other members of the WTO. New Zealand has proposed to further increase transparency in the negotiations by making the future consolidated negotiating text available to the public, instead of restricting it only to WTO Members.[59]

However, there are still ways to further improve the process of the JSIs. As several previous studies have highlighted, there are some administrative changes that could be made. Improving interpretation during meetings, translating text proposals into multiple languages, providing support for individuals taking on roles such as small-group facilitators, optimising the meeting schedule to prevent conflicts, and providing capacity support to enable experts based in the capital to attend meetings.[60]

57 WTO Documents (2019)
58 Diplo (2022)
59 WTO Documents (2020a)
60 IISD (2022)

The argument that there is a general hesitation towards JSIs and not just towards e-commerce is supported by the low participation of African countries in all current JSIs. Out of the 97 members in the JSI on MSME, only five are from Africa. Similarly, out of the 70 signatories of the domestic services regulation, only three are from Africa. The number is slightly higher for the Joint Statement Initiative (JSI) on Investment Facilitation for Development, with 16 African countries participating.[61]

3.3.3 Addressing concerns around JSIs

Even though many African countries have chosen to stay outside of the JSI on e-commerce, they are engaging in other multilateral forums such as UNCTAD, UNCITRAL, and G20 in the area of digital trade. This supports the notion that it is rather the JSI itself that is affecting their decision not to join rather than the digital trade topic.

The debate surrounding the existence of JSIs has been heavily politicised by a small yet influential number of countries. This is problematic because it prevents valid arguments against the JSI structure from being discussed.

The fact that the JSI process is less formalised do disproportionately affects countries with limited capacity and favours countries with greater capacity to leverage their interests. If JSIs are becoming the new standard for negotiations in the WTO, there should be a discussion on how to make them more inclusive. Some scholars suggest that further institutionalisation is one solution.[62]

Institutionalising the JSI could potentially resolve some issues such as the absence of support from a secretariat which has been crucial in supporting WTO multilateral negotiations (see box 1), particularly for developing countries. The role of the secretariat is almost non-existent in a JSI setting which could be clarified if the JSI were institutionalised. It would also create more transparent rules around when and how a negotiation can be started. Other problems stemming from the more ad hoc structure of the JSI could be solved by implementing clearer rules to govern small groups and establishing timelines for entry.[63] In addition, certain crucial aspects of multilateral negotiations, such as the deliberative function, also need to be revamped.

At the same time, greater involvement of the secretariat would raise the debate around how a JSI is connected to the WTO framework and its relation to other work programmes. Institutionalising JSIs would require members to discuss issues around what budget would cover JSI negotiations and how a potential outcome would legally be incorporated in the WTO framework which are highly controversial issues.

Nevertheless, the ad hoc structure of the JSIs has made them a flexible and efficient negotiating tool at a time when many multilateral negotiations have stalled. Still, there needs to be a more constructive discussion on how the JSIs are working in practice and what can be done to improve them and make them more inclusive.

61 WTO Joint Initiatives (2023)
62 Shamel, A. (2022)
63 Shamel, A. (2022)

4 Conclusions and policy recommendations

There is a clear need for new global rules governing digital trade, and the Joint Statement Initiative (JSI) on e-commerce is an important step towards achieving that goal. Agreeing on global principles, standards and rules promotes interoperability between different regulatory frameworks and ensures that benefits from digital trade are shred inclusively. However, if there is a lack of participation from African countries, the final results run the risk of not representing a global solution, and regulatory fragmentation will persist. It is clear that digitalisation is a priority for most African countries. Despite this many countries have chosen not to participate in the JSI.

In this report we have highlighted that the reasons for non-participation vary widely but many of them stem from a lack of resources that may make them prioritise other negotiations, trade issues or that make them disproportionally affected by the ad hoc negotiation structure. Some reasons for not joining may be difficult to address, such as a focus on regional integration, negative experiences from past trade negotiations or a hesitancy to challenge the stance of other influential member states in the region. Yet, some of the reasons could be addressed and possibly increase both participation and active engagement in the negotiations. It is also important to point out that many of these reasons are not unique to African countries but are shared by many other developing countries and solving them would benefit this broader group of countries.

From this we conclude that there are several things that can be done to address these concerns and increase participation of African countries in the JSI negotiation.

Improve transparency, inclusiveness, and the deliberative function within the JSI structure

There need to be further administrative adjustments to facilitate not only the admission but also the active participation of African countries. Some examples of improvements that could be made include providing interpretation services in multiple languages in small group meetings, ensuring that there are no scheduling conflicts for small group meetings, always offering the option to attend meetings virtually, and providing support for smaller missions to facilitate their submissions. The JSI process could also benefit from improved transparency by making negotiating texts, focus group facilitator reports, and co-convenor reports available to a wider audience. Making it possible to join as an official observer to the negotiation would further increase transparency for those contemplating joining.

Another issue is the lack of a deliberative function within the JSI setting which is something that needs to be addressed. There are clear benefits to members being able to discuss issues related to a specific topic more informally. Whether this should be done within the Work Programme stream or the JSI structure should be further explored.

Many of these challenges are not unique to the e-commerce JSI and could be beneficial to further discuss in a wider JSI context. If JSIs become more prevalent within the WTO, it is important to provide support to members to ensure their equal participation in the negotiation process.

Ensure that policy priorities from African countries are accommodated

The thematic topics in the JSI do include several topics that African countries seem to prioritise such as trade facilitation and infrastructure. However, they do have a greater focus on industrial policy and market access in the area of digital trade compared to developed countries. Making sure that the market access part of the negotiations is finalised should therefore be prioritised.

The reluctance of developing countries towards the JSI sometimes stems from a lack of adequate policies in other areas, such as market concentration, revenue loss, and taxation. Hence, by committing to finding solutions to these issues in other global forums such as the OECD or the UN, countries might be more willing to sign up to liberalising trade rules.

In areas where interests do overlap, there is a clear bias towards less binding commitments from African countries. To increase the incentives for countries to join there needs to be tailored SDT-provisions throughout the agreement that involve both flexibility and longer implementation periods without compromising on an ambitious outcome. Here proposals from developing countries could be a good starting point for discussions.

Some have suggested that the approach in the Trade Facilitation Agreement where financial support is tied to implementation commitments, is a possibility. However, this is a rather complex system so other options to facilitate capacity support should also be explored. Nevertheless, implementation periods are only part of the solution, and the e-commerce provisions vary in how binding they are and what is requested from participants. A multifaceted approach is therefore necessary.

The capacity building and technical support should be given to countries before and throughout the entire negotiation process, and not focus only on the implementation phase

Given the low level of e-commerce readiness in many African countries, adopting technical and regulatory frameworks required by the JSI on e-commerce will be expensive and time consuming.

Technical assistance, development cooperation, and capacity building should be expanded and utilised in more innovative ways to support countries before and throughout the entire negotiating process. One example is that countries could be given access to financial and technical assistance to help them assess whether or not to join existing negotiations and even identify their offensive and defensive interests. Projects like Trade Academy by the National Board of Trade and supporting countries like Liberia in their WTO accession are some concrete examples of this.

The E-Commerce Capacity Building Framework, including the World Bank Fund, is part of the solution to support countries. It is positive that the Capacity Framework addresses issues that arise from capacity constraints throughout the process. However, it is important to consider granting non-participants access to the fund as they may be the ones who need it the most.

Another important capacity building effort is exploring how to reform 'Aid for Trade' which was launched in 2005 at the 6th WTO Ministerial Conference to support developing and least developed countries to benefit from the multilateral trading system. In a new digital economy with new dynamics, the Aid for Trade (AfT) initiative needs to be improved to address the digital divide, thereby enabling more countries to join the JSI. Today only 0,4 per cent of total AfT is utilised for digital transformation but the need for support from the development cooperation community within e-commerce will only increase. It would therefore be beneficial to develop a new "Development Cooperation Agenda for Digital Trade". Capacity building in the area of data and privacy issues is especially needed.

We do not only need more African countries to join but also to actively participate and influence existing negotiations. This would require breaking down silos within governments and the development cooperation community. The e-commerce readiness assessment by UNCTAD and developing Aid for Trade to address digital concerns are crucial initiatives that have the potential to be expanded and developed further. There also needs to be more support in providing specialised and technical skills to the Geneva-based officials from developing countries. This is especially important for complex and technical negotiations such as e-commerce. Providing training, briefings or summaries on some technical topics could further facilitate a better understanding of the issues being negotiated. If countries prioritise to firstly finalise negotiations on a regional or continental level, support for AfCFTA is also important.

Much can and should be done to better facilitate the participation of African and other developing countries in the JSI negotiations while at the same time aiming for an ambitious outcome that can be concluded in the near future.

References

Afcfta (2023). About the AfCFTA. Accessed 4th May 2023 About The AfCFTA – AfCFTA (au-afcfta.org)

Arnold S (2021). *Drivers and Barriers of Digital Market Integration in East Africa: A case study of Rwanda and Tanzania*. University of Bologna

Banga et.al (2021). *E-commerce in preferential trade agreements*

CUTS (2009). *The Most Favoured-Nation Provision in the EC-EAC EPA and its Implications.* Accessed 3rd March GRC – MFN (cuts-geneva.org)

Diplo (2022). Stronger digital voices from Africa: Building African digital foreign policy and diplomacy. Accsessed 4th of May 2023 Africa digital foreign policy and diplomacy – Diplo Resource

Diplo (2022). Africa's participation in international processes related to the digital economy. Accessed 5th February 2023. https://www.diplomacy.edu/resource/report-stronger-digital-voices-from-africa/africa-participation-international-processes-digital-economy/

Diplo (2022). Seminar on E-commerce capacity building. Accessed 4th of May 2023. Lessons and solutions: E-commerce capacity building – YouTube

Evenett, S., Fritz, J., (2022). Emergent Digital Fragmentation. CEPR Press

Fiama, A., Roy, R., Yarina,Y., (2020). *Shifting consensus Decision-Making to Joint Statement Initiative.*, Graduate Institute Geneva.

Foster, C., Azmeh, S., (2018). *The digital trade agenda and Africa*. Bridges Africa, vol 7, issue 2.

Foster, C., Graham, M. (2016). *Reconsidering the role of the digital in global production networks.* Global Networks.

Fulcrum (2023). *Fragmented Digital Regulations are Constraining ASEAN's Digital Economy*., Sithanonxay Suvannaphakdy. Published 17th February 2023 Fragmented Digital Regulations are Constraining ASEAN's Digital Economy | FULCRUM

GSMA(2021). The State of mobile Internet Connectivity 2021. Accessed 15th of March 2023 The State of Mobile Internet Connectivity 2021 (gsma.com)

IISD (2020). Addressing the Digital Divide in the Joint Statement Initiative on E-Commerce: From enabling issues to data and source code provisions. Accessed 4th February 2023 digital-divide-e-commerce-en.pdf (iisd.org)

IISD (2022). Cooperation, Capacity Building, and Implementation Considerations of Developing Countries in the E-Commerce Joint Statement Initiative: Status and way forward. Yasmin Ismail. Accessed 12 April 2023 Cooperation, Capacity Building, and Implementation Considerations of Developing Countries in the E-Commerce Joint Statement Initiative (iisd.org)

ITC (2020). *Business and policy insights: Mapping e-Marketplaces in Africa*. Accessed 23 of April 2023 Business and policy insights: Mapping e-Marketplaces in Africa | ITC (intracen.org)

ITU (2021). Digital trends in Africa 2021. Accessed 15th of May D18-RPMAFR-C-0002!!MSW-E.docx (live.com)

Kelsey, J (2022). The Illegitimacy of Joint Statement Initiatives and Their Systemic Implications for the WTO. *Journal of International Economic Law, Volume 25, Issue 1, March 2022, Pages 2–24*

Lacey, S (2021). Digital Reboot: The Case for a Newly Invigorated Aid for Digital Trade Initiative, International Trade Working Paper, The Commonwealth. PDF view of the file ITWP_2021-10 (thecommonwealth-ilibrary.org)

Lemma, A., Mendez-Parra, M., Naliaka, L (2022). *The AfCTA: unlocking the potential of the digital economy in Africa*. ODI report.

Mamdouh, H. (2021). Plurilateral Negotiations and Outcomes in the WTO. Paper from King & Spalding

Mekonnen, T. (2022). Potentials, Prospects and Policy: Digital Trade between Africa and the EU. OCED Forum,. Accessed 15th of May 2023 Potentials, Prospects and Policy: Digital Trade between Africa and the EU | The OECD Forum Network (oecd-forum.org)

OECD (2021a). Digital Trade Inventory OECD (2021a), Digital Trade Policy Papers

Phillips et.al. (2020). *Digital technology governance: developing countries' priorities and concerns*. Digital pathways at Oxford paper Series. Oxford, United Kingdom

OECD (2023). The impact of digitalisation on trade. Accessed 12th of March. Digital Trade

Pittet, T. (2021). *The WTO and Africa: The State of Play and Key Priorities Going Forward*, SAIIA

Pittet, T. (2022). *African Participation in WTO E-commerce Negotiations*, SAIIA.

Tavengerwi, R., Mumbo, V. and Kira, B. (2022). *What to consider ahead of the Afcfta Phase II Negotiations: focus on digital trade policy issues in four Sub-Saharan African countries.* Digital pathways at Oxford paper Series. Oxford, United Kingdom

UNCTAD (2020). *Fast-tracking implementation of eTrade Readiness Assessments*. Accessed 25th of May 2023 Fast-tracking implementation of eTrade Readiness Assessments | UNCTAD

UNCTAD (2020a). *The UNCTAD B2C E-commerce Index 2020: Spotlight on Latin America and the Caribbean.* UNCTAD Technical Notes on ICT for Development No. 17. https://unctad.org/publication/unctad-b2c-e-commerce-index-2020-spotlight-latin-america-and-caribbean

UNCTAD (2020b). *What is at stake for developing countries in trade negotiations on e-commerce? The case of the joint statement initiative.* Accessed 25th November 2022. https://unctad.org/system/files/official-document/ditctncd2020d5_en.pdf

UNCTAD (2021). *What is at stake for developing countries in trade negotiations on e-commerce?* Accessed 9th of January 2023 What is at stake for developing countries in trade negotiations on e-commerce? | UNCTAD

UNCTAD. (2021a). Covid-19 And E-Commerce A Global Review. COVID-19 and e-commerce: a global review | UNCTAD

UNCTAD (2023). *Data Protection and Privacy Legislation Worldwide.* Accessed 30th May 2023 Data Protection and Privacy Legislation Worldwide | UNCTAD

UNCTAD (2022). eTrade Readiness Assessment ECOWAS., Accessed 21 May eTrade Readiness Assessment: Member States of the Economic Community of West African States (unctad.org)

UNECA (2021). *Covid-19 Impact on E-Commerce: Africa.* Accessed 19th of January b11990296.pdf (uneca.org)

WTO (2022a). WTO Documents Online, INF/ECOM/62/Rev.3

WTO Documents (2017). WT/MIN(17)/21

WTO Documents (2019). INF/ECOM/49

WTO Documents (2017a). JOB/GC/144

WTO Documents (2017b). WT/MIN(17)/60

WTO Documents (2019a). WT/L/1056

WTO Documents (2020a). INF/ECOM/42/Rev.2

WTO Documents (2021). INF/ECOM/68 and INF/ECOM/49

WTO Documents (2021a). WT/GC/W/819

WTO Joint Initiatives (2023). Accessed 12th May 2023 WTO | Joint Initiatives

Annex 1

Table 2. Themes identified in policy documents

Policy Document	Infrastrucutre	SMEs	Market Access	Comp-etition	Economic Development	Investment	No mention of digital trade	No mention of trade	Skills	Continental / regional/integration	Trade facilitation	e-commerce
Kenya National Trade Policy	x	x	x	x	x	x						
South Africa National Digital and Future Skills Strategy								x	x			
South Africa trade policy strategy framework	x									x		
Nigeria National Digital Economy Policy and Strategy		x	x									
The Digital Senegal 2016–2025 Strategy										x		
Digital Ethiopia 2025	x											x
Egypts Vision 2023	x				x							
Namibias 5th National Development Plan										x	x	
Digital Maurititus 2030								x				
Rwanda Trade Policy			x		x							
SADC e-commerce strategy					x					x		

1. Kenya National Trade Policy

Kenya National Trade Policy (2016)_0.pdf

2. South Africa National Digital and Future Skills Strategy

National Integrated ICT Policy White Paper: National Digital and Future Skills Strategy South Africa (www.gov.za)

3. South Africa trade policy strategy framework

Microsoft Word – A South African Trade Policy and Strategy Framework.doc (tralac.org)

4. Nigeria National Digital Economy Policy and Strategy

file (ncc.gov.ng)

5. The Digital Senegal 2016–2025 Strategy

Dalessandro (1).pdf

6. Digital Ethiopia 2025

4_5906611000244700517 (explodie.org)

7. Egypts Vision 2023

Egypt's Vision 2030 (mped.gov.eg)

8. Namibias 5th National Development Plan
NDP5.pdf (ecb.org.na)

9. Digital Maurititus 2030
DigitalMauritius2030.pdf (govmu.org)

10. Rwanda Trade Policy
index.php (minicom.gov.rw)

11. Uganda National Trade Policy
National Trade Policy (enhancedif.org)

12. SADC e-commerce strategy
SADC E-commerce strategy

Annex 2

Discussions and interviews with the following organisations and persons have taken place from June 2022 to June 2023

Access to Finance

AeTrade Group

Australian Representation Geneva

Cenfri

Christopher Foster

Datasphere Initiative

Digital Europe

Diplo Foundation

EPRN

Erik van der Marel

EU Commission

European Chamber of Commerce Rwanda

Hamid Mamdouh

Ministry of Trade Rwanda

OECD

Shamel Azmeh

Tigere Pittet

Trade Mark Africa

UNCTAD

Sammanfattning på svenska
Summary in Swedish

Tekniska framsteg har förändrat vår ekonomi samt hur och vad vi handlar. Våra nuvarande handelsregelverk är inte fullt ut anpassade till denna förändrade verklighet. Globala handelsregelverk är särskilt viktiga på ett nytt område såsom digital handel för att undvika fragmentering av regler och diskriminerande åtgärder samt garantera marknadstillträde. Det mest heltäckande initiativet för att hantera det på globalnivå är e-handelsförhandlingarna inom WTO. Ett nittiotal länder deltar i förhandlingarna men endast sju afrikanska länder har valt att delta. Att så få länder från den afrikanska kontinenten valt att delta är problematiskt eftersom reglerna som tas fram riskerar att inte ta hänsyn till dessa länders kontext, legitimiteten för förhandlingarna riskerar ifrågasättas och att det i ett senare skede kan försvåra interoperabilitet mellan olika system.

Syftet med rapporten är att bredda debatten kring varför så få afrikanska länder valt att delta i e-handelsförhandlingarna samt undersöka vad som kan göras för att adressera dessa orsaker. Detta görs genom en litteraturstudie som kompletterats med analys av policydokument samt samtal och intervjuer med intressenter. Rapporten drar slutsatsen att länder som valt att inte delta är en heterogen grupp och anledningarna att de inte deltar är mycket olika. Däremot bör inte alltför stort fokus läggas på att komma runt bristande kapacitet att implementera åtagandena utan i stället stödja länderna både innan och genomgående i förhandlingsprocessen. Rapporten tar fram ett antal rekommendationer vad som kan göras för att kunna öka incitamenten för länder att gå med nu och i framtiden. Några av förslagen har även bäring på andra förhandlingar med samma struktur.

- Förbättra strukturen och processen för JSI-förhandlingar
- Se till att afrikanska länders prioriteringar tas till vara på i förhandlingarna
- Se till att kapacitetsstöd och teknisk assistans ges till länder även för att förbereda dem för att gå med och delta aktivt i förhandlingarna.

The National Board of Trade Sweden is the government agency for international trade, the EU internal market and trade policy. Our mission is to facilitate free and open trade with transparent rules as well as free movement in the EU internal market.

Our goal is a well-functioning internal market, an external EU trade policy based on free trade and an open and strong multilateral trading system.

We provide the Swedish Government with analyses, reports and policy recommendations. We also participate in international meetings and negotiations.

The National Board of Trade, via SOLVIT, helps businesses and citizens encountering obstacles to free movement. We also host several networks with business organisations and authorities which aim to facilitate trade.

As an expert agency in trade policy issues, we also provide assistance to developing countries through trade-related development cooperation. One example is Open Trade Gate Sweden, a one-stop information centre assisting exporters from developing countries in their trade with Sweden and the EU.

Our analyses and reports aim to increase the knowledge on the importance of trade for the international economy and for global sustainable development. Publications issued by the National Board of Trade only reflect the views of the Board.

The National Board of Trade Sweden, September 2023. ISBN: 978-91-89742-18-5

Kommerskollegium
National Board of Trade Sweden

Box 6803, S-113 86 Stockholm, Sweden
Phone +46 8 690 48 00
E-mail registrator@kommerskollegium.se
www.kommerskollegium.se