



# WTO JSI Agreement on Electronic Commerce and the Framework Agreement on Facilitation of Cross-Border Paperless Trade in Asia and the Pacific (CPTA)

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United Nations Network of Experts for Paperless Trade and Transport in Asia and the Pacific

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## Abstract

A review of the stabilized text of an “Agreement on E-commerce” is undertaken to identify potential linkages to the CPTA implementation. The JSI agreement is different in nature as well as much broader in scope than the CPTA but includes a section on Enabling electronic Commerce covering issues related to paperless and cross-border paperless trade, including an article dedicated to paperless trade(ing) and another on electronic single window and interoperability. The provisions related to paperless trade in the JSI text are found to be consistent with the general principles and other provisions included in the CPTA. They remain essentially non-binding in nature and provide parties with much flexibility, and limited guidance and how they may be implemented. In that context, the dedicated and inclusive intergovernmental framework established by the CPTA provides an effective way for the Parties of CPTA to implement the paperless trade-related provisions featured in the JSI text. The countries in Asia and the Pacific keen on pursuing their trade digitalization efforts and that have not yet acceded to CPTA are therefore encouraged to accede to it as soon as possible.

**Keywords:** international trade, trade facilitation, paperless trade, trade-related documents and data, CPTA

**JEL Codes:** F10, F13, O38

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## **Acronyms and Abbreviations**

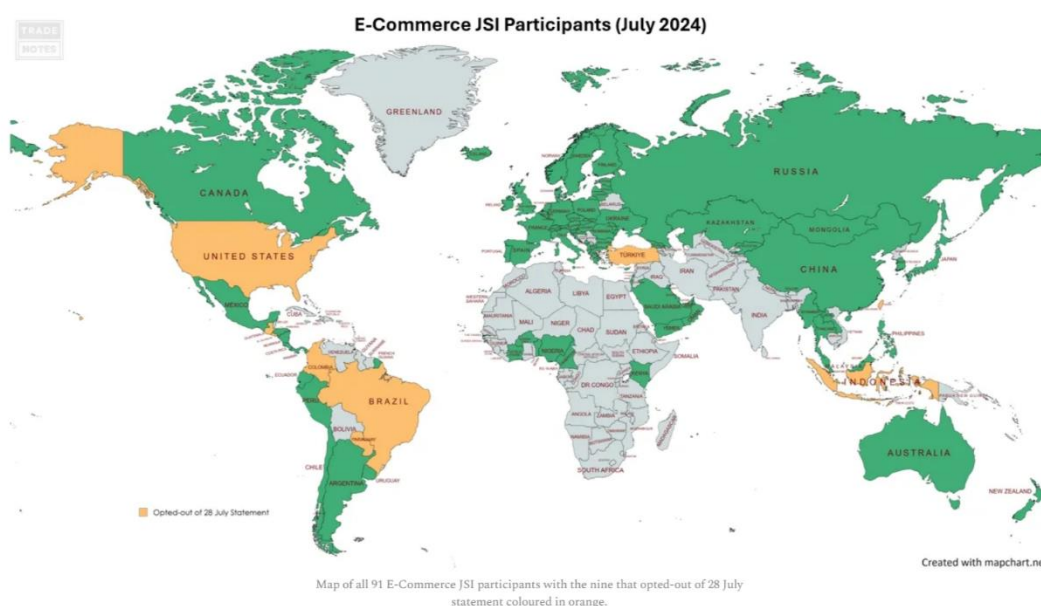
CPTA	Cross-Border Paperless Trade in Asia and the Pacific
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
GATS	General Agreement on Trade in Service
ICC	International Chamber of Commerce
ICC DSI	International Chamber of Commerce Digital Standards Initiative
JSI	Joint Statement Initiative on Electronic Commerce
MLETR	Model Law on Electronic Transferable Records
UN/CEFACT	United Nations Centre for Trade Facilitation and Electronic Business
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Trade and Development
WTO	World Trade Organization

# 1. Introduction

On 26 July 2024, nearly 80 countries participating in the WTO Joint Statement Initiative on Electronic Commerce (JSI) released a stabilized text, indicating they “will proceed with their domestic processes, with a view to integrating the outcome of negotiations in the WTO legal framework”.<sup>2</sup>

The JSI is co-convened by Australia, Japan and Singapore, three Asia and the Pacific countries member of ESCAP. Many other ESCAP countries have joined the JSI and confirmed support for the text, including China, Mongolia, Kyrgyzstan, the Philippines, Republic of Korea and Russian Federation, all already parties to the Framework Agreement on the Facilitation of Cross-Border Paperless Trade in Asia and the Pacific (CPTA), a UN treaty that entered into force in 2021.<sup>3</sup> Three JSI participants member of ESCAP, i.e., the United States, Indonesia and Türkiye have not agreed to the stabilized text at this stage, as shown in Figure 1. In addition, a majority of countries in Central Asia and South Asia, including India, have never joined the JSI and related negotiations.

**Figure 1: E-commerce JSI Participants (July 2024)**



Note: the map is shown here for illustrative purposes only. Country borders featured have no legal meaning, nor do they represent the views of the authors and the United Nations in any way.

Source: Devon Whittle, Trade Notes, 29 July 2024.<sup>4</sup>

<sup>2</sup> WTO Document INB/ECOM/87.

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/ECOM/87.pdf&Open=True>

<sup>3</sup> Information on the CPTA is available at: [www.unescap.org/projects/cpta](http://www.unescap.org/projects/cpta). As of July 2024, 13 countries in Asia-Pacific are parties to the UN treaty. Updated list of parties available at:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=X-20&chapter=10&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-20&chapter=10&clang=_en)

<sup>4</sup> Whittle Trade Notes dated 29 July, <https://tradenotes.substack.com/p/digital-the-wto-e-commerce-jsis-stabilised>



As noted by Elms (2024)<sup>5</sup> and others, unless the JSI text is incorporated into the WTO, and the new rules apply on a most-favoured nations basis, the agreement will provide only weak guidance towards future digital policy alignment. Despite the very significant uncertainties associated with such incorporation taking place in at least the short to medium term, several of the new JSI rules are directly related to paperless trade.

While the JSI agreement is different in nature as well as much broader in scope than the CPTA - the JSI aims at specifying rules on e-commerce, including on paperless trade(ing); the CPTA provides a framework dedicated solely to facilitating and enabling cross-border paperless trade(ing) – it might provide useful guidance for the implementation of the CPTA. Accordingly, this note identifies and discusses provisions of the JSI agreement most relevant to the CPTA.

## 2. Which provisions of the JSI agreement are relevant to CPTA?

The JSI agreement is divided into 4 substantive sections (Enabling electronic commerce; Openness and electronic commerce; Trust and electronic commerce; and Telecommunications), as well as a section on Transparency, cooperation and development and another on Exceptions. Section B on Enabling electronic commerce has rules most directly related to the CPTA and consists of 7 articles (articles 4-10)<sup>6</sup>.

Article 4 on *Electronic Transactions Framework* calls for endeavoring to adopt a legal framework to govern electronic transactions consistent with the *UNCITRAL Model Law on Electronic Commerce 1996*, and the *UNCITRAL Model Law on Electronic Transferable Records 2017 (MLETR)*. While very few countries have yet adopted MLETR,<sup>7</sup> most countries already have laws consistent with the 1996 model law on e-commerce. The general principles of the CPTA are based on these UNCITRAL model laws and ESCAP and UNCITRAL have worked together on promoting their implementation, including through the CPTA. For example, as part of efforts in implementing CPTA, the secretariat of ESCAP has developed a cross-border paperless trade database which includes, among others, the MLETR Tracker which has been a joint effort between ESCAP and ICC DSI<sup>8</sup>.

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<sup>5</sup> <https://www.hinrichfoundation.com/research/article/digital/the-ecommerce-jsi-reaches-landmark-at-the-wto/>

<sup>6</sup> It is useful to mention that JSI contains a specific article on Paperless Trading (Article 8). While there is no specific definition on paperless trading in JSI, it expressly mentions "customs authority" under this article. Presumably, this may indicate that the JSI Article 8 on Paperless Trading is primarily customs related. On the other hand, JSI Articles 4, 5, 6, 7 and 9, as discussed below, are regarded as "paperless" trade in the context of CPTA. Therefore, the word "paperless" in the contexts of JSI and CPTA should be interpreted differently.

<sup>7</sup> [https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic\\_transferable\\_records/status](https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_transferable_records/status)

<sup>8</sup> <https://www.digitalizetrade.org/mletr>

Article 5 on Electronic Authentication and Electronic Signatures specifies that “a Party shall not deny the legal effect, legal validity, or admissibility as evidence in legal proceedings of an electronic signature solely on the basis that the signature is in electronic form”, but allows parties to specify performance standards or accreditation requirements according to their own laws or regulations. Article 6 on Electronics Contracts has a similar provision, but for electronic contracts. This provides parties with much flexibility, providing little guidance for CPTA implementation – The CPTA already includes *Functional equivalence* and *Non-discrimination of the use of electronic communications* in its General principles. Article 5 also specifies that “Parties shall encourage the use of interoperable electronic authentication” and that they “may work together [...] to encourage the mutual recognition of electronic signatures”. These 2 provisions are directly related to and consistent with the Objective, General principles (specifically the one on *Promotion of Interoperability*) of the CPTA, as well as its Article 8 on Cross-border mutual recognition of trade-related data and documents in electronic form.

Article 7 is dedicated to Electronic Invoicing. The article emphasizes the importance of electronic invoicing to facilitate electronic commerce, but sets no specific rules aside from indicating that electronic invoices may not be denied legal effects “solely on the basis that the invoice is in electronic form” and that those parties who develop related frameworks should be designed to support cross-border interoperability and take into relevant but unspecified international standards. The existence of a specific article on electronic invoicing highlights its significance and the need for more work to be done to enable their use across borders. This is consistent with the recent discussions at the 3<sup>rd</sup> Session of the CPTA Standing Committee, where electronic invoice was one of three documents prioritized for cooperation<sup>9</sup>.

Article 8 on Paperless Trading is directly related to the CPTA text and one of the most detailed article in the JSI, featuring 12 provisions. The Article indicates that “*The Parties recognize the importance of eliminating paper forms and documents required for importation, exportation, or transit of goods*” and encourage each party to “*eliminate paper forms and documents*”. Interestingly, the Article has separate provisions for “form[s] issued or controlled by its customs authority” and for those issued by “any government agency other than its customs authority”. Provisions aimed at Customs authority are sometimes binding, while “mirror provisions” for other agencies are always of a best-endeavor nature. This approach may be attributed to the gap in paperless trade readiness between Customs and other agencies that is evident in many countries. One possible implication for CPTA parties could be to consider establishing separate working groups for Customs and other agencies as they proceed with implementation of the framework agreement.

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<sup>9</sup> Further information is available through <https://www.unescap.org/sites/default/d8files/event-documents/2400195E.pdf>.

Article 8 makes it binding for a customs authority to make available their own forms in electronic format and to accept them as the legal equivalent of the paper version. Acceptance of the electronic forms issued or controlled by them is subject to the absence of domestic (and international) legal requirements to the contrary, which need to be notified within 2 years of the agreement entering into force. Aside from a best-endeavour provision “to cooperate [...] in international fora to promote the use of electronic forms” (8.11) and another “to take into account international standards” (8.12), there is no provision in that Article on enabling the exchange or recognition of electronic forms or documents across borders among the parties. It would be useful to verify the extent to which this JSI article deepens the commitments already made under the existing WTO Trade Facilitation Agreement in this area.

Article 9 on Single Windows Data Exchange and System Interoperability is probably the most closely related to the objective of the UN treaty on facilitation of cross-border paperless trade. This article builds upon Article 10.4 on Single Window to call for, on a best-endeavour basis, enabling “*through a single entry point the electronic submission of the documentation or data*” required for import, export or transit. Provisions aimed at interoperability are as follows:

(1) endeavouring “to incorporate, as appropriate, the World Customs Organization Data Model or other international standards for data elements”,

(2) “ensur[ing] the protection and confidentiality of the data exchanged with other single windows, whenever this exchange is permitted”,

(3) “encouraging to implement a reference number or other identity verification tool to uniquely identify data relating to an individual transaction”,

(4) endeavouring “to share their respective experiences in establishing or maintaining a single window”, and

(5) endeavouring “to work towards a harmonization, to the extent practicable, of data elements and customs processes”.

Interestingly, the Article distinguishes between single window integrated with a Party’s customs authorities and those that are not, making the first three interoperability-related provisions applicable to customs-related systems only.<sup>10</sup>

With the exception of the provision on ensuring the protection and confidentiality of the data exchanged, these provisions are recommendations rather than binding rules. These recommendations have been repeatedly made in trade facilitation related documents, trainings, events and technical assistance programmes of international organizations active in the field. Some of them have already been implemented. For

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<sup>10</sup> The fact that countries have taken different approaches to paperless trade(ing) implementation was also recognized during the negotiation of the CPTA, leading countries to refer to paperless trade systems rather than just single window systems.

example, UNCTAD, UN Regional Commissions and WCO, to name a few, have long organized experience sharing events on the establishment or maintenance of a single window. UN/CEFACT and WCO have long-standing and on-going work on data harmonization and data models. And ESCAP and ICC now maintain a global database on projects and services related to cross-border paperless trade, including but not limited to exchange of data and documents amongst single windows. Work and activities are on-going in relation to all five provisions, including at ESCAP. Parties to the CPTA may take note of these provisions and discuss whether related work may or not be prioritized in the joint action plan.

The last article of the section on Enabling Electronic commerce is [Article 10 on Electronic payments](#). All provisions appear to be very much of a best-endeavour nature, including seemingly simple commitments such as making related laws and regulations, procedures and technical standards available publicly. Several provisions are directly linked to commitments made by countries on related services in the GATS agreement and several subparagraphs as well as footnote provide additional text diluting the commitments in the Article. While not specifically excluded from the scope of the CPTA, electronic payments have not been included in the joint action plan developed by the parties.<sup>11</sup> The nature of the JSI provision on this topic suggests that this remains a particularly complex and difficult topic of discussion that may not be currently prioritized for discussion under the CPTA.

### **3. Conclusion**

A review of the stabilized text of an “Agreement on E-commerce” was undertaken to identify potential linkages to the CPTA implementation. The JSI agreement is different in nature as well as much broader in scope than the CPTA but includes a section on Enabling electronic Commerce covering issues related to paperless and cross-border paperless trade, including an article dedicated to paperless trade(ing) and another on electronic single window and interoperability. The provisions featured in the JSI text are found to be consistent with the general principles and other related provisions included in the CPTA.

The provisions related to paperless trade in the JSI remain essentially non-binding in nature and provide parties with much flexibility, and limited guidance and how they may be implemented. In that context, the regional intergovernmental framework established by the CPTA provides a dedicated and inclusive cooperation platform for

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<sup>11</sup> See Annex 1 of document ESCAP/PTA/PTC(3)/2, available at: <https://www.unescap.org/sites/default/d8files/event-documents/2400195E.pdf>

the Parties of CPTA to implement the paperless trade-related provisions featured in the JSI text at their own pace. The countries in Asia and the Pacific that have not yet acceded to CPTA interested in capturing the substantial benefits associated with digitalizing trade procedures<sup>12</sup> are therefore encouraged to accede to the CPTA as soon as possible.

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<sup>12</sup> See ADB-ESCAP Trade Facilitation Report 2024 and other reports at <https://www.untfsurvey.org/report> for estimates of benefits associated with WTO TFA+ paperless trade reform.