

The E-Commerce Plurilateral Reveals the Backdoor Strategy to Adopt JSIs

*Professor Emeritus Jane Kelsey, University of Auckland, New Zealand. J.Kelsey@auckland.ac.nz,
21 April 2026*

Arguably, the most systemically significant outcome from the World Trade Organization’s “reform” ministerial conference (MC14) in Yaoundé, Cameroon in March 2026 was the *Declaration on Interim Arrangements for the Agreement on Electronic Commerce*.¹ A sub-group of 66 WTO Members proclaimed their intention to implement a plurilateral agreement on electronic commerce and proceed with domestic procedures for its acceptance. It will enter into force after 45 “Participants” have notified the Director-General of the WTO of their acceptance of the agreement.

This agreement is to be governed by “interim arrangements” until WTO Members decide to add it as a plurilateral agreement in Annex 4 of the Marrakesh Agreement. Under Article X.9 that requires a consensus, which has been and is likely to remain elusive. The Interim Arrangement provides for a shadow process of dispute arbitration to the formal WTO dispute settlement mechanism, reflecting its non-WTO status. Yet, inexplicably the WTO Director-General has a formal role to receive participants’ notifications of acceptance and to inform other Members of disputes. She and the Secretariat also administer aspects of the agreement.

The implications of this plurilateral Declaration strike at the very core of the WTO. The agreement had no mandate for the negotiations, but was based on a Joint Statement by a number of Members in 2017 (hence the description “Joint Statement Initiative” or JSI). It failed to secure the consensus support of Members at the General Council for its adoption as an Annex 4 plurilateral agreement.² Its adoption was never a subject for discussion by the WTO Members at the MC14, let alone a consensus decision, yet it was allocated the formal WTO document number WT/MIN(26)/W/26 in the Ministerial Conference series. Despite all of this, the Joint Press Release by its Co-Convenors (Australia, Japan and Singapore) branded it a “WTO Agreement on E-Commerce with Interim Arrangements”, and cited Director-General Ngozi Okonjo-Iweala in support.³

Almost immediately, that approach was being referenced as a precedent to secure adoption of other plurilateral agreements among sub-sets of members: agreements that have no mandate and no consensus support within the WTO could become de facto WTO instruments merely by the participants announcing they are such.

This short note analyses some legal and systemic implications of allow this strategy to succeed.

Key concerns about the JSI e-commerce as a precedent

1. Unmandated plurilateral negotiations, and the adoption of the resulting agreement as a WTO instrument, using a “pragmatic” approach that is not provided in the rules would create a precedent for more general non-compliance with WTO rules.
2. If the WTO’s instruments and the scope of its agreements can be expanded by collective action outside the rules, the institution itself will have no boundaries.
3. If the Director-General and Secretariat exceed the constitutional limits on their power by facilitating, and then servicing, these agreements they will have no effective constraints on what they do.
4. If plurilaterals can be adopted as de facto agreements in this way, Members will have no incentive to comply with the explicit requirements in Article X.9 for consensus, enabling plurilateralism to become the norm, rather than the exception, in the multilateral trading regime.

5. An open-ended plurilateral that provides for future negotiations based on the will of a sub-group of Members can override inbuilt negotiating mandates on the subject matter and make them irrelevant.
6. All of this works in favour of the power-brokers in the WTO whose economic and strategic influence will enable them to dictate the future direction, subjects and activities of the WTO at the expense of developing countries and LDCs and their needs and priorities.

Endorsements of an unlawful process

By the end of the MC14 the Interim Arrangement for the JSI on e-commerce had become a precedent for the back door adoption of existing and future unmandated plurilateral agreements:

- (a) In March, prior to the ministerial, the US Trade Representative Jamieson Greer foreshadowed the adoption of “interim plurilaterals”, which he described as “*voluntary and temporary agreements among a subset of Members to move forward on specific issues without needing full consensus*”.⁴ There is no such thing as an “interim plurilateral” in the WTO.
- (b) At the launch of the Interim Arrangement on the third day of the ministerial, Japan’s trade minister said it “*serves as a successful milestone of the WTO’s rule-making function in plurilateral format*.”⁵
- (c) Canada’s trade minister went further, misleadingly describing it as “*a path forward for a plurilateral initiative conceived and negotiated at the WTO*”.⁶
- (d) At the conclusion of the ministerial, the MC14 Chair described it as a “*pragmatic pathway*” to bring the agreement into effect while working towards its full incorporation into the WTO legal framework.⁷
- (e) At her final press conference, the Director-General proposed completing the work on the failed IFA initiative and submitting that and the JSI on e-commerce to the Secretariat for notification, while waiting for the process to be agreed upon at the General Council. She is quoted as saying “*Let’s see if within the configuration of the WTO we can also have willing coalitions of members who, when there is an opportunity, can seize it in a plurilateral and move ahead without necessarily waiting to go through the process*”.⁸

Passing off as a WTO Agreement

The original JSI e-commerce text of July 2024⁹ was designed to be adopted, implemented and enforced within the WTO. That has not occurred. The MC14 document contains that entire text, sandwiched between a ten paragraph Declaration at the start and a 12-paragraph Annex on Interim Arrangements with a more detailed appendix on appeal arbitration procedures at the end.

The Declaration says the participants “*affirm their commitment to **agree WTO rules** on trade-related aspects of electronic commerce, as announced on 25 January 2019 (WT/L/1056)*.” That cross-references to the 2019 Joint Ministerial Statement where 49 Members announced their intention to “*commence **WTO negotiations** on trade-related aspects of e-commerce*”, despite there being no mandate from all the Members for such negotiations and hence to describe them as **WTO** negotiations on “**WTO rules**”. Such a “bootstraps” argument allows Members to seek to legitimise a final plurilateral agreement by citing their own previous joint statement and its assertions of WTO status.

This sleight of hand is reinforced by the allocation of a formal WTO document number in the Ministerial Conference series to the Declaration on Interim Agreements. The allocation of specific document numbers at ministerial conferences dates back to Doha, but there appear to be no rules that

restrict when a document can be given such a reference. That potentially opens the door to an unlimited range of Member-initiated communications being tabled at a Ministerial Conference and securing a document number that confers some false legitimacy on it as belonging within the WTO.

Unauthorised roles for Director-General & WTO Secretariat

A number of provisions in the July 2024 text rely on the Director-General and Secretariat for implementation and administration, including in disputes. These have not been amended in the Interim Arrangements Annex.

The Declaratio provides for the Agreement to come into force among its Participants – necessarily outside the WTO – on the deposit of 45 instruments of acceptance. That process is to be supported by the Director-General and the Secretariat:

- Article 29 says “*Acceptance shall take place by **deposit** of an instrument of acceptance to this Agreement **with the Director-General of the WTO.**”*
- Article 36 says the Agreement shall be **serviced by the WTO Secretariat.**
- Article 37 says the **Agreement shall be deposited with the Director-General** who shall promptly furnish it to all parties to the Agreement, along with notifications of acceptance or withdrawal.
- Section A paragraph 3 of the Appendix on Arbitration Appeals, a separate process outside the Dispute Settlement Understanding, provides for the **WTO Director-General to notify the parties to the dispute** and third parties about the results of selection of arbitrators in a dispute.

The Director-General has no legal authority to do this. The Director-General’s functions, set down in the Marrakesh Agreement, do include receipt of notification of acceptance of amendments to that Agreement, to an Annex 1 Agreement (Art X.7, Art XIV.3), and to Plurilateral Agreements that are defined in Article II.3 as those adopted in Annex 4:

- Article XIV.4 *The acceptance and entry into force of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement. Such Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. Upon the entry into force of this Agreement, such Agreements shall be deposited with the Director-General of the WTO.*
- Article X.7: *Any Member accepting an amendment to this Agreement or to a Multilateral Trade Agreement in Annex 1 shall deposit an instrument of acceptance with the Director-General of the WTO within the period of acceptance specified by the Ministerial Conference.*
- Article XIV.3: *This Agreement and the Multilateral Trade Agreements, and any amendments thereto, shall, upon the entry into force of this Agreement, be deposited with the Director-General of the WTO.*

None of those apply here.

Moreover, Article IV of the Marrakesh Agreement requires the Director-General to discharge her duties independently. “*The responsibilities of the Director-General and of the staff of the Secretariat shall be exclusively international in character. In the discharge of their duties, **the Director-General and the staff of the Secretariat shall not seek or accept instructions from any government or any other authority external to the WTO.** They shall refrain from any action which might adversely reflect on their position as international officials.*”

Equally: “*The Members of the WTO shall respect the international character of the responsibilities of the Director-General and of the staff of the Secretariat and shall not seek to influence them in the discharge of their duties.*”

In this case, it appears that the Secretariat, led by the Director-General have collaborated with the subset of Members participating in this JSI to advance a position favoured by those Members, thereby breaching their respective obligations under the Marrakesh Agreement.

Unbudgeted Secretariat Services

Article VII of the Marrakesh Agreement requires the Committee on Budget, Finance and Administration to review an annual budget estimate and financial statement presented by the Director-General and its recommendations are to be approved by the General Council. Financial regulations and the annual budget estimate are to be adopted by a two-thirds majority of the General Council comprising more than half the Members of the WTO. There appears to be no specific budget allocation to support the negotiation of unmandated JSIs, let alone for the Director-General’s and Secretariat’s role in supporting their implementation as non-WTO agreements.

Unclear Status of Dispute Settlement

Article 27 of the July 2024 JSI e-commerce text said the dispute settlement provisions of the GATT and GATS and the Dispute Settlement Understanding (DSU) applied to disputes under the Agreement, along with development flexibilities set out in Article 20.

The Annex to the Interim Agreement disapplies Article 27 until the agreement is added to the WTO agreements. Instead, the Articles XXII and XXIII of the GATT and GATS, as elaborated by the DSU, are incorporated into the agreement, *mutatis mutandi*. The incorporation of the DSU into this agreement replaces the Dispute Settlement Body (DSB) with a Committee of the Parties. But it does not address the enforcement issues whereby the DSB can authorise suspension of obligations or commitments that are beyond the scope of the provision breached.

The Appendix on arbitration appeals applies Article 22 of the DSU on Compensation and Suspension of Concessions *mutatis mutandis* – but the DSU allows a party to request permission to authorise the suspension of concessions across the same and other covered WTO Agreements. The latter requires consultation with the relevant WTO Councils and sectoral bodies with responsibility for those agreements. Leaving that provision unamended would require those bodies to engage with a dispute process involving a non-WTO agreement.

The Appendix to the Annex also provides for a substitute arbitration appeal mechanism that seeks to replicate the DSU, but uses the WTO’s pool of standing arbitrators. The arbitration would be governed by the DSU and the WTO rules and procedures applicable to WTO Appellate Review. In several places (para 11, 13, 14, 15) the Appendix uses the words “*Pursuant to Article ... of the DSU ...*”, as if this was being undertaken as a matter that is subject to the DSU. And the transparency provision in Article 18 is “further to” the relevant GATT and GATS provisions relating to dispute settlement.

As noted above, under Section A, para 3 of the Appendix of this non-WTO agreement the WTO Director-General is also responsible to notify the parties to the dispute and third parties about the results of selection of arbitrators.

Moratorium on Customs Duties on Electronic Transmissions

This note is focused on the operational provisions of the JSI. However, some substantive obligations on participants have significant consequences if they are misrepresented as WTO rules. Article 11 on Customs Duties on Electronic Transmissions is defined to include content, a matter that has been

accepted by some states in non-WTO Agreements, but has not been determined by the Members of the WTO. If this purports to be a WTO agreement or WTO rules, and seeks to import that expanded definition into the organization, it will significantly shift the ground in the pending negotiations on this issue.

Notably, the provision in Article 11.5 to review the ban on customs duties on e-transmissions after 5 years, and periodically thereafter, with a view to assessing whether amendments are appropriate was largely mirrored in the proposal of proponents of a permanent ban during the MC14.

Three days after the end of the MC14 a group of 23 Members issued a new Joint Statement saying they would maintain the current practice of not imposing tariffs on e-transmissions, including content.¹⁰ Virtually all of those Members have already made similar commitments in other agreements, so this makes little difference in practice. This was described as an open-ended “temporary plurilateral measure” that applies until the next General Council meeting in May 2026. Its function seems symbolic, but may be intended to message members that the participants will be prepared to enter a future plurilateral on the moratorium on their terms.

Interestingly, this did not include all the signatories to the JSI on e-commerce, which also makes the moratorium permanent, but it did include several Members that are not party to the JSI (Ecuador, Guatemala, Mexico, Panama, Paraguay, Taiwan, US, Uruguay).

A long term strategy underpins this development

This Declaration and Interim Arrangement is the latest step in more than a decade of moves designed to shift the WTO from a multilateral to a plurilateral institution.¹¹ The first exploratory step was the negotiation of a Trade in Services Agreement (TiSA) on the margins of the WTO between 2013 and 2016. TiSA was designed to bypass multilaterally-mandated negotiations under the General Agreement on Tariffs and Trade (GATS) and develop an unmandated plurilateral agreement that would then be adopted in the WTO, although it was unclear how. The negotiation was actively facilitated by the WTO Secretariat. TiSA was never concluded, so the how it would be incorporated into the WTO was never resolved.¹²

In 2017, at the MC11 in Buenos Aires, several sub-groups of WTO Members, led by its wealthier and more powerful countries, launched joint ministerial statements on specific topics that were intended to, and did, lead into negotiations. These became known as the Joint Statement Initiatives or JSIs. The lead proponents were almost identical to those Members who declared the Doha “Development” Round of multilateral negotiations dead at the previous ministerial.

These joint statements fed into formal negotiations for three agreements, without a WTO negotiating mandate pursuant to Article III.2 of the Marrakesh Agreement and by-passing existing institutional decisions, mandates and bodies on those matters. Again, this development had the active support of the WTO Secretariat which treated them as negotiations taking place within the WTO. However, the lack of any formal status posed a dilemma for their adoption as WTO agreements, especially as Article X.9 of the Marrakesh Agreement requires consensus support for inscribing new plurilateral agreements under Annex 4. Various means were developed to circumvent this obstacle.¹³

- (i) The JSI on Services Domestic Regulation (SDR) was the first to be concluded. Because the agreement added to or altered the core rules of the GATS, it should have been adopted by formally amending that agreement. But that would have required consensus and some Members objected that the JSI was bypassing an existing mandate and body authorised to address this issue. To avoid that argument, its proponents developed a back-door route for its adoption by describing it as a Reference Paper and adding it to Members’ GATS schedules as an “additional commitment”.¹⁴

Australia, as the lead architect of this strategy, calculated that this would be very difficult to challenge legally.¹⁵ Nevertheless, most JSI SDR participants responded to objections made by India and South Africa by agreeing to insert a corrigendum in their amended schedules that states, inter alia, that “*the present certification does not create a precedent for incorporating outcomes in the WTO, including from the Joint Statement Initiatives*”.¹⁶ In any case, its potential value as a precedent is limited because the content of the plurilateral would need to relate exclusively to the GATS (or to equivalent schedules under the GATT) or involve a messy division of content across the two agreements that have quite different schedules.

- (ii) The first attempt to secure adoption of a JSI under Article X.9 as an Annex 4 plurilateral agreement involved the Investment Facilitation Agreement (IFA). India, and initially South Africa, prevented its adoption at the General Council over concerns about the systemic implications of the proliferation of plurilaterals and their displacing of multilateralism. India maintained that position at the MC14. At the end of the MC14, 129 participating countries issued a *Joint Ministerial Declaration on the Investment Facilitation for Development Agreement*¹⁷ where they committed to seek timely integration of the IFA within the WTO Framework. The Joint Press Release from the Co-Convenors Chile and South Korea would “continue to explore practical pathways for its effective implementation”.¹⁸ Once again, the Director-General was quoted as congratulating the participants “on their determination to keep pushing forward”. Informal discussions with delegations at the MC14 indicate that “practical pathways” discussed among the participants included the approach adopted for the JSI on electronic commerce.
- (iii) Negotiation of the JSI on electronic commerce was concluded in July 2024. At the General Council in February 2025 and December 2025¹⁹ there was no consensus for the adoption of the agreement as an Annex 4 plurilateral. An early draft of the MC14 agenda included a proposal for its adoption as an Annex 4 agreement;²⁰ however, that was dropped from later versions. Because this JSI has much less support than the IFA, its chances of adoption at the General Council and the MC14 were even less. Some months earlier, the proponents had begun developing an alternative strategy to finesse the adoption of the agreement as a quasi-WTO instrument, irrespective of the obvious illegalities. As noted above, a Declaration was issued during the MC14 that its signatories would initiate their domestic ratification processes with a view to it entering into force under interim arrangements. However, the original 91 participating Members in the JSI had dwindled to 66.

None of this has happened by trial and error. There has been a strong support team of academics working for over a decade to legitimise the transition to plurilaterals and develop a strategy to achieve it. Specifically in relation to strategies to implement the JSI e-commerce, an article in 2025 that was co-authored by an academic who worked for 30 years in the WTO entitled “How Can the JSI on E-commerce Become Part of the WTO Framework?” is worthy of particular attention.²¹

- ¹ “Declaration on Interim Arrangements for the Agreement on Electronic Commerce”, WT/MIN(26)/W/26, 29 March 2026. <https://www.meti.go.jp/press/2025/03/20260328001/20260328001-2.pdf>
- ² “Incorporation of the Agreement on Electronic Commerce into Annex 4 of the WTO Agreement”, WT/GC/W/963/Rev.1, 3 December 2025. <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W/963R1.pdf&Open=True>
- ³ “Joint Press Release. Adoption of the WTO Agreement on E-Commerce with Interim Arrangements. Jointly Issued by the Department of Foreign Affairs and Trade, Australia; Ministry of Foreign Affairs, Japan; Ministry of Trade, Economy and Industry, Japan; and Ministry of Trade and Industry, Singapore”, 18 March 2026. <https://isomer-user-content.by.gov.sg/166/91d0dd35-6076-4980-8be4-9225ccc25819/JOINT%20PRESS%20RELEASE%20-%20ADOPTION%20OF%20THE%20WTO%20AGREEMENT%20ON%20E-COMMERCE%20WITH%20INTERIM%20ARRANGEMENTS.pdf>
- ⁴ “Further perspectives on WTO Reform. Communication from the United States”, WT/GC/W/998, 23 March 2026. https://ustr.gov/sites/default/files/files/Issue_Areas/Trade%20Organizations/US%20Further%20Perspectives%20on%20WTO%20Reform%20-%20March%202026.pdf
- ⁵ Joint Press Release. Adoption of the WTO Agreement on E-Commerce with Interim Arrangements. Jointly Issued by the Department of Foreign Affairs and Trade, Australia; Ministry of Foreign Affairs, Japan; Ministry of Trade, Economy and Industry, Japan; and Ministry of Trade and Industry, Singapore, 18 March 2026. <https://isomer-user-content.by.gov.sg/166/91d0dd35-6076-4980-8be4-9225ccc25819/JOINT%20PRESS%20RELEASE%20-%20ADOPTION%20OF%20THE%20WTO%20AGREEMENT%20ON%20E-COMMERCE%20WITH%20INTERIM%20ARRANGEMENTS.pdf>
- ⁶ Ibid
- ⁷ WTO, Fourteenth Ministerial Conference, MC14 Chairperson’s Summary, WT/MIN(26)/35, 31 March 2026
- ⁸ Ravi Kanth, “WTO: D-G defends ‘nimble’ plurilateral push as e-com moratorium lapses”, SUNS #10412, 31 March 2026, <https://twm.my/title2/wto.info/2026/ti260346.htm>
- ⁹ “Joint Statement Initiative on Electronic Commerce”, INF/ECOM/87, 26 July 2024. <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/ECOM/87.pdf&Open=True>
- ¹⁰ “Joint Statement on the Moratorium on Customs Duties on Electronic Transmissions”, WT/GC/283, 2 April 2026
- ¹¹ Jane Kelsey, “The Illegitimacy of Joint Statement Initiatives and Their Systemic Implications for the WTO”, 25(1) *Journal of International Economic Law*, 2022, 2-24.
- ¹² Jane Kelsey, “From GATS to TiSA: Pushing the trade in services regime beyond the limits”, *European Yearbook of International Economic Law* (2016) 7, 119-150.
- ¹³ Gabrielle Marceau and Anand Nandakumar, “How Can the JSI on E-commerce Become Part of the WTO Framework?”, *Global Trade and Customs Journal*, 2025, vol 20, no.5, 309-320.
- ¹⁴ Jane Kelsey, “Briefing note on Services Domestic Regulation JSI Text of 27 September 2021 (INF/SDR/1)”, Third World Network, October 2021. https://www.twm.my/title2/briefing_papers/twn/Domestic%20regulation%20TWNBP%20Oct%202021%20Kelsey.pdf
- ¹⁵ Parliament of Australia Joint Standing Committee on Treaties, *Joint Initiative on Services Domestic Regulation*, Report 205, February 2023. https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/025039/toc_pdf/Report205.pdf;fileType=application%2Fpdf
- ¹⁶ Eg. Council for Trade in Services, “Certification of schedule of specific commitments - Communication from the Republic of Kazakhstan – Corrigendum”, S/C/W/415, Corr.1, 16 February 2024.
- ¹⁷ “Joint Ministerial Declaration on the Investment Facilitation for Development Agreement”, WT/MIN(26)/32, 29 March 2026. https://www.wto.org/english/tratop_e/invfac_public_e/ifd29032026_e.pdf
- ¹⁸ “Joint Press Release, Investment Facilitation for Development Agreement, Jointly Issued by the Republic of Korea and Chile”, 30 March 2026. https://www.wto.org/english/news_e/news26_e/infac_30mar26_353_e.htm
- ¹⁹ General Council, “Incorporation of the Investment Facilitation for Development Agreement into Annex 4 of the WTO Agreement”, WT/GC/W/Rev.4, 4 December 2025. https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?MetaCollection=WTO&SymbolList=%22WT%2fGC%2fW%2f927%2fRev.4%22+OR+%22WT%2fGC%2fW%2f927%2fRev.4%2f*%22&Language=ENGLISH&SearchPage=FE_S_S001&languageUIChanged=true#
- ²⁰ Trade Negotiations Committee, “Revised Road to Yaoundé MC14, Addendum. Draft Schedule of MC14 Sessions”, JOB/TNC/127/Rev.2/Add.1, 19 January 2026
- ²¹ Gabrielle Marceau and Anand Nandakumar, “How Can the JSI on E-commerce Become Part of the WTO Framework?” *Global Trade and Customs Journal*, 2025, vol 20, no.5, 309-320