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|  | **Addendum 1 to Document** **EG-ITRs-3/3-E** |
| **19 August 2024** |
| **English only** |
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| Contribution from Hill | |
| Overlaps ITU-WTO | |
| Purpose  To present overlaps between ITU and WTO work on e-commerce.  Action required  The Expert Group on the International Telecommunication Regulations is invited to **consider** this document.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  References  *Council* [*Resolution 1379*](https://www.itu.int/md/S23-CL-C-0121/en) *(Terms of Reference)*  [*EG-ITRs-1/2*](https://www.itu.int/md/S23-EGITRS1-C-0002/en)*;* [*EG-ITRs-2/4*](https://www.itu.int/md/S24-EGITRS2-C-0004/en)*;* [*EG-ITRs-2/21*](https://www.itu.int/md/S24-EGITRS2-C-0021/en) | |

Summary

This Addendum presents our analysis of the overlaps between work in ITU and work in the WTO Joint Statement Initiative on E-Commerce.

Proposal

1 On 26 July 2024, the Co-Convenors of the WTO the Joint Statement Initiative on Electronic Commerce (JSI E-Commerce) published stabilized text of an Agreement on Electronic Commerce, document [INF/ECOM/87](https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/ECOM/87.pdf&Open=True).

2 The document states: “Taking note of the evolving nature of cross-border electronic commerce and digital technology, participants recognise that some issues of importance to digital trade have not been addressed in this text. Participants will discuss the inclusion of these issues in future negotiations. Participants reserve the right in any future negotiations to propose amendments to the attached Agreement including with respect to scope, exceptions and dispute settlement.”

3 Thus it appears that the “stabilized text” may be revisited, in particular to accommodate the comments of countries that participate in the JSI E-Commerce but apparently did not approve the “stabilized text”, namely Brazil, Colombia, El Salvador, Guatemala, Indonesia, Paraguay, Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Türkiye and United States (see the footnote at the end of the first page of the cited document).

See also: <https://johnmenadue.com/australia-developing-countries-and-the-us-clash-over-wto-electronic-commerce-rules/>.

4 In our view, there are the following overlaps between work in ITU and work in the WTO JSI E-Commerce.

5 It may be advisable to revisit those overlaps in the context of future discussions in WTO regarding possible revisions of the “stabilized text”.

Allocation of frequencies

6 Article 21.6 of the JSI E-Commerce Agreement contains specific provisions on allocation of frequencies.

7 Yet this is one of the core mandates of the ITU, and there are numerous ITU instruments and even treaty provisions for frequencies[[1]](#footnote-1).

8 Further, the e-commerce JSI provisions on the use of frequencies impose certain restrictions on domestic measures; such restrictions have not been agreed in ITU. If such restrictions are felt to be useful and necessary, then they should be negotiated and agreed in the ITU, which is the agency with expertise on frequency matters.

Access to infrastructure and interconnection

9 Article 21.7 of the of the JSI E-Commerce Agreement contains specific provisions on access to infrastructure and interconnection.

10 ITU publishes best practices and capacity building for conditions for the use of infrastructure by competitors[[2]](#footnote-2) and for interconnection[[3]](#footnote-3).

11 The relevant ITU provisions are not binding. Since there is no agreement in ITU on making such provisions binding, the TPP provisions contradict what has been agreed in ITU. If binding provisions are felt to be useful and necessary, then they should be negotiated and agreed in the ITU, which is the agency with expertise on such matters.

Cybersecurity

12 Article 17 of the of the JSI E-Commerce Agreement calls for cooperation regarding cybersecurity.

13 There are numerous ITU Recommendations on security[[4]](#footnote-4) and cybersecurity[[5]](#footnote-5), and Article 6 of the 2012 International Telecommunication Regulations, a treaty, provides that: “Member States shall individually and collectively endeavor to ensure that the security and robustness of international telecommunication networks in order to achieve effective use thereof and avoidance of technical harm thereto, as well as the harmonious development of international telecommunication services offered to the public.”

14 The e-commerce JSI provision is more specific than the ITU provision. Thus, the e-commerce JSI provision contradicts what has been agreed in ITU. If specific binding provisions are felt to be useful and necessary, then they should be negotiated and agreed in the ITU, which is the agency with expertise on such matters.

Spam

15 Article 15 of the of the JSI E-Commerce Agreement contains specific provisions regarding spam (unsolicited commercial electronic messages).

16 There are numerous ITU-T Recommendations on spam[[6]](#footnote-6), and Article 7 of the 2012 International Telecommunication Regulations, a treaty, provides that: “Member States should endeavor to take necessary measures to prevent the propagation of unsolicited bulk electronic communications and minimize its impact on international telecommunication services. Member States are encouraged to cooperate in that sense.”

17 The e-commerce JSI provision is far more specific than the ITU provision. Thus, the e-commerce JSI provision contradicts what has been agreed in ITU. If specific binding provisions are felt to be useful and necessary, then they should be negotiated and agreed in the ITU, which is the agency with expertise on such matters.

Regulatory body and licensing

18 Articles 21.3-21.5 of the JSI E-Commerce Agreement contain specific provisions regarding telecommunication regulatory bodies.

19 ITU has numerous activities related to best practices for regulatory bodies[[7]](#footnote-7) and licensing[[8]](#footnote-8).

20 The relevant ITU provisions are not binding. Since there is no agreement in ITU on making such provisions binding, the TPP provisions contradict what has been agreed in ITU. If binding provisions are felt to be useful and necessary, then they should be negotiated and agreed in the ITU, which is the agency with expertise on such matters.

Recourse

21 Article 21.8 of the JSI E-commerce Agreement provides that enterprises have the right to have recourse to the regulatory and authorities of other states.

22 A very similar provision was proposed for the 2012 International Telecommunication Regulations but was rejected by the developed countries.

23 Thus, the e-commerce JSI goes against what had been agreed in ITU.

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1. The ITU Radio Regulations. [↑](#footnote-ref-1)
2. <https://www.itu.int/en/ITU-D/Technology/Pages/default.aspx>. [↑](#footnote-ref-2)
3. See Recommendation ITU-T D.50 and its Supplements. [↑](#footnote-ref-3)
4. See Recommendations ITU-T X.800-X.849; and X.1000-X.1099. [↑](#footnote-ref-4)
5. See Recommendations ITU-T X.1200-X.1299; X.1500-X.1599; X.1600-X.1699. [↑](#footnote-ref-5)
6. See Recommendations ITU-T X.1230-X.1249. [↑](#footnote-ref-6)
7. See for example: <http://www.ictregulationtoolkit.org/toolkit/6> [↑](#footnote-ref-7)
8. See for example: <http://www.ictregulationtoolkit.org/toolkit/3> [↑](#footnote-ref-8)