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WORK PROGRAMME ON ELECTRONIC COMMERCE

COMMUNICATION FROM SAMOA ON BEHALF OF THE ACP GROUP

Revision

The following communication, dated 16 February 2024, is being circulated at the request of the delegation of Samoa on behalf of the ACP Group.

1 INTRODUCTION

1.1. At the Twelfth WTO Ministerial Conference (MC12), Ministers agreed to reinvigorate discussions on the WTO Work Programme on Electronic Commerce and intensify deliberations on the Decision not to impose customs duties on electronic transmissions. The specific reference to the Work Programme was accompanied by an emphasis on the development dimension. In particular, Ministers provided guidance to intensify discussions on the moratorium and to hold periodic reviews on reports submitted on the moratorium on customs duties on electronic transmissions focusing on scope, definition, and impact of the moratorium.¹ Unlike the previous two Ministerial Decisions on the Work Programme on Electronic Commerce (2017 and 2015),² the emphasis on development is highlighted and brought back to the core of the discussions since this dimension was extensively mentioned in the Ministerial Decisions that preceded, i.e., the 2013 and 2011 at the ninth and eighth Ministerial Conferences³ respectively.

2 DEVELOPMENT DIMENSION

2.1. The development dimension is significant and central to our discussions given that the gap in the digital divide remains persistently wide between WTO developed countries and developing country Members, in particular with regard to Least Developed Countries (LDCs), where only 36% of their populations are said to have utilized the internet in 2022 when compared to 66% of the population globally having done so over the same period, according to the International Telecommunication Union.⁴ The digital divide can also be seen in the absence of an operational and thriving Electronic Commerce sector in many developing countries.⁵ There are several aspects underlying the divide which stem from infrastructural constraints; human capital limitations and institutional challenges. The enumeration below provides a non-exhaustive list to articulate the problem.

2.2. ACP States face challenges as it relates to:

- Having an accurate picture of the e-commerce and digital ecosystem;
- Designing and enforcing effective regulations;
- Harnessing the latest generation of technologies due to high capital costs and license fees;
- Lack of reliable, affordable, high-speed and high-capacity broadband Internet; and,

¹ [WT/MIN\(22\)/32](#)

² [WT/MIN\(17\)/65](#); [WT/MIN\(15\)/42](#)

³ [WT/MIN\(13\)/32](#); [WT/L/843](#)

⁴ <https://www.itu.int/itu-d/reports/statistics/facts-figures-for-ldc/>

⁵ [WT/COMTD/SE/W/45](#) page 63 - 72

- Promoting consumer trust due to a lack of cooperation agreements on e-commerce and consumer protection;⁶
- Connecting households to the electrical grid is slow and unequally distributed across regions;⁷
- Capitalizing on data generated through search engines and various platforms such as social media and booking websites can be complex given the dominance of a few large multinational corporations in this space and the resulting unequal playing field;
- Acquiring and disseminating digital skills due to the lack of qualified personnel on the ground and limited availability of learning materials in local languages and dialects;
- The lack of interoperability needs poses an obstacle to the growth and integration of the ACP e-commerce sector to global online payments systems;
- Very limited e-commerce data available for the region;
- Access to finance for e-commerce projects;
- Lack of regulatory framework to govern e-commerce;
- Low level of automation of border procedures and information, insufficient alignment of those procedures with best e-commerce practices and standards, underdeveloped postal services, and difficult access e-commerce platforms.

2.3. To address and close some of the gaps mentioned above, cooperation on establishing governance frameworks at the multilateral level and within the context of the WTO could assist in creating a space to formulate and tailor solutions based on the specific needs of individual ACP Members as well as those of other developing countries. In light of the strong linkages with other areas of work under the rubric of the WTO, relevant areas of work could be enhanced such as *inter alia*, Trade and Transfer of Technology; Trade and Development; Aid for Trade; Trade Facilitation; Technical Barriers to Trade, and other Working Groups.

2.4. Beyond the promotion of electronic commerce in and of itself, further work and analysis can be conducted to identify opportunities for promoting trade and development, especially for micro, small, and medium size enterprises (MSMEs), youth and women entrepreneurs, via electronic commerce. Experience sharing and cooperation could also be enhanced to support trade and investment promotion agencies among ACP states and developing countries in establishing and enhancing their Electronic Single Windows (ESW) to stimulate and facilitate overall trade. This could lay the groundwork for strengthening the business environment for conducting digital trade thereby making the country more attractive for foreign direct investment.

3 REGULATORY FRAMEWORKS

3.1. A coherent, global harmonized regulatory framework for e-commerce is complex to attain due to the rapidly evolving nature of the sector. There are fundamental aspects to the type of regulations enacted that can promote confidence, predictability, and transparency in the system. These can include *inter alia* electronic transaction legislation; consumer protection legislation; privacy and data protection laws; and cybercrime and cybersecurity laws.⁸ The promotion of sound regulation, adapted to the specific capacity and reality on the ground in each country, ought to be promoted to facilitate the integration of digital entrepreneurs from ACP countries. The introduction of legislation in advanced economies, such as, the General Data Protection Regulation (GDPR) can give rise to difficulties in compliance for digital businesses in developing countries. In this regard, enhanced transparency, technical assistance and cooperation with trading partners and international organizations, such as UNCITRAL, UNCTAD, ITU and ITC, could facilitate in laying the groundwork or harmonizing the existing regulatory framework in ACP countries. In particular, the ACP Group recognizes the valuable input provided by UNCTAD in their E-Trade Readiness Assessments that enable countries to identify gaps in their e-commerce sector, formulate customized strategies to enable the development of the industry and allows them to be better prepared and informed about their national circumstances when it comes to negotiations on electronic commerce, including in negotiations that are plurilateral in nature. The ACP Group has also encouraged the WTO Secretariat to prepare an information note that compiles, in a thorough manner, all the relevant cyber related legislation in place.

⁶ <https://unctad.org/topic/competition-and-consumer-protection/consumer-protection-map>

⁷ For instance, in Sub-Saharan Africa in 2021, close to half the population in aggregate still lacked access to electricity.

⁸ <https://unctad.org/page/e-transactions-legislation-worldwide>

3.2. Similar to the initiative taken by the Council for Trade in Services (CTS), the ACP Group sees value in bringing to the dedicated discussions table, a series of workshops, with businesses and expertise active in the e-commerce sector from the ACP region to highlight the challenges and opportunities they encounter in relation to compliance with cyber laws at a global level, including the costs and the manner in which various laws and regulations affect their competitiveness. These examples could demonstrate the importance of formulating a harmonized set of trade-related standards pertaining to e-commerce, with the input from businesses in developing countries.

3.3. An assessment of the degree to which countries uphold sound consumer protection must take into consideration the developmental dimension and in particular the challenges faced by regulatory authorities and governments in developing countries in doing so.

3.4. We need to also examine the relevant technical and regulatory issues in relation to the encryption systems.

3.5. In the African region, according to UNCTAD in its 2021 Digital Economy Report,⁹ there are only 33 countries that have electronic transaction legislation, 28 countries have consumer protection legislation, 33 with privacy and data protection laws, and 39 with cybercrime laws. In the case of small island developing states (SIDS), the report notes that there is legislation in 23 countries for electronic transactions, 14 for consumer protection, 14 for privacy and data protection, and 24 for cybercrime. An analysis of ACP regions, coupled with data from the International Telecommunications Union (ITU), showed evidence of legislation facilitating electronic transactions in Antigua and Barbuda, Bahamas, Barbados, Belize, Cabo Verde, Dominica, Fiji, Grenada, Jamaica, Mauritius, Namibia, Seychelles, St. Lucia, St. Vincent and the Grenadines, Trinidad & Tobago, and Vanuatu, for example. Countries with online consumer, or data protection regulation included among others, Angola, Antigua & Barbuda, Bahamas, Barbados, Cabo Verde, Cuba, Dominican Republic, Jamaica, St. Kitts & Nevis, St. Lucia, Suriname, Trinidad & Tobago, Mauritius, and Namibia. The Organisation of Eastern Caribbean States (OECS) provided further information on the regulatory areas arising from their E-readiness assessment prepared by the Commonwealth Secretariat. Here we would wish to stress the importance of e-readiness assessments and e-commerce strategies in assisting developing countries to enhance their participation in the e-commerce ecosystem, and to better empower our Members to effectively participate in the e-commerce discussions in the WTO. International organizations like UNCTAD should be better supported to complete a greater number of these technical cooperation products for developing countries. Some of our Members are still waiting for e-readiness assessments requests to be matched since 2018.

3.6. While the Pacific Islands Forum (PIF) has noted that overall the Pacific is in its nascent stages of ICT regulatory development, it is worth noting that Vanuatu, Samoa, Fiji, Papua New Guinea, Nauru, Tonga, Kiribati, Solomon Islands and others have been registered at various ranking levels with regulatory regimes and competition frameworks. As noted by the Pacific Regional E-Commerce Strategy and Roadmap, as of 2021 no Pacific Island countries has data protection and privacy laws in place, only 21% have e-transactions law in place, 43% have cybercrime laws in place, and 57% has consumer protection laws in place – with the latter rarely addressing online protection. Notwithstanding some progress recorded since 2021, the legislative and regulatory regime in the Region needs to be advanced. Regional initiatives have also been established and are underway in ACP Regions.

3.7. Notwithstanding these indications of progress in the development of regulations to facilitate e-commerce, more adaptation of regulations to suit specific needs as well as proper readiness or gap assessments are needed. Developed country WTO Members and developing countries in a position to do so should therefore provide more resources to developing Members, to advance drafting and approval of model legislation such as the laws of UNCTIRAL, as well as joining relevant regional and international conventions and agreement promoting trade.

3.8. The WTO Secretariat can play an important role in preparing an information note on all of the records of information on laws and regulations across developing countries, including ACP member States. This will not only help us to gauge, at least based on information in the public domain, our level of regulatory and legislative e-commerce readiness, but to assess the fundamental question that we have been asking: what is the WTO's role on e-commerce?

⁹ <https://unctad.org/page/e-transactions-legislation-worldwide>

3.9. Nevertheless, the ACP Group takes note of the observation of the Facilitator at the 18 October 2023 Dedicated Discussion, where she recalled that during the trade policy review of some Members, of those with e-commerce legislation, not all had functional e-commerce, and few capitalised on it and how it works. This could be an area the WTO, in collaboration with other relevant organizations, could initiate in the context of technical assistance programmes for trade in e-commerce.

4 ACP E-COMMERCE PROGRESS

4.1. E-commerce is a priority for most of the ACP countries if not all. Most members have aspired to formalize and regularize the sector in view of the potential it has to address Members' socio-economic and developmental needs. To ensure transparency and coordination between regional blocks, regional policy frameworks have also been developed to ensure that countries within the region progress equitably as such measures enhance trade and employment opportunities guided by regional trade agreements.

4.2. Regional policy frameworks are effective as they ensure targeted policy responses to the regions developmental needs such as the Pacific Regional E-Commerce Strategy. The Strategy lays the existing status of the Pacific region's e-commerce readiness and propose priority actions to address such key needs. The strategy is a valuable tool to coordinate donor partners and implementing agencies so as to maximize value for money. At the end of 2022, 43% of the Strategy priority action areas were being implemented, including in areas such as strategy and data development, trade logistics and facilitation, e-payments, e-commerce skills, access to finance, ITC infrastructure and services, and e-commerce rules.

4.3. More recently in July 2023, the Council of Ministers of the Economic Community of West African States (ECOWAS) endorsed a regional e-commerce strategy¹⁰ for the organization's 15 member nations in close partnership with UNCTAD and other development partners. The strategy aims at accelerating structural change and development and fostering regional integration through economic diversification and job creation in line with the ECOWAS Vision 2050 for an inclusive and sustainable development for the region.

4.4. Other Regions have also made progress to respond to their e-commerce needs through institutional reforms that allow growth and confidence in digital trade. We also recognize that e-commerce plays a critical role towards environmental sustainability through integrating elements related to the environmental impact of e-commerce, such as sustainable practices and reducing the carbon footprint. For instance, using digital products and services, such as e-books, digital music, and streaming services, reduces the need for physical production, packaging, and transportation, thereby minimizing environmental impact. This consideration could align Members with their concerns related to climate change and environmental sustainability.

5 MORATORIUM ON CUSTOMS DUTIES

5.1. Discussions on the moratorium on customs duties on electronic transmissions have evolved over time due to the technological evolution of e-commerce and the implications of cross-border sale of goods and services. The polarizing issue is the revenue loss associated with the digitalization of products which in their physical form would normally incur a customs duty. Nonetheless, the moratorium has stood in place over time on the basis that it is only the physical carrier of a good that incurs a customs duty and not the content within the carrier. Furthermore, divergences also exist among WTO Members with regard to the scope application of the term "transmissions" and whether or not content falls within or outside the scope of transmissions.

5.2. The decision on the moratorium as agreed to by our Ministers reads, "to maintain the current practice of not imposing customs duties on electronic transmissions". The question of whether content is included in the value of a product and within the definition of electronic transmissions has also been an issue of divergence among Members. We know that duties were essentially not charged on the content of the physical version, rather tariffs were imposed on the carrier media of software. This practice in the context of the GATT/WTO was based on the GATT Decision 4.1 – Valuation of Carrier Media Bearing Software for Data Processing Equipment 24 September 1984, for Members

¹⁰ <https://unctad.org/news/new-strategy-set-boost-e-commerce-west-africa>

parties to the decision. That decision provided that "only the cost or value of the carrier medium itself shall be taken into account."

5.3. For all WTO Members, in the case of products that were traded physically, and are now traded digitally, it would be interesting to know if the tariff on the physical product was charged based on the content. Assessments of revenue loss would require a deeper analysis of the actual tariff imposed by each country on the content of the now digitized products. The trends at the time of imposition of tariffs on physical goods could be considered. Such analysis on revenue loss could examine the practice of each WTO Member and what cost would have been paid by our consumers when the physical media was the leading technology.

5.4. In reality, notwithstanding the work done by Indonesia, further analysis and discussions would be needed on actual levy of customs duties on digitized products in the cyberspace domain. Closely related to the discussions and analysis of the non-imposition of customs duties on electronic transmissions is the consideration of alternative means of collecting revenue on the sale of digital goods and services, notably domestic levy of value added tax (VAT) or good and services tax (GST).

5.5. To advance the discussions on revenue collection, technical cooperation between the WTO, the United Nations Secretariat, the OECD Secretariat, and other relevant regional institutions could be deepened to enhance exchange of information on frameworks, models and tax regimes being designed that take into account the contemporary global business and trade context, while also seeking to create a level playing field. Existing internal tax practices involving e-commerce transmissions in developing countries could inform the discussions in the context of the WTO and provide trade officials with a concrete understanding of what forms of revenue collection are feasible, and how systems can be deployed. A parallel discussion could also explore implications of emerging and growing sectors in domains such as Artificial Intelligence; Blockchain; the Internet of Things and Cryptocurrencies. In particular, discussions could examine how these are likely to reconfigure manufacturing and supply chains, global value chains and distribution of trade and financial flows and the implications in terms of the design of global regulatory frameworks. It should be noted however that the moratorium does not prevent imposing local taxes on electronic transmissions, thus could counteract any possible revenue implications.

6 WAY FORWARD

6.1. As ACP countries strive to develop their economies, industrialize and promote employment, they face at the same time a rapidly changing economic and trade landscape with the advent of new tools such as generative Artificial Intelligence that is likely to disrupt business models. Access to new technologies remains out of reach for a majority of ACP countries and people as these can be prohibitively expensive in terms of the basic equipment to begin with. One case in point is the low level of secure internet servers across ACP regions, whereas the top ten advanced economies comprised between around 2 million and around 46 million secured servers in 2020, the top ACP country only comprised 15,242 servers in the same year.¹¹

6.2. With the right policy mix, a conducive environment can be established to promote E-commerce for the benefit of people and development. At the same time, innovative forms of global governance will be required to regulate areas such as algorithms and avoid discrimination at the firm level as well as at the level of citizens. Electronic commerce could be further leveraged to provide access to essential lifesaving goods and key inputs to support nascent industries in developing countries and LDCs such as through cooperation on export credit facilities and reduction in bank charges.¹²

6.3. Members may reflect upon some questions to assist in the process of formulating possible outcomes at MC13 on the Work Programme on Electronic Commerce for Ministers to consider:

- How can the WTO and other relevant international organizations promote the development of sound, comprehensive and detailed data on e-commerce in relation to goods and services?
- What forms of inter-organizational cooperation could enhance knowledge sharing with regard to e-commerce activity?

¹¹ <https://data.worldbank.org/indicator/IT.NET.SECR.P6>

¹² [WT/GC/W/787](#)

- What flexibilities, technical assistance and capacity building could be extended to developing countries to build a viable domestic economic and social base to enable and enhance participation in global e-commerce?
 - What information can be routinely shared and compiled on practices concerning electronic transmissions, current valuation of physical goods that are also traded digitally, VAT and other tax systems including in developing countries and LDCs?
 - What role the WTO and possibly regular bodies such as the Council for Trade in Services can play in fostering discussions on greater interoperability between various online payments systems?
 - How do principles such as non-discrimination enshrined in the WTO rulebook interact and operate alongside principles such as the right to regulate, for instance in the case of data regulation?
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ANNEX

DRAFT MINISTERIAL DECISION

Ministerial Decision of ____ February 2024

The Ministerial Conference:

Takes note of the efforts to reinvigorate the 1998 Work Programme on Electronic Commerce through Dedicated Discussions, which included the exchange of good practices, submissions from Members on specific topics, and a workshop organized with international organizations,

Decides to instruct Members to further increase engagement under the Work Programme, with [WT/L/274](#) used as the basis for such work, especially with a continued focus on the development dimension,

Mandates the WTO's continued collaboration with other international organizations and relevant stakeholders to enhance coordination to address the main challenges related to e-commerce, including those highlighted in the Dedicated Discussions, such as the need for training and capacity building,

Agrees to maintain the current practice of not imposing customs duties on electronic transmissions until the 14th Session of the Ministerial Conference, and

Agrees to hold further deliberations and gather empirical evidence on the scope, definition, and impact of the moratorium, with periodic updates to the meetings of the General Council as well as on the Work Programme.
