Why a Deal in the WTO JSI on E Commerce is a "must-have" for MC13

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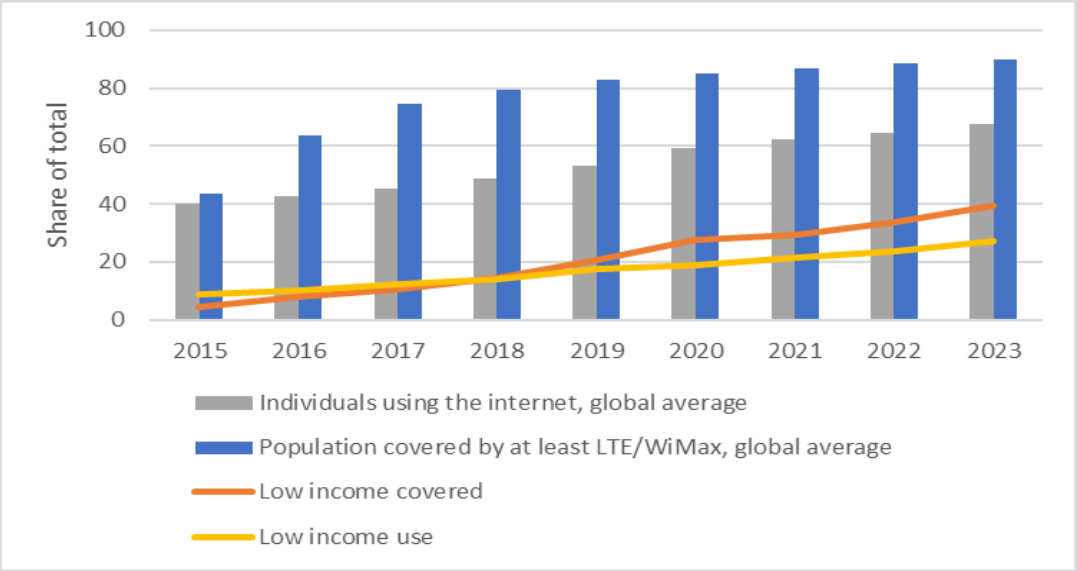
Start with the basics. The internet is fundamentally dependent on openness to cross-border data flows. But many governments are regulating to constrain international data transfers - including under a banner of data sovereignty. In the interest of preserving the integrity of the internet, the WTO urgently needs to lock in some degree of interconnectedness.

The internet is a network of networks with an open architecture that exchanges information through packets in a decentralised manner. Everybody can be connected to anyone around the world; new digital applications can be accommodated and offered everywhere. This structure has made the internet extremely resilient, accessible through multiple channels on multiple devices, from mainframe computers to mobile telephones. It has facilitated and stimulated international trade for decades by lowering business search and transaction costs, and it has lowered the barriers to entering international markets for micro, small and medium sized enterprises (MSMEs), including in developing countries. The internet also enhances access to information for consumers and enables families and friends to stay in touch, students to learn, and doctors and patients to monitor health conditions and access information about prevention and care. The internet is a global public good.

Unfortunately, an open internet can no longer be taken for granted. The internet is also an arena for darker activity including financial fraud and scams, drug trafficking, misinformation, manipulation and the like. The policy challenge is to secure individual safety, privacy and security, while maintaining the integrity, safety and security of the internet itself. All too often, government interventions aimed explicitly or implicitly at enhancing privacy, security and accountability require the routing of information through specified servers, where governments and other stakeholders with an interest in exerting control can monitor information flows. Policymakers may not even be aware of the dangers their policy approaches affecting cross-border data flows pose for the integrity of the internet itself. The Internet Society's Internet Assessment Toolkit helps in identifying unintended consequences of policy measures for the integrity of the internet, such as a new interconnection regime in the Republic of Korea and a proposed new (sender pays) regime in the European Union (EU).

Connectivity over the open internet is a necessary but not sufficient condition for a thriving global digital services market. There is a significant usage gap particularly in low-income countries, meaning that not all available network capacity is utilised (Figure 1). The reasons for this include unaffordable network services and thin markets for digital services. Pro-competitive regulation in telecommunications, underpinned by the WTO/GATS Reference Paper on Telecommunications, has undoubtedly helped rein in costs. However, changes in technology as well as market structure over the past couple of decades have rendered the reference paper outdated and even obsolete.

Figure 1. Coverage and use of the Internet, global and low-income country average



Source: ITU

Turning to online content, access to streaming services, cloud computing, collaborative platform services, education and health applications should stimulate the uptake of the internet.[1] Openness to trade in online services, in turn, thickens the market for such services. This culminates in a virtuous circle where the open internet and competitive telecoms open opportunities for digital content providers to access global markets, which stimulates demand for network infrastructure and services, which lower the cost of connectivity - attracting more subscribers and services providers.

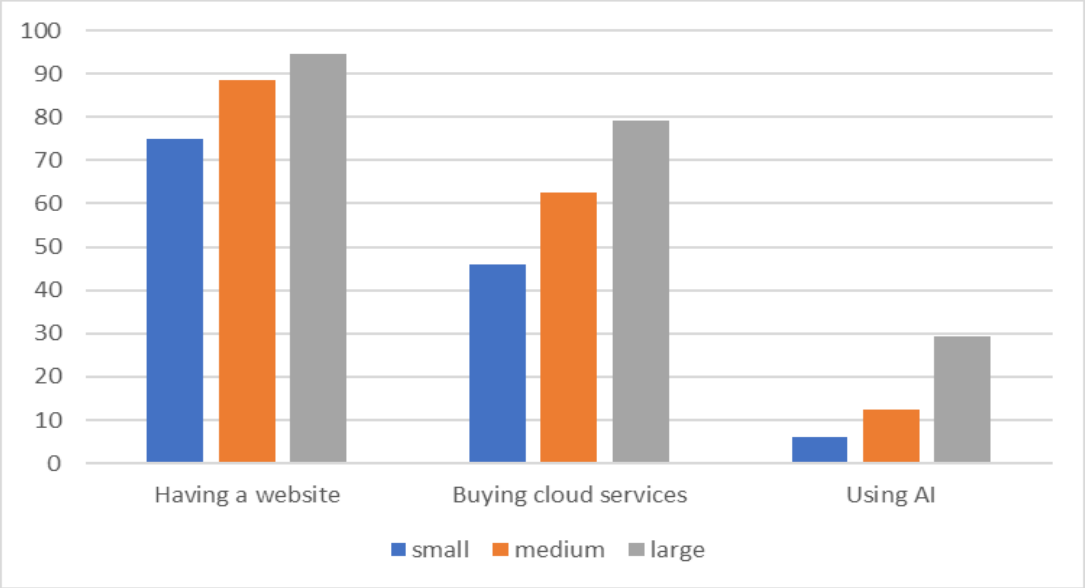
The internet is far from universally adopted even in OECD countries (Figure 2). Most firms have a website where they market their goods and services and interact with customers and suppliers. But a quarter of small firms in the OECD do not. Since the statistics only include firms with 10 employees or more, and more than 90% of all firms have less than 10 employees, the identified share of all firms having a website, using cloud computing or AI is probably much lower than indicated by the figure.[2]

The internet, including digital platforms, can vastly extend MSMEs' reach beyond the local market. Cloud services can reduce their costs, and AI can potentially boost their productivity. ICT firms in India, for example, have embraced AI and expect substantial productivity and competitiveness gains (e.g. Nasscom, 2023). So why are SMEs on average such laggards in adopting digital solutions? Of course, some SMEs are content with staying in their local market and providing a family livelihood. But there is also a vast number of existing and potential entrepreneurs that find regulatory requirements an insurmountable burden for going digital, let alone entering foreign markets. Study after study shows that the burden of regulation in dealing with complex privacy, security and data localisation requirements falls

[1] Although there is surprisingly little research on this connection, the literature on two-sided markets demonstrates the value of content for individual network providers or platforms. They typically subsidise content to attract subscriptions (Rysman, 2009).
[2] The 90% refers to all firms, including active firms with no employees.

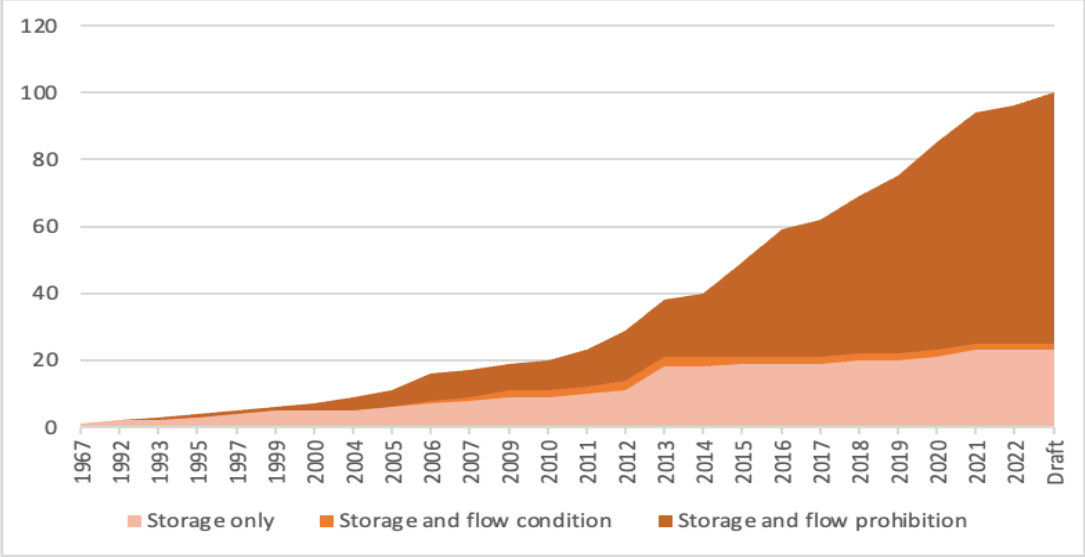
disproportionately on SMEs. For example, the EU General Data Protection Regulation (GDPR) has led to market concentration in e commerce (Johnson et al. 2023) while compliance reduces revenue twice as much for small e commerce sites as larger ones (Goldberg et al. 2024).

Figure 2. Use of ICT services by firm size (10+ employees), %, OECD average, 2023.



Source: [OECD ICT access and usage by businesses]

Figure 3. Data Localisation is growing and becoming more restrictive



Source: [OECD]

The Internet is fast becoming the biggest channel for services trade transactions. It has been obvious to the business community for at least two decades that the WTO needs to put in place some pro-trade governance around international commercial transactions that take place electronically over the internet. It should be equally obvious today, not only to producers

but to consumers, that all international trade is paid for electronically: the bulk of payments now take place via changes in ledgers over the internet.

The WTO JSI on E Commerce, co-chaired by Australia, Singapore and Japan, is designed to start the process of filling this long-standing governance gap as fast as possible via a plurilateral deal. A key underlying objective is to deal with the array of inconsistent digital regulatory approaches WTO members have adopted since the WTO Work Programme on E Commerce began in 1998, and the host of restrictive measures which have since been introduced to impede international flows of data. Fortunately WTO members had sufficient foresight to agree in 1998 on a Moratorium on Customs Duties on Electronic Transmissions - this has served alongside the General Agreement on Services (GATS) as the sole trade mechanism allowing the global digital economy to take off and to flourish.

Let's move to the latest complication. Digital transformation is outpacing the sclerotic trade negotiating cycle. Artificial intelligence (AI), which like the internet is fundamentally dependent on cross-border data transfers, is poised for deployment at scale. As with the internet, issues of public trust are generating domestic regulatory impetus and domestic standards development.

The past year or so has seen some awesome - or terrifying - developments in AI-enabled algorithms. A lot more are yet to come, and quickly. They could drastically change the way the digital economy and society at large is organised. The upside potential is for inclusive green growth and imaginative human-centred societal solutions, while credible dystopian scenarios foresee surveillance societies, misinformation, polarisation and the end of democracy.

The relationship between AI and trade in services is multifaceted with data at its core. The AI-enabled digital transition of services makes them more easily tradeable, while trade in services and associated data flows provide inputs for further development of AI-enabled applications: another virtuous circle. Large Language Models (LLM) are hungry for data for their development and training, and the market is dominated by a few players. But the recent development of small language models that can run on smartphones and laptops could enable tailoring programs for such uses as overcoming language barriers facing services traders, including MSMEs in developing countries.

Against the background of intensifying domestic regulatory impetus, the UN Secretary General's Advisory Body on AI recently released its interim report on *AI for Humanity*, proposing for comment some principles and functions for new multilateral cooperation on international AI governance.

Again, the WTO has a critical part to play. Trade governance must support the integrity of the Internet. Trade governance must also support *AI for good.*

Trade governance must similarly align with other international initiatives to ensure that trade supports the path to a green and inclusive society. The converse also applies. Restrictions on cross-border data flows must not impede these high-level sustainable development objectives.

Trade restrictions are rarely the most efficient means of achieving non-trade objectives. Achievement of privacy and cyber security does not require restrictions on cross-border data flows, but rather the development of common or interoperable standards. Achievement of *AI for good* similarly requires development of baseline international standards frameworks including on the ethics of AI. These are tasks for the multistakeholder international standards community.

The tasks for the WTO are threefold. First, to assert and commit to the core trade principles which must apply. Second, to facilitate international regulatory cooperation to help ensure that domestic digital regulation is consistent with international interoperability. Third, to promote the development and adoption of international standards through open multi-stakeholder processes and technical assistance, as a key in unlocking global digital market access.

Against this background, the WTO Ministerial Conference (MC13) must not come and go in February without visible evidence of an emerging plurilateral deal in the JSI on E Commerce. Whether governments are prepared to admit it or not, WTO MC13 will be deemed a failure if it does not provide the right environment to help get a deal in this JSI before the window of opportunity closes. A minimum prerequisite is extension at MC13 of the WTO E Commerce Moratorium. And for all the above reasons, any JSI announcement must clearly identify ongoing pathways for continued future progress to facilitate interconnectedness of electronic systems by disciplining barriers to cross-border data flows.

Since the United States' dramatic about-turn on digital trade announced last October, frantic negotiating activity has been underway in Geneva to complete at least an early harvest plurilateral deal on E Commerce in time to announce at MC13.

The business community waits with bated breath as the ink dries on the latest negotiating text. Participating members still have a chance to deliver a halfway decent deal. The WTO still has a chance to celebrate relevance in the digital economy of the 21st century. Business is not yet walking away. Indeed there can be no doubt of the enormity of international services business support for WTO processes over the past year. More time, more energy, more concerted resources, more evidence-based publications, more trips to Geneva and most important of all, more MSME participation. The JSI co-convenors continue their efforts 24/7, in difficult and deteriorating geopolitical circumstances.

In the final slouch towards MC13, where anticipated action may yet need more time, words will really matter. The global business community will be listening: but maybe for the last time. Ministers will need to publicly acknowledge that alignment around common or interoperable digital standards is easier said than done and can not necessarily be implemented in the WTO alone. The potential disruptive force of AI applications is not making the task any easier. The stakes for public trust in the digital economy are very high. Working together in good faith based on agreed principles (OECD, APEC, ITU, G20) is more important than ever. MC13 is the best chance WTO members have to make it clear they do in fact have political will to cooperate - before it is too late. If they do not, we are headed globally into digital market disintegration and collapse of the open internet as we know it. We will all be poorer.

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