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## **WTO ELECTRONIC COMMERCE NEGOTIATIONS**

### **CONSOLIDATED NEGOTIATING TEXT – DECEMBER 2020**

#### *Revision*

This Consolidated Negotiating Text is a working document that captures progress so far in the WTO Joint Statement Initiative on Electronic Commerce. It brings together streamlined text based on all text proposals submitted by Members to date and has been prepared under the responsibility of the co-convenors. This text incorporates outcomes of small group discussions that have been considered in plenary sessions.

No attributions have been made at this stage. For transparency, a box has been included under each provision to indicate which Members' proposals the text is based on.

For the purposes of this document, proposed definitions have generally been placed with the provisions to which they relate. Some proposed cross-cutting definitions have been included in Annex 1.

The draft text reflected in this document is subject to the consideration of several cross-cutting issues that many Members have highlighted in the negotiations, including the following:

- Several Members have noted that they would expect security, general and prudential exceptions to apply.
- Several have expressed their intention that commitments would not apply to government procurement, or information held by or on behalf of a Party, or measures related to such information, including measures related to its collection.
- Some Members have said they want to carve out from scope financial services as defined in the GATS Annex on Financial Services.
- Several have noted the need to determine the relationship of provisions with Members' market access commitments, and the legal architecture of the JSI outcome.

In preparing this document, the same drafting approach used for previous streamlined text compilations has been applied. This includes merging elements of text that have a similar effect and the use of square brackets and alternatives to reflect differences in proposals.

This document has been prepared on a without prejudice basis, and text that is not in square brackets does not indicate agreement to or conclusion of the text.

This working document does not prejudge the final legal framework which will give legal effect to each provision.

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Section A: Enabling Electronic Commerce

A.1. Facilitating Electronic Transactions

(1) Electronic transactions frameworks

1. Each [Party/Member] shall maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce 1996 [taking into account, as appropriate, other relevant international standards.]

2. **[Alt 1:**

Each [Party/Member] shall endeavour to:

- (a) avoid unnecessary regulatory burden on electronic transactions; and
- (b) facilitate input by interested persons in the development of its legal framework for electronic transactions.]

**[Alt 2:**

Each [Party/Member] shall:

- (a) minimise the regulatory burden on electronic commerce; and
- (b) ensure that a [Party's/Member's] regulatory frameworks support industry-led development of electronic commerce.]

**[Alt 3:**

Having regard to their national policy objectives, [Parties/Members] shall endeavour to avoid measures that:

- (a) unduly hinder electronic commerce; or
- (b) have the effect of treating commerce by electronic means in a more restrictive manner than commerce conducted by other means.]

**Paragraph 1:**

- Based on text proposals by US, SG, HK, CN and CA.

**Paragraph 2:**

- Alt 1 based on text proposals by US, SG, HK, UA and CA.
- Alt 2 based on text proposal by CN.
- Alt 3 based on text proposal by BR.

## (2) Electronic authentication and electronic signatures

1. "Electronic authentication" means the process or act of verifying the identity of a party to an electronic communication or transaction or\* ensuring the integrity of an electronic communication. [FN1]

**FN1:** For greater certainty, electronic authentication include the process or act of verifying the identity of a [party to an electronic signature/signatory to an electronic communication].

*\*Negotiators' note: It is understood that 'or' includes 'and' and thus encompasses situations where both or either functions are performed.*

2. "Electronic signature" means data in electronic form that is in, affixed to, or logically associated with [an electronic/a] data message that may be used to identify [and verify] the signatory in relation to the data message and indicate the signatory's approval of the information contained in the data message. [FN2]

**FN2:** For greater certainty, nothing in this provision prevents a Party from according greater legal effect to an electronic signature that also ensures that an electronic data message has not been altered [or that also verifies the identity of a signatory in relation to the electronic data message].

3. Except in circumstances otherwise provided for under its laws or regulations, a [Party/Member] 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.
4. No [Party/Member] shall adopt or maintain measures that would:
  - (a) prohibit parties to an electronic transaction from mutually determining the appropriate [electronic signature, or] electronic authentication methods for that transaction; or
  - (b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their transaction complies with any legal requirements with respect to electronic authentication [or electronic signatures].
5. Notwithstanding paragraph 4, a [Party/Member] may require that, for a particular category of transactions, the [electronic signature or] method of authentication meets certain performance standards or is certified by an accredited authority, in accordance with its laws or regulations.
6. To the extent provided for under their laws or regulations, [Parties/Members] shall apply paragraph[s] 3 [to 5] to [other electronic processes or means of facilitating or enabling electronic transactions, such as] electronic seals, electronic time stamps, [or/and] electronic registered delivery services.
7. [Parties/Members] shall encourage the use of interoperable electronic authentication.
8. [[Parties/Members] shall encourage the mutual recognition of electronic authentication and of electronic signatures.]

*Paragraph 1:*

- Based on text proposals by JP, US, HK, KR, CA, CN and EU.

*Paragraph 2:*

- Based on text proposals by US, KR, CA, ID, BR, CN, and EU.

*Paragraph 3:*

- Based on text proposals by JP, SG, US, HK, KR, ID, CN, CA, BR, EU and UA.

*Paragraph 4:*

- Alt 1 based on text proposals by JP, SG, HK, KR, US, BR, UA, CA, CN and EU.

*Paragraph 5:*

- Based on text proposals by JP, SG, HK, KR, CN, US, CA, BR, UA and EU.

*Paragraph 6:*

- Based on text proposal by EU.

*Paragraph 7:*

- Based on text proposals by JP, SG, HK, KR, CA, UA, BR and CN.

*Paragraph 8:*

- Based on text proposals by BR and CN.

(3) Electronic contracts

1. "Electronic Contract" is an agreement between parties made through the electronic system.

2. [Parties/Members] shall:

**[Alt 1:**

ensure that:

- (a) [its legal framework allows for] contracts [may/to] be concluded by electronic means and [its law does not result in electronic contracts being / shall not be] [denied / deprived of] legal effect [and/or] validity [and/or enforceability] solely on the ground that they have been made by electronic means [; and
- (b) [its/their] [law/legal systems] [does/do] not create obstacles for the use of electronic contracts.]

**[Alt 2:**

except as otherwise provided for certain types of transactions under their laws or regulations, provide electronic commerce parties with the option to accept electronic contracts, and shall not deny the legal validity of a contract solely on the basis that the contract is in electronic form. [Parties/Members] agree that the act of electronic commerce parties entering into or performing a contract by using an automatic information system shall have legal effect on the parties using such a system.]

**[Alt 3:**

ensure that contracts may be concluded by electronic means using electronic signature as an instrument that guarantees legal effect and ensures validity and integrity of contracts by applying of national cryptography instruments.]

3. **[Alt 1:**

This Article (electronic contracts) does not apply to broadcasting services, gambling services, legal representation services, to services of notaries or equivalent professions involving a direct and specific connection with the exercise of public authority, and to contracts that establish or transfer rights in real estate, contracts requiring by laws or regulations the involvement of courts, public authorities or professions exercising public authority, contracts of suretyship granted and on collateral securities furnished by persons acting for purposes outside their trade, business or profession and contracts governed by family laws or regulations or by the laws or regulations of succession.]

**[Alt 2:**

Paragraph 2 does not apply to:

- (a) contracts that require witnessing in person;
- (b) contracts that create or transfer rights in real estate;
- (c) contracts requiring by law the involvement of courts, public authorities or professions exercising public authority; or
- (d) contracts governed by family law or by the law of succession.]



*Paragraph 1:*

- Based on text proposal by ID.

*Paragraph 2:*

- Based on text proposals by EU, BR, UA and CN.
- Alt 1 based on text proposals by EU, BR, UA and UK.
- Alt 2 based on text proposal by CN.
- Alt 3 based on text proposal by RU.

*Paragraph 3:*

- Alt 1 based on text proposal by EU.
- Alt 2 based on text proposal by UK.

(4) Electronic invoicing

1. [Parties/Members] agree that where electronic commerce operators issue paper or electronic invoices for the sale of goods or provision of services in accordance with their laws or regulations, electronic invoices shall have the same legal effect as paper invoices.
2. Each [Party/Member] recognises the importance of e-invoicing standards which help improve the efficiency, accuracy, and reliability of electronic commerce transactions.
3. Each [Party/Member] shall ensure that the implementation of measures related to e-invoicing in its jurisdiction is designed to support cross-border interoperability. For that purpose, each [Party/Member] shall base its measures related to e-invoicing on international systems, guidelines or recommendations, where they exist.
4. Each [Party/Member] shall endeavour to share best practices pertaining to e-invoicing systems.

*Paragraph 1:*

- Based on text proposal by CN.

*Paragraph 2:*

- Based on text proposals by SG and NZ.

*Paragraph 3:*

- Based on text proposals by SG and NZ.

*Paragraph 4:*

- Based on text proposal by NZ.

## (5) Electronic payments services

1. Except as otherwise provided for special types of transactions under their domestic laws and regulations, [Parties/Members] shall provide electronic commerce parties with the option to accept electronic payment services, and shall not prohibit the conclusion of a transaction solely on the basis that the payment is in electronic form.
2. With respect to the supply of electronic payment services, [Parties/Members] agree that:
  - (a) each [Party/Member] shall accord to electronic payment services and services suppliers of another [Party/Member] within its territory treatment no less favourable than that it accords to any other like services and services suppliers.
  - (b) each [Party/Member] shall grant electronic payment services suppliers of another Member the right to establish or expand a commercial presence within its territory, including through acquisition of existing enterprises.
  - (c) each [Party/Member] shall grant electronic payment services suppliers of another Member established within its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business.
  - (d) when membership or participation in, or access to, any self-regulatory body, or any other organization or association, is required by a [Party/Member] in order for electronic payment services suppliers of any other Member to supply electronic payment services on an equal basis with electronic payment services suppliers of the [Party/Member], or when the [Party/Member] provides directly or indirectly such entities, privileges or advantages in supplying electronic payment services, the [Party/Member] shall ensure that such entities accord national treatment to electronic payment services suppliers of any other Member resident in the territory of the [Party/Member].
3. [Parties/Members] shall ensure that licensing requirements for electronic payment services suppliers of any other [Party/Member] are applied on a non-discriminatory basis and in a least trade restrictive manner.
4. [Parties/Members] shall, in the development of policies, regulatory systems and standards concerning electronic payment services, facilitate consultation with electronic payment services suppliers of any other Member operating within its territory. To the extent consistent with their domestic laws and regulations, [Parties/Members] shall ensure that electronic payment services suppliers of any other [Party/Member] operating within its territory are provided with adequate advance notice of, and opportunity to comment on, regulatory decisions of general application that are proposed by their regulatory authorities.

**Paragraphs 1-4:**

- Based on text proposal by CN.

## A.2. Digital trade facilitation and logistics

## (1) Paperless trading

1. "Trade administration documents" means the forms [and documents] issued or controlled by a [Party/Member] that must be completed by or for an importer or exporter in connection with the import, export or [transit] of goods.
- 1bis. "Supporting documents" means any document [that may be] required by Customs or other governmental agency to support the information presented on trade administration documents.
2. Each [Party/Member] shall [endeavour/whenever feasible] to make all [existing] [requirements for the submission of] trade administration documents available to the public in electronic form, [[including/which could include] [in formats that can be electronically interchanged directly between computers/in electronically processable formats/in formats that can be exchanged using electronic data-processing techniques]].
3. Each [Party/Member] shall [endeavour to] accept trade administration documents submitted electronically, [[including/which could include] [in formats that can be electronically interchanged directly between computers/in electronically processable formats/in formats that can be exchanged using electronic data-processing techniques], as the legal equivalent of the paper [version of those] documents [except where:
  - (a) there is [a domestic or] an international legal requirement to the contrary; or
  - (b) [on specific circumstances,] doing so would reduce the effectiveness of the trade administration process.]
- 3bis. Each [Party/Member] shall accept supporting documents submitted electronically as the legal equivalent of the paper version of those documents, provided that the integrity and authenticity of the document are ensured, except where:
  - (a) there is [a domestic or] an international legal requirement to the contrary; or
  - (b) [on specific circumstances,] doing so would reduce the effectiveness of the trade administration process.
4. **[Alt 1:**

The [Parties/Members] shall cooperate bilaterally and in international forums [, as well as provide technical assistance and exchange information,] to enhance acceptance of electronic versions of trade administration documents.]

**[Alt 2:**

The [Parties/Members] shall endeavour to encourage their [relevant public and private entities/competent authorities and other relevant bodies] to cooperate [on the activities/on matters] related to paperless trading, such as standardisation of trade administration documents.]
5. In developing initiatives which provide for [the use of/a transition to/concerning the use of] paperless trading, [Parties/Members] shall endeavour [to take into account the methods agreed by international organisations/base such initiatives on relevant international standards/to take into account standards of, or methods agreed by, relevant international organisations].
6. [Parties/Members] shall endeavour to adopt relevant international standards, [*inter alia* the following standards,] whenever available, for issuing, accepting [and/or] exchanging electronic trade administration documents [and supporting documents], *inter alia*:

- (a) Electronic phytosanitary certificate (e-Phyto), as defined in the International Standard for Phytosanitary Measures 12 of the Food and Agriculture Organization of the United Nations;
- (b) Electronic CITES permit (eCITES), for the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- (c) International Air Transport Association (IATA) Electronic Air Waybill (e-AWB) and Cargo XML;
- (d) United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) Data Interchange for Administration, Commerce and Transport (UN/EDIFACT), Electronic SPS Certificate (eCERT).

[6bis. For those [Parties/Members] which are not members to the organizations issuing the standards, other [Parties/Members] will provide, upon request, necessary information and technical assistance to enable their adoption of such standards.]

7. [Parties/Members] are encouraged to, whenever practical, employ the WCO Unique Consignment Reference for the identification of consignments in trade administration documents.

*Paragraph 1:*

- Based on text proposals by JP, HK, BR, KR, NZ, CN, TH and UK.

*Paragraph 1bis:*

- Based on text proposals by BR and NZ.

*Paragraph 2:*

- Based on text proposals by JP, UA, KR, CN, BR, SG, NZ and UK.

*Paragraph 3:*

- Based on text proposals by JP, HK, UA, KR, NZ, SG, BR, CN and UK.

*Paragraph 3bis:*

- Based on text proposals by BR.

*Paragraph 4:*

- Alt 1 based on text proposal by SG.
- Alt 2 based on text proposals by KR and UK.

*Paragraph 5:*

- Based on text proposals by SG, NZ, UK and CT.

*Paragraph 6:*

- Based on text proposals by BR and CT.

*Paragraph 7:*

- Based on text proposal by BR.

(2) De minimis

1. **[Alt 1:**

To the extent possible, each Party shall:

- (a) set a de minimis value in its law below which it will not collect customs duties or taxes on shipments;
- (b) not collect customs duties or taxes on shipments below its set de minimis value **[FN]**; and
- (c) review, as appropriate, its set de minimis value, taking into account relevant factors such as rates of inflation, effect on trade facilitation, impact on risk management, administrative cost of collecting duties compared to the amount of duties, cost of cross-border trade transactions, impact on micro, small or medium-sized enterprises or other factors related to the collection of customs duties.]

**[FN:** For greater certainty, this paragraph shall not apply to internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of the GATT 1994.]

**[Alt 2:**

Each [Party/Member] shall endeavour to establish de minimis duty free criteria on imported items for personal use to facilitate electronic commerce taking into account relevant WCO standards, including WCO Cross Border E Commerce Framework of Standards and WCO Guidelines on Immediate Released Goods.]

2. Paragraph 1 shall not apply to shipments of restricted or controlled goods, such as goods subject to import licensing or similar requirements.

*Paragraph 1:*

- Alt 1 based on text proposals by AU and KR.
- Alt 2 based on text proposal by ID.

*Paragraph 2:*

- Based on text proposals by AU and KR.

(3) Customs procedures

1. "Customs procedure" means the treatment applied by each customs authority to goods and means of transport that are subject to customs law.
2. Each [Party/Member] shall ensure that its customs procedures and practices are predictable, consistent, transparent, and efficient.
3. Each [Party/Member] shall promptly provide information and respond to questions raised by another [Party/Member] on specific information related to any of its customs procedures.
4. Each [Party/Member] shall adopt or maintain simplified customs procedures to streamline and speed up the customs procedures of goods, transacted by electronic commerce.

*Paragraphs 1-4:*

- Based on text proposal by KR.

## (4) Improvements to trade policies

1. [Parties/Members] recognize that the popularization of the internet has fostered fast development of cross-border electronic commerce and new modes of trade, which in turn have strongly promoted trade growth and significantly enhanced its inclusiveness. In the area of trade in goods, volumes of small consignments have increased exponentially, more products are sold to consumers directly, and micro, small and medium-sized enterprises (MSMEs) have acquired unprecedented opportunities of direct access to international markets.
2. [Parties/Members] shall endeavour to adjust their trade policies in a flexible manner for improvements to adapt to such new development of trade, including but not limited to:
  - (a) specifying, with respect to trade in goods, policies of customs duties and charges, and internal taxes and other internal charges that are applicable to cross-border E-commerce where products are sold online and later physically delivered to consumers or buyers within their territories, including limit on transaction value of each consumer or buyer, and/or limit on scope of products under such policies, if any;
  - (b) specifying non-tariff measures such as import quotas and licenses, registration or filing for record requirements, conformity assessment procedures and etc. that are applicable or related to cross-border E-commerce, and simplifying or exempting such non-tariff measures to the extent practical and possible, meanwhile identifying where such simplification and exemption are not applicable.
3. [Parties/Members] shall promptly notify [the XX Council/Committee] of the policies and measures referred to in paragraph 2 of Article X as well as any changes made to them. The [XX Council/Committee] shall develop and decide upon specific format and requirements of the notification.
4. [Parties/Members] shall not apply, in cross-border E-commerce where products are sold online and later physically delivered to consumers or buyers within their territories, customs duties, charges, internal taxes and other internal charges higher or non-tariff and other regulatory measures stricter than in the normal circumstances of trade. [Parties/Members] shall ensure that technical regulations, standards and conformity assessment procedures are not prepared, adopted or applied with a view to creating unnecessary obstacles to cross-border E-commerce.

**Paragraphs 1-4:**

- Based on text proposal by CN.



## (5) Single windows data exchange and system interoperability

*Data exchange solutions*

1. [Parties/Members] shall provide, on their national foreign trade single window systems, to the extent practicable, electronic interfaces for the exchange of data, including electronic trade administration documents, with traders, international trade logistic service providers, governmental agencies and other relevant stakeholders.
2. The electronic interface referred on paragraph 1 shall, at the minimum, provide for the exchange of data relevant for customs clearance.
3. Whenever possible, the electronic interface shall allow the submission of data in advance in order to begin processing information prior to the arrival of goods with a view to expediting the release of goods upon arrival.

*Single window internal interoperability*

4. [Parties/Members] shall endeavour to establish arrangements by which authorized private entities, such as port community systems, logistic service providers and e-commerce platforms, may exchange data with the single window system in lieu of traders and other trade stakeholders under an agreement to use this private solution.
5. The arrangements referred on paragraph 4 shall, whenever possible, favor private solutions designed to provide international trade services to small and medium enterprises.

*Interoperability between national single windows*

6. [Parties/Members] are encouraged to develop interoperability solutions for their single window systems to exchange data, including electronic trade administration documents, with the single windows of other Members with the purpose of expediting the clearance and release of goods and implementing cooperation arrangements between Customs and between other border agencies.

*Guidelines for data exchange and interoperability*

7. [Parties/Members] shall endeavour to adopt the WCO Data Model or other compatible relevant international standard for the exchange of information with their single windows.
8. [Parties/Members] shall determine what data should be exchanged with their single windows.
9. The interoperability and data exchange solutions shall, to the extent possible, employ technologies, such as blockchain, that ensure the compliance with all international and internal legal requirements related to the protection and confidentiality of the exchanged information.
10. [Parties/Members] shall determine the operational conditions for the exchange of information between their single windows and other systems.
11. Whenever a national single window is not available or not integrated with Customs or other relevant governmental agencies, this article applies to customs management systems or other relevant governmental electronic systems used for processing trade.

*Paragraphs 1-11:*

- Based on text proposal by BR.

## (6) Logistics Services

1. [Parties/Members] recognize the importance of logistics services to the development of cross border electronic commerce and even the economic development at large, commit to enhance logistics services capacity and relevant infrastructure connectivity and promote the synergetic development of the logistics services and cross-border electronic commerce.
2. [Parties/Members] agree to improve the level of specific commitments in logistics services, to undertake both market access and national treatment commitments on core freight logistics services and related freight logistics services including allowing establishment of commercial presence and ensure that relevant domestic regulations are applied in a reasonable, transparent and non-discriminatory manner.
3. [Parties/Members] shall streamline licensing procedures related to logistics services, grant all applicants licenses in a non-discriminatory manner, and control the process time between accepting the application and making the decision within a reasonable period. If the competent authorities of a [Party/Member] consider an application of a logistics services supplier from another [Party/Member] incomplete or not meeting the criteria for approval, the competent authorities shall, in accordance with domestic laws and regulations, inform the applicant and provide reasons within a reasonable period of time.
4. [Parties/Members] agree, pursuant to their respective domestic laws and regulations, to promote the establishment of transport coordination mechanisms among themselves including a cooperation mechanism on civil aviation to improve infrastructure, promote international multimodal transport and inter-connectivity between different modes of transport, and formulate standard and compatible transport rules, so as to facilitate further international transport and logistics services.
5. [Parties/Members] shall ensure that decisions made and procedures applied by their regulatory authorities to all logistics services suppliers within their territories are impartial, transparent and non-discriminatory, and their regulatory authorities do not adopt or maintain policies and measures that will restrain competition.
6. [Parties/Members] agree to support the cooperation between logistics services and postal services so as to enhance delivery efficiency and promote trade development.
7. For greater certainty, logistics services include core freight logistics services and related freight logistics services. Core freight logistics services refer to services auxiliary to all modes of transport set out in MTN.GNS/W/120, and related freight logistics services refer to maritime transport services (excluding internal waterways transport services), rail freight transport services, road freight transport services, air freight transport services, technical testing and analysis services and courier services.

*Paragraphs 1-7:*

- Based on text proposal by CN.

## (7) Enhanced trade facilitation

1. [Parties/Members] shall endeavour to facilitate cross-border E-commerce where products are sold online and later physically delivered to consumers or buyers within their territories through measures including implementation of the Trade Facilitation Agreement (TFA). To this end, [Parties/Members] shall attach particular importance to the significance of the implementation of paragraphs 1, 4, 7, 8 and 9 of Article 7, Article 8, and paragraph 1, 3 and 4 of Article 10 in the Trade Facilitation Agreement, and make utmost efforts to implement these paragraphs at an earliest possible date.
2. [Parties/Members] shall commit to improving their capacities to use advance electronic data related to customs clearance as a basis of effective risk management with a view to enhancing trade facilitation. To this end, [Parties/Members] shall adopt or maintain procedures allowing for the advance submission of electronic data concerning transactions of products as well as related payments and deliveries, including using the single window referred to in Article 10.4 of the Trade Facilitation Agreement or other platforms of customs clearance, so that customs clearance can base on the processing and comparison of such data and begin prior to the arrival of the products for quick release.
3. [Parties/Members] shall consider applying, as appropriate, various types of models of revenue collection for duties and/or taxes in addition to the current transaction-based model where duties and taxes are assessed and collected at the border, and shall offer, to the extent practical, electronic payment options in accordance with Article 7.2 of the Trade Facilitation Agreement.
4. [Parties/Members] shall encourage using the customs warehouses or the free zones provided by the International Convention on the Simplification and Harmonization of Customs Procedures to facilitate the development of cross border E-commerce where products are sold online and later physically delivered to consumers or buyers within or outside their territories. To this end, Members shall take measures including but not limited to the following.
  - (a) [Parties/Members] shall allow products to be stored under customs control in the customs warehouses and/or the free zones without payment of import duties, charges and relevant internal taxes and charges till sold and physically delivered to consumers or buyers within or outside their territories according to transaction contracts done on-line by electronic means. For products sold and to be physically delivered to consumers or buyers within their territories, customs clearance and payment of import duties, charges and relevant internal taxes and charges shall be made before delivery. For products sold and to be physically delivered to consumers or buyers outside their territories, customs clearance and payment of duties and/or taxes shall be exempted.
  - (b) [Parties/Members] shall allow for handling operations of products such as breaking bulk, grouping of packages, repacking and etc. during storage in the customs warehouses and/or the free zones so that the products can be sold and physically delivered to consumers or buyers within or outside their territories according to transaction contracts done on-line by electronic means, provided that the integrity and original retail packing of the individual product are not destroyed.
  - (c) [Parties/Members] shall, to the extent possible, facilitate return and change of products in cross-border E-commerce where products are sold online and later physically delivered to consumers or buyers within or outside their territories.
5. [Parties/Members] shall encourage using the customs warehouses and/or the free zones provided by the International Convention on the Simplification and Harmonization of Customs Procedures as regional distribution centers (RDCs) where goods can temporarily be stored under customs control without clearance and payment of import duties, charges and relevant internal taxes and charges, so as to facilitate, in the normal circumstances of trade, an expedited delivery of physical goods to buyers.

6. [Parties/Members] shall actively explore various ways of enforcing customs control that can accommodate the new development of trade such as cross-border E-commerce, so as to coordinate and optimize clearance processes and improve clearance efficiency while ensuring safety and security. This shall include adopting or maintaining a risk management system to concentrate customs control on high-risk consignments and to expedite the release of low-risk consignments, and to the extent practicable, such clearance modes as collective clearance or batch clearance.
7. [Parties/Members] shall commit to enhancing international cooperation on regulation of products in cross-border E-commerce in areas including, but not limit to, electronic data exchange, product quality responsibility tracing, product safety risk warning, quick reaction to unqualified product and etc.

*Paragraphs 1-7:*

- \* Based on text proposal by CN.

## (8) Use of technology for the release and clearance of goods

*Use of embedded technology*

1. [Parties/Members] are encouraged to use, whenever possible, available data provided by information technology systems or sensors embedded on vehicles, shipping containers, packing materials or others to:
  - (a) perform risk analysis for customs and other border controls;
  - (b) expedite the release of goods.
2. [Parties/Members] are encouraged to cooperate with the private sector to use data provided by embedded technology to expedite the processing of trade operations.

*Risk management technologies*

3. [Parties/Members] shall, to the extent possible and practicable, apply data analytics methodologies within their risk management systems for customs control.
4. [Parties/Members] customs administration risk management systems shall endeavour to provide for the regular updating of risk profiles, taking into consideration the dynamics of trade operations and the results of previous customs control activities.
5. [Parties/Members] shall endeavour to employ machine learning and other artificial intelligence technologies to improve the efficiency of their customs administration risk management systems.
6. [Parties/Members] shall endeavour to apply the measures provided in this article in risk management systems for trade related controls performed by other governmental agencies, such as those in charge of sanitary, phytosanitary and quality and technical regulation conformity controls.

*Non-intrusive and remote inspections*

7. When physical inspections of cargoes are deemed necessary by customs or other governmental agencies, [Parties/Members] shall, whenever practicable, employ non-intrusive or remote technologies in order to avoid damages and expedite the release of goods.
8. [Parties/Members] shall preferably use, to the extent possible, non-intrusive technologies for processing expedite shipments and other small consignments.
9. Nothing in paragraphs 7 and 8 shall affect the right of a [Party/Member] to use traditional physical inspections when non-intrusive technologies are impracticable or ineffective.
10. [Parties/Members] are encouraged to cooperate with private sector stakeholders, such as authorized economic operators and customs warehouses, on the use of non-intrusive or remote technologies cargo inspections performed by customs or other governmental agencies.

**Paragraphs 1-10:**

- Based on text proposal by BR.

## (9) Provision of Trade Facilitating and Supportive Services

1. [Parties/Members] recognize that comprehensive and integrated supply of trade facilitating and supportive services, in particular such services as information and transaction platform, customs clearance, logistics, payment and its collection, taxation and etc. that are greatly needed by micro, small and medium-sized enterprises (MSMEs) to engage in international trade including cross-border E-commerce, and further enhancement of such services through the internet and information and communication technologies will contribute tremendously to improvements in quality and efficiency of the services, as well as better development of trade.
2. [Parties/Members] shall, consistent with its domestic laws and regulations, allow services suppliers to provide in a comprehensive and integrated manner trade facilitating and supportive services by means of cross-sector operation and relying on the internet and information and communication technologies. To this end, [Parties/Members] shall endeavour to undertake and improve specific commitments in such services sectors in a coordinated and comparable manner during market access negotiations with a view to achieving a higher level of liberalization.
3. [Parties/Members] reiterate that their application of any qualification requirements and procedures, technical standards and licensing requirements relating to trade facilitating and supportive services, as well as any issuance of relevant licenses, shall be consistent with the principles of non-discrimination and transparency, unless otherwise specified in [Parties'/Members'] schedule of specific commitments on services.

*Paragraphs 1-3:*

- Based on text proposal by CN.

Section B: Openness and electronic commerce

B.1. Non-discrimination and liability

(1) Non-discriminatory treatment of digital products

1. "Digital product" means a computer program, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically.

[For greater certainty,] a digital product does not include a digitised representation of a financial instrument, including money.

**[Alt 1:**

This definition should not be understood to reflect a [Party's/Member's] view that digital products are a good or are a service.]

**[Alt 2:**

This definition should not be understood to reflect a [Party's/Member's] view on whether trade in digital products through electronic transmission should be categorised as trade in services or trade in goods.]

2. No [Party/Member] shall accord less favourable treatment to a digital product created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of another [Party/Member], or to a digital product of which the author, performer, producer, developer or owner is a person of another [Party/Member], than that it accords to other like digital products. [For greater certainty, to the extent that a digital product of a [non-Party/non-Member] is a "like digital product", it will qualify as an "other like digital product" for the purposes of this paragraph.]
3. This Article (non-discriminatory treatment of digital products) does not apply to a subsidy or grant provided by a [Party/Member], including a government-supported loan, guarantee or insurance.
4. This Article does not apply to broadcasting.

*Paragraph 1:*

- Based on text proposals by JP and US.
- Alt 1 based on text proposal by US.
- Alt 2 based on text proposal by JP.

*Paragraph 2:*

- Based on text proposals by JP, US and UA.

*Paragraph 3:*

- Based on text proposals by JP and US.

*Paragraph 4:*

- Based on text proposal by JP.

(2) Interactive computer services (limiting liability)

1. "Information content provider" means a person or entity that creates or develops, in whole or in part, information provided through the internet or another interactive computer service.
2. "Interactive computer service" means a system or service that provides or enables electronic access by multiple users to a computer server.
3. The [Parties/Members] recognise the importance of the promotion of interactive computer services, including for small and medium-sized enterprises, as vital to the growth of digital trade.
4. To that end, other than as provided in paragraph 6, no [Party/Member] shall adopt or maintain measures that treat a supplier or user of an interactive computer service as an information content provider in determining liability for harms related to information stored, processed, transmitted, distributed, or made available by the service, except to the extent the supplier or user has, in whole or in part, created, or developed the information.
5. No [Party/Member] shall impose liability on a supplier or user of an interactive computer service on account of:
  - (a) any action voluntarily taken in good faith by the supplier or user to restrict access to or availability of material that is accessible or available through its supply or use of the interactive computer services and that the supplier or user considers to be harmful or objectionable; or
  - (b) any action taken to enable or make available the technical means that enable an information content provider or other persons to restrict access to material that it considers to be harmful or objectionable.
6. Nothing in this Article (interactive computer services) shall:
  - (a) apply to any measure of a [Party/Member] pertaining to intellectual property, including measures addressing liability for intellectual property infringement; or
  - (b) be construed to enlarge or diminish a [Party's/Member's] ability to protect or enforce an intellectual property right; or
  - (c) be construed to prevent:
    - (i) a [Party/Member] from enforcing any criminal laws or regulations, or
    - (ii) a supplier or user of an interactive computer service from complying with a specific, lawful order of a law enforcement authority.

The [Parties/Members] understand that measures referenced in paragraph 6(c)(ii) shall be not inconsistent with paragraph 4 in situations where paragraph 4 is applicable.

7. For greater certainty:
  - (a) a [Party/Member] may comply with this Article (interactive computer services) through its laws or regulations or through existing legal doctrines applied through judicial decisions; and



- (b) this Article (interactive computer services) is subject to Article [X] (general exceptions), which, among other things, provides that, for purposes of this Agreement, the exception for measures necessary to protect public morals is incorporated into and made part of this Agreement, mutatis mutandis. The [Parties/Members] agree that measures necessary to protect against online sex trafficking, sexual exploitation of children, and prostitution, such as U.S. Public Law 115-164, the "Allow States and Victims to Fight Online Sex Trafficking Act of 2017," which amends the Communications Act of 1934, is a measure that is necessary to protect public morals.]

*Paragraphs 1-7:*

- Based on text proposal by US.

(3) Interactive computer services (infringement)

1. "Interactive computer service" means a system or service that provides or enables electronic access by multiple users to a computer server.
2. In spite of the fact that an interactive computer service provider may have in place a reliable and credible policy, the [Parties/Members] recognize that a person's intellectual property rights may be infringed by an inappropriate behaviour of the users.
3. When a [Party/Member] becomes aware of any infringement of a person's intellectual property rights by the inappropriate behaviour of the users of the interactive computer services, such [Party/Member] may promptly notify the situation to the relevant Parties, including the [Party/Member] where the computing facilities for the interactive computer services are located in its territory.
4. Each [Party/Member], at the request or notification by any other [Party/Member], shall endeavour to cooperate to discontinue the infringement referred to in paragraph 3.

*Paragraphs 1-4:*

- Based on text proposal by KR.

B.2. Flow of information

(1) [Cross-border transfer of information by electronic means / Cross-border data flows]

1. [Alt 1:

"Covered person" means a national of a [Party/Member] or an enterprise of a [Party/Member].]

[Alt 2:

"Covered person" means:

- (a) with respect to a [Party/Member], an investment in its territory of an investor of another [Party/Member] in existence as of the date of entry into force of this Agreement for those [Parties/Members] or established, acquired, or expanded thereafter;
- (b) a [Party/Member], or a national or an enterprise of a [Party/Member], that attempts to make, is making, or has made an investment in the territory of another [Party/Member], with an exception of an investor in a financial institution; or
- (c) a person of a [Party/Member] that seeks to supply of supplies a service.]

[Alt 3:

"Person" means a natural person or an enterprise.]

2. "Enterprise" means [an/any] entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including [any branch, / a] corporation, trust, partnership, sole proprietorship, joint venture, [or other association / association or similar organisation].

3. [Alt 1:

"Personal information" means [any] information, including data, about an identified or identifiable natural person.]

[Alt 2:

"Personal data" means any information relating to an identified or identifiable natural person.

4. [Parties/Members] recognise that each [Party/Member] may have its own regulatory requirements concerning the transfer of information by electronic means.

5. [Alt 1:

No [Party/Member] shall [prohibit or restrict/prevent] the cross-border transfer of information, including personal information, by electronic means, [if/where] this activity is for the conduct of [an enterprise/the business of a covered person/the business or for the consumers to access, distribute and use services and applications].]

[Alt 2:

Each [Party/Member] shall allow the cross-border transfer of information by electronic means [, including personal information,] [when/if] this activity is for the conduct of the [business of a person of [Parties/Members]/business/business [activity] of a covered person].]

**[Alt 3:**

The [Parties/Members] are committed to ensuring cross-border data flows to facilitate trade in the digital economy. To that end, cross-border data flows shall not be restricted by:

- (a) requiring the use of computing facilities or network elements in the [Party's/Member's] territory for processing, including by imposing the use of computing facilities or network elements that are certified or approved in the territory of the Party;
- (b) requiring the localisation of data in the [Party's/Member's] territory for storage or processing;
- (c) prohibiting storage or processing in the territory of other [Parties/Members];
- (d) making the cross-border transfer of data contingent upon use of computing facilities or network elements in the [Party's/Member's] territory or upon localisation requirements in the [Party's/Member's] territory.]

6. **[Alt 1:**

[This Article does not/Nothing in this Article shall] prevent a [Party/Member] from adopting or maintaining a measure inconsistent with paragraph 5 [that is necessary] to achieve a legitimate public policy objective, provided that the measure:

- (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
- (b) does not impose restrictions on transfers of information greater than are [necessary/required] to achieve the objective.]

**[Alt 2:**

Nothing in this Article shall prevent a [Party/Member] from adopting or maintaining measures inconsistent with paragraph 5 to achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised [restriction on trade/barrier to the transfer of information and to trade through electronic means]].

**[Alt 3:**

Nothing in this Article shall prevent a [Party/Member] from adopting or maintaining:

- (a) measures inconsistent with paragraph 5 to achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or
- (b) any measure that it considers necessary for the protection of its essential security interests.

For greater certainty, a legitimate public policy objective includes the protection for privacy.]

**[Alt 4:**

[Parties/Members] may adopt and maintain the safeguards they deem appropriate to ensure the protection of personal data and privacy, including through the adoption and application of rules for the cross-border transfer of personal data. Nothing in the agreed disciplines and commitments shall affect the protection of personal data and privacy afforded by the [Parties'/Members'] respective safeguards.]

7. A measure does not meet the conditions of paragraph 5 if it accords different treatment to data transfers solely on the basis that they are cross-border in a manner that modifies the conditions of competition to the detriment of [a covered person/service suppliers] of another [Party/Member].
8. Paragraph 5 shall not apply to information held or processed by or on behalf of a [Party/Member], or measures related to such information, including measures related to its collection.

*Paragraph 1:*

- Alt 1 based on text proposal by US.
- Alt 2 based on text proposal by KR.
- Alt 3 based on text proposal by JP.

*Paragraph 2:*

- Based on text proposals by CA and KR.

*Paragraph 3:*

- Alt 1 based on text proposals by JP, US, KR and CA.
- Alt 2 based on text proposals by EU and BR.

*Paragraph 4:*

- Based on text proposals by SG, BR, KR and UK.

*Paragraph 5:*

- Alt 1 based on text proposals by US, CT, KR and CA.
- Alt 2 based on text proposals by JP, BR, SG and UK.
- Alt 3 based on text proposal by EU.

*Paragraph 6:*

- Alt 1 based on text proposals by JP, US, CT, CA and UK.
- Alt 2 based on text proposals by SG and BR.
- Alt 3 based on text proposal by KR.
- Alt 4 based on text proposal by EU.

*Paragraph 7:*

- Based on text proposals by US and CT.

*Paragraph 8:*

- Based on text proposal by JP.

(2) Location of computing facilities

1. "Computing facility" means a computer server [and/or] storage device for processing or storing information for commercial use.
2. **[Alt 1:**  
"Covered person" means a national of a [Party/Member] or an enterprise of a [Party/Member].  
**[Alt 2:**  
"Covered person" means:
  - (a) with respect to a [Party/Member], an investment in its territory of an investor of another [Party/Member] in existence as of the date of entry into force of this Agreement for those [Parties/Members] or established, acquired, or expanded thereafter;
  - (b) a [Party/Member], or a national or an enterprise of a [Party/Member], that attempts to make, is making, or has made an investment in the territory of another [Party/Member], with an exception of an investor in a financial institution; or
  - (c) a person of a [Party/Member] that seeks to supply of supplies a services.]**[Alt 3:**  
"Person" means a natural person or an enterprise.]
3. "Enterprise" means [an/any] entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including [any branch, / a] corporation, trust, partnership, sole proprietorship, joint venture, [or other association / association or similar organisation].
4. The [Parties/Members] recognise that each [Party/Member] may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.
5. **[Alt 1:**  
No [Party/Member] shall require [a covered person/an enterprise/a person of [Parties/Members]] to use or locate computing facilities in that [Party's/Member's] territory as a condition for conducting business in that territory.  
**[Alt 2:**  
[Parties/Members] shall not require the use or location of computing facilities in its territory as a condition for conducting business in that territory.]
6. Nothing in this Article shall prevent a [Party/Member] from adopting or maintaining measures inconsistent with paragraph 5 [necessary] to achieve a legitimate public policy objective, provided that the measure:
  - (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; [and
  - (b) does not impose restrictions on the use or location of computing facilities greater than are [necessary/required] to achieve the objective.]
7. Nothing in this Article shall prevent a [Party/Member] from adopting or maintaining any measure that it considers necessary for the protection of its essential security interests.

8. Paragraph 5 shall not apply to information held or processed by or on behalf of a [Party/Member], or measures related to such information, including measures related to its collection.
9. This article does not apply with respect to covered financial service suppliers, which are addressed by Article [X] (Location of financial computing facilities).

*Paragraph 1:*

- Based on text proposals by JP, US, KR, CA and UK.

*Paragraph 2:*

- Alt 1 based on text proposal by US.
- Alt 2 based on text proposal by KR.
- Alt 3 based on text proposal by JP.

*Paragraph 3:*

- Based on text proposals by CA and KR.

*Paragraph 4:*

- Based on text proposals by SG, KR and UK.

*Paragraph 5:*

- Alt 1 based on text proposals by JP, US, KR, UA, CA and UK.
- Alt 2 based on text proposal by SG.

*Paragraph 6:*

- Based on text proposals by JP, SG, UA, KR, CA and UK.

*Paragraph 7:*

- Based on text proposal by KR.

*Paragraph 8:*

- Based on text proposal by JP.

*Paragraph 9:*

- Based on text proposal by US.

(3) [Financial information / Location of financial computing facilities for covered financial service suppliers]

*[Drafting Note: The UK intends to propose definitions for this topic.]*

1. "Covered financial service supplier" means:
  - (a) a financial institution of another [Party/Member]; or
  - (b) a financial service supplier of another [Party/Member], other than a financial institution of another [Party/Member], that is subject to regulation, supervision, and licensing, authorization, or registration by a financial regulatory authority of the [Party/Member].
2. "Financial institution" means a financial intermediary or other enterprise that is authorised to do business and is regulated or supervised as a financial institution under the law of the [Party/Member] in whose territory it is located.
3. "Financial institution of another [Party/Member]" means a financial institution, including a branch, located in the territory of a [Party/Member] that is controlled by a person of another [Party/Member].
4. "Financial market infrastructure" means a multi-participant system in which a covered financial service supplier participates with other financial service suppliers, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives, or other financial transactions.
5. "Financial service" means a service of a financial nature. Financial services include all insurance and insurance-related services and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

*Insurance and insurance-related services*

- (a) direct insurance (including co-insurance):
  - (i) life,
  - (ii) non-life;
- (b) reinsurance and retrocession;
- (c) insurance intermediation, such as brokerage and agency; and
- (d) services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;

*Banking and other financial services (excluding insurance)*

- (e) acceptance of deposits and other repayable funds from the public;
- (f) lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions;
- (g) financial leasing;
- (h) all payment and money transmission services, including credit, charge and debit cards, travellers checks, and bankers drafts;
- (i) guarantees and commitments;
- (j) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:



- (i) money market instruments (including checks, bills, certificates of deposits);
  - (ii) foreign exchange;
  - (iii) derivative products, including futures and options;
  - (iv) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements;
  - (v) transferable securities; and
  - (vi) other negotiable instruments and financial assets, including bullion;
- (k) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and supply of services related to these issues;
- (l) money broking;
- (m) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;
- (n) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (o) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
- (p) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions, and on corporate restructuring and strategy;
6. "Financial service computing facility" means a computer server or storage device for the processing or storage of information for the conduct of business within the scope of the license, authorisation, or registration of a covered person, but does not include a computer server or storage device of, or those used to access:
- (a) financial market infrastructure;
  - (b) exchanges or markets for securities or for derivatives such as futures, options, and swaps; or
  - (c) non-governmental bodies that exercise regulatory or supervisory authority over covered persons;
7. "Financial service supplier of another [Party/Member]" means a person of a [Party/Member] that supplies or seeks to supply a financial service within the territory of another [Party/Member] or to a person of another [Party/Member];
8. A [Party/Member] shall not restrict a financial service supplier of another [Party/Member] from transferring information, including by electronic means, where such transfers are necessary for the conduct of the ordinary business of the financial service supplier.
9. **[Alt 1:**
- The [Parties/Members] recognise that immediate, direct, complete, and ongoing access by a [Party's/Member's] financial regulatory authorities to information of covered financial service suppliers, including information underlying the transactions and operations of such persons, is critical to financial regulation and supervision, and recognise the need to eliminate any potential limitations on that access.

*[paragraph X]* No [Party/Member] shall require a covered financial service supplier to use or locate financial service computing facilities in the [Party's/Member's] territory as a condition for conducting business in that territory, so long as the [Party's/Member's] financial regulatory authorities, for regulatory and supervisory purposes, have immediate, direct, complete, and ongoing access to information processed or stored on financial service computing facilities that the covered financial service supplier uses or locates outside the [Party's/Member's] territory.

Each [Party/Member] shall, to the extent practicable, provide a covered financial service supplier with a reasonable opportunity to remediate a lack of access to information as described in paragraph *[X above]* before the [Party/Member] requires the covered financial service supplier to use or locate financial service computing facilities in the [Party's/Member's] territory.

For greater certainty, so long as a [Party's/Member's] financial regulatory authorities do not have access to information as described in paragraph *[X above]*, the [Party/Member] may require a covered financial service supplier to use or locate financial service computing facilities in the [Party's/Member's] territory.]

**[Alt 2:**

Subject to paragraph *[Y below]*, a [Party/Member] shall not require a financial service supplier of another [Party/Member] to use, store or process information in the [Party's/Member's] territory as a condition for conducting business in that territory **[FN]**.

**[FN:** For greater certainty, the circumstances to which this paragraph applies include those in which a financial service supplier of another [Party/Member] uses a service provided by an external business for the processing or storage of information.]

*[paragraph Y]* A [Party/Member] has the right to require that information of a financial service supplier of another [Party/Member] is used, stored or processed in its territory, where that [Party/Member] is not able to ensure access to information required for the purposes of financial regulation and supervision, provided that, to the extent practicable, the [Party/Member] provides a financial service supplier of another [Party/Member] with a reasonable opportunity to remediate any lack of access to information.]

10. **[Alt 1:**

For greater certainty, a [Party/Member] may adopt or maintain a measure that is not inconsistent with this Agreement, including any measure consistent with Article *[X]* (Prudential Exceptions).]

**[Alt 2:**

For greater certainty, nothing in this Article shall prevent a [Party/Member] from adopting or maintaining measures in accordance with the prudential exception.]

11. Nothing in this Article shall preclude a [Party/Member] from adopting or maintaining measures to protect personal information, personal privacy, and the confidentiality of individual records and accounts, provided that such measures are not used to circumvent the provisions of this Agreement.

*Paragraphs 1-7:*

- Based on text proposal by US.

*Paragraph 8:*

- Based on text proposal by UK.

*Paragraph 9:*

- Based on text proposal by US.

*Paragraph 9:*

- Alt 1 based on text proposal by US.
- Alt 2 based on text proposal by UK.

*Paragraph 10:*

- Alt 1 based on text proposal by US.
- Alt 2 based on text proposal by UK.

*Paragraph 11:*

- Based on text proposal by UK.

## B.3. Customs duties on electronic transmissions

1. "Electronic transmission" or "transmitted electronically" means a transmission made using any electromagnetic means.
2. **[Alt 1:**  
 No [Party/Member] shall impose customs duties [, fees or charges] on electronic transmissions [which include any content transmitted electronically] [between a person of one [Party/Member] and a person of another [Party/Member].]  
  
**[Alt 2:**  
 [Parties/Members] agree to maintain the current practice of not imposing customs duties on electronic transmissions, not including content transmitted electronically. [Parties/Members] may adjust their practice referred to in paragraph 1 in light of any further WTO Ministerial Decisions or Agreements in relation to the Work Programme on Electronic Commerce.  
  
 For greater certainty, the above shall not preclude a Member to apply custom procedures for public policy purposes.]  
  
**[Alt 3:**  
 Each [Party/Member] shall maintain its practice of not imposing customs duties on electronic transmissions between itself and another Member, consistent with paragraph 3 of the WTO Ministerial Decision of 13 December 2017 (WT/MIN(17)/65) and any further WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.]
3. **[Alt 1:**  
 For greater certainty, paragraph 2 shall not preclude a [Party/Member] from imposing internal taxes [, fees] or other [internal] charges on [electronic transmissions [which include] [the/any] content transmitted electronically] [or revenue and profit generated from digital trade], provided that such taxes [, fees] or charges are imposed in a manner consistent with [the WTO Agreement / this Agreement] [and on a non-retroactive basis].]  
  
**[Alt 2:**  
 For greater certainty, paragraph 2 shall not preclude a [Party/Member] from imposing internal taxes on electronic transmissions which include any content transmitted electronically, provided that such taxes are imposed in a manner consistent with Articles I.1 and III:2 of the GATT 1994 or Articles II.1 and XVII of the GATS.]

*Paragraph 1:*

- Based on text proposals by JP, US, BR, KR and CA.

*Paragraph 2:*

- Alt 1 based on text proposals by JP, US, SG, HK, BR, KR, NZ, CA, EU, UA, RU and UK.
- Alt 2 based on text proposal by ID.
- Alt 3 based on proposal by CN.

*Paragraph 3:*

- Alt 1 based on text proposals by SG, HK, UA, KR, NZ, CA, BR, RU, ID, CN and UK.
- Alt 2 based on text proposal by US.

## B.4. Access to internet and data

## (1) Open government data

1. ["Government data" means data, including metadata, (i) held by the central government and (ii) public disclosure of which is not restricted under domestic law. **[FN]**

**FN:** This Article is without prejudice to a Member's/Party's laws pertaining to intellectual property.]

["Open government data" means data held by the central government, [and to the extent provided for in the laws and regulations of a [Party/Member], by other levels of government,] which is made available for public access and use, as determined by the [Party/Member].]

["Metadata" means structural or descriptive information about data such as content, format, source, rights, accuracy, provenance, frequency, periodicity, granularity, publisher or responsible party, contact information, method of collection, and other descriptions.]

2. [Parties/Members] recognise that facilitating public access to and use of [open] government data fosters economic and social development, competitiveness, and innovation.
3. [Parties/Members] shall endeavour to [identify] and [publish] [open] government data and facilitate public access and use. In doing so, [Parties/Members] shall endeavour to [expand the coverage of open government data and] provide the public with the opportunity to [[request]/[recommend] the disclosure of data held by the government] / [apply for the access and use of data held by the government] / [address the government on the disclosure of its data].
4. [To the extent that a [Party/Member] chooses to make government data available to the public,] a [Party/Member] shall [endeavour to] ensure that the [open government] data is:
  - (a) in a [searchable] machine-readable and open format;
  - (b) updated, as applicable, in a timely manner; and
  - (c) properly documented [using [common/standardised] metadata schemes] / [using metadata schemes which are [standardised or] commonly used at least in the [Party/Member]] / [and organized] / [in the form of systematized data using metadata schemes] / [using [common] metadata schemes and organized] / [using commonly used and standardised metadata schemes] / [using/accompanied by metadata that allow the user to understand and manipulate the data].
5. [Parties/Members] shall endeavour to ensure that the user of [open] government data may, [without any restrictive terms and conditions]\*:

*\* or an alternative formulation to be further discussed.*

- (a) use, reuse and redistribute the [open] government data [in any form];
- (b) distribute [open] government data and regroup its components;
- (c) modify [or retrieve] information from the [open] government data; and
- (d) use the [open] government data for commercial [and non-commercial] purposes [, including in the process of production of a new product or service].

[For greater certainty, the user of [open] government data shall endeavour to link original sources, where it is possible.]

**6. [Alt 1:**

[Parties/Members] shall endeavour to cooperate to identify ways in which each [Party/Member] can expand [access to and use of government data [that the [Party/Member] has made public]] / [the coverage of open government data and facilitate access to and use of open government data], [as well as to exchange information and experiences on their practices and policies on open government data,] with a view to enhancing and generating business opportunities, especially for small and medium-sized enterprises.]

**[Alt 2:**

[Parties/Members] are encouraged to exchange information and experiences on their practices and policies on open government data, particularly relating to the development of electronic commerce.]

***Paragraph 1:***

- Based on text proposals by HK, RU and US.

***Paragraph 2:***

- Based on text proposals by HK, JP, RU, UA and US.

***Paragraph 3:***

- Based on text proposals by HK, US.

***Paragraph 4:***

- Based on text proposals by HK, JP, RU, UA and US.

***Paragraph 5:***

- Based on text proposals by RU.

***Paragraph 6:***

- Alt 1: Based on text proposals by JP, RU, UA and US.
- Alt 2: Based on text proposal by HK.

## (2) [Open internet access / Principles on Access to and Use of the Internet for [electronic commerce/Digital Trade]]

## 1. [Alt 1

"End-user" means a natural person, or enterprise to the extent provided for in a [Party's/Member's] laws and regulations, using or requesting a publicly available telecommunications service, either as a consumer or for trade, business or professional purposes.]

## [Alt 2

"User" means a natural person or enterprise using or requesting Internet access services.]

## 2. [Alt 1:

Subject to applicable policies, laws and regulations,] [Parties/Members] recognise [the benefits of/that] consumers in their territories [having/have] the ability to:]

## [Alt 2:

Subject to applicable policies, laws and regulations], [Parties/Members] [should/shall endeavour to] maintain or adopt appropriate measures to ensure that [end-users/consumers] in their territory are able to:]

- (a) access [, distribute] and use services and applications of [a consumer's/their] choice available on the Internet, subject to reasonable [and non-discriminatory/, proportional, non-discriminatory and transparent] network management; [FN]

**FN:** For the purposes of paragraph 2(a), [Parties/Members] recognise that an Internet access service supplier that offers its [consumers] certain content on an exclusive basis would not be acting contrary to this principle.

- (b) connect the [end-user] devices of [a consumer's/their] choice to the Internet, provided that such devices do not harm the network; and
- (c) access [transparent, clear and sufficiently descriptive] information on the network management practices of [a consumer's/their] internet access service supplier.

## 3. [For the adequate provision of services and applications, reasonable network management aims at preserving the stability, safety and functionality of the Internet, by utilising technical measures that are compatible with international standards developed for this purpose.]

## 4. [Access and use of services and applications of a consumer's choice available on the Internet, regardless of the country where the service or application is being provided, subject to reasonable, proportional, non-discriminatory and transparent network management.]

*Paragraph 1:*

- Alt 1: based on text proposal by the UK.
- Alt 2: based on text proposal by the US.

*Paragraph 2:*

- Alt 1: based on text proposals by CT, SG, BR, and CA.
- Alt 2: based on text proposals by the EU, UA, JP and the UK.

*Paragraph 3:*

- Based on text proposal by BR.

*Paragraph 4:*

- Based on text proposal by BR.

(3) Access to and use of interactive computer services

1. "Interactive computer service" means a system or service that provides or enables electronic access by multiple users to a computer server.
2. The [Parties/Members] recognise the importance of interactive computer services in the development and expansion of electronic commerce, as vital to the growth of digital trade.
3. Each [Party/Member] shall ensure that any user of any other [Party/Member] is accorded access to and use of interactive computer services on fair, reasonable and non-discriminatory terms and conditions.
4. Each [Party/Member] shall, at the request of any other [Party/Member], enter into consultations with a view to maintaining practices referred to in paragraph 3. The [Party/Member] addressed shall accord full and sympathetic consideration to such a request and shall cooperate to maintain those practices and supply the requesting [Party/Member] with information of relevance to the matter in question.
5. Nothing in this Article (access to and use of interactive computer services) shall prevent a [Party/Member] from adopting or maintaining measures to comply with its laws and regulations, provided that the measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

*Paragraphs 1-5:*

- Based on text proposal by KR.



(4) Competition

1. [Parties/Members] recognise that some characteristics of digital trade, such as platform-based business models, multi-sided markets, network effects and economies of scale, may pose additional challenges on competition policy. Accordingly, [Parties/Members] shall endeavour to:
  - (a) develop adequate approaches to promoting and protecting competition in digital market;
  - (b) strengthen collaboration mechanisms for cooperating to identify and mitigate market distortions arising from abuses of market dominance.

*Paragraph 1:*

- Based on text proposal by BR.

## Section C: Trust and electronic commerce

## C.1. Consumer Protection

## (1) Online consumer protection

1. "[Misleading] [fraudulent] [and/or] deceptive commercial [activities/conduct]" includes:
  - (a) making misrepresentations or false claims as to material qualities, price, suitability for purpose, quantity or origin of goods and services [, including implied factual misrepresentations, that cause significant detriment to the economic interests of a misled consumer];
  - [(b) advertising goods or services for supply without intention [or objective capability] to supply;]
  - [(c) failing to deliver products or provide services to a consumer after the consumer is charged;] or
  - [(d) charging or debiting a consumer's financial, telephone or other accounts without authorisation.]
2. The Parties/Members recognise the importance of transparent and effective measures that enhance consumer confidence and trust in electronic commerce. Each [Party/Member] shall adopt or maintain [measures/laws or regulations] [that protect consumers from/to proscribe] [misleading] [fraudulent] [and/or] deceptive [commercial practices/commercial activities] [that cause harm or potential harm to consumers] engaged<sup>1</sup> in [electronic commerce] [or] [other] [online [commercial] activities].]
- 2bis. [Such measures shall, *inter alia*/Additionally, [Parties/Members] should consider adopting or maintaining measures that]:
  - (a) require traders to act in good faith [and abide by honest market practices, including in response to questions by consumers];
  - (b) [require traders to provide/give consumers the right to have] accurate and comprehensive information regarding the [goods or] services [and its provider] [and the terms of the contract];
  - [(c) prohibit the charging consumers for services not requested or for a period in time not authorised by the consumer; and]
  - [(d) grant consumers access to redress.]]
3. [Each [Party/Member] shall [to the extent possible] provide protection for consumers engaged in electronic [commerce/transactions] that is [at least [effectively] equivalent to/no worse than] that provided for consumers of other forms of commerce under its laws, regulations or policies.]
4. The [Parties/Members] recognise the importance of cooperation between their respective consumer protection agencies or other relevant bodies [including the exchange of information and experience, [as well as cooperation in appropriate cases of mutual concern [regarding the violation of consumer rights]] in relation to electronic commerce in order to enhance online consumer protection.

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<sup>1</sup> For the purposes of this article, the term 'engaged' includes the pre-transaction phase of electronic commerce.

5. **[Alt 1:**

[Parties/Members] [recognise the importance of improving/shall encourage or promote] awareness of, and access to, [independent, impartial and fair] consumer redress mechanisms, [such as an Online Dispute Resolution(ODR) Scheme for electronic transactions], including for consumers transacting cross-border, [in accordance with the laws and regulations of each Party].

**Alt 2:**

[In accordance with the laws and regulations of each [Party/Member]. [Parties/Members] shall encourage or promote awareness of, and access to, consumer redress mechanism, provide solutions for the disputes between consumers and operators of electronic commerce, through maintaining or instituting judicial, arbitral, or administrative tribunals or procedures, or consumers associations.]

## 6. [Each Member shall take measures aimed at stimulation of commercial activities within the framework of electronic commerce in conformity with the following fair business practice principles:

- (a) to provide accurate, detailed, clear and easily accessible information about seller/supplier and goods or services offered, and about the conditions and costs associated with a transaction to enable consumers to make an informed decision about the transaction, and retain a complete and accurate record of the transaction;
- (b) to inform the consumer about the warranty period and expiration dates of goods;
- (c) to confirm the consumer purchase intention;
- (d) to provide to consumer before the purchase is concluded a possibility to correct or modify the order;
- (e) to provide to consumers easy to use, secure payment system and information on the level of security such systems afford;
- (f) to grant safety of goods or services with conditions of appropriate use based on the information provided;
- (g) to compensate for damage caused by the violation of consumers' rights].

*[Drafting note: Guatemala and Ecuador can support this text as long as they are allowed an implementation period of X years.]*

**Paragraph 1:**

- Based on text proposals by SG and NZ.

**Paragraph 2:**

- Based on text proposals by JP, NZ, SG, HK, UA, CN, CA, RU, EU, BR.

**Paragraph 3:**

- Based on text proposals by NZ, SG, CN, KR, RU.

**Paragraph 4:**

- Alt 1 based on text proposals by NZ, EU, SG, HK, BR, UA, KR and CA, RU.

**Paragraph 5:**

- Alt 1 based on text proposals by NZ, BR and KR.
- Alt 2 based on text proposal by CN.

**Paragraph 6:**

- Based on text proposal by RU.

**Drafting Note:**

- Proposed by GT and EC.

## (2) Unsolicited commercial electronic messages

1. ["Commercial electronic message" means an electronic message which is sent for commercial purposes to an electronic address of a person<sup>2</sup> through telecommunication services, comprising at least electronic mail and to the extent provided for under domestic laws and regulations, other types of messages. "Unsolicited commercial electronic message" means a commercial electronic message that is sent without the consent of the recipient or despite the explicit rejection of the recipient.]
2. [[Parties/Members] recognize the importance of promoting confidence and trust in electronic commerce, including through transparent and effective measures that limit unsolicited commercial electronic messages. Each [Party/Member] shall [endeavour to] adopt or maintain measures that:
  - (a) require suppliers of [unsolicited] commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages; or
  - (b) require the consent, as specified in the laws or regulations of each [Party/Member], of recipients to receive commercial electronic messages; [or]
  - (c) [otherwise provide for the minimisation of unsolicited commercial electronic messages].]
3. [[Parties/Members] shall [endeavour to] require that commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are made, and contain the necessary information to enable recipients to request cessation free of charge and at any time.]
4. [Each [Party/Member] shall provide access to either redress or recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraph 2 [and 3].]
5. [[Parties/Members] shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

[Drafting note: Guatemala and Ecuador can support this text as long as they are allowed an implementation period of X years.]

**Paragraph 1:**

- Based on text proposals by JP, HK, BR, KR, CA and EU.

**Paragraph 2:**

- Based on text proposals by JP, HK, UA, KR, CA, EU, SG, CN and BR.

**Paragraph 3:**

- Based on text proposals by BR, UA and EU.

**Paragraph 4:**

- Based on text proposals by JP, SG, HK, KR, CN, CA, EU and UA.

**Paragraph 5:**

- Based on text proposals by JP, SG, HK, KR, CN and CA.

**Drafting Note:**

- Proposed by GT and EC.

<sup>2</sup> For greater certainty, the "electronic address of a person" does not cover IP addresses.

C.2. Privacy

(1) [Personal information protection / Personal data protection]

1. **[Alt 1:**

"Personal information" means [any] information, including data, [about/relating to] an identified or identifiable natural person.]

**[Alt 2:**

"Personal data" means [any] [direct or indirect] information [about/relating to] an identified or identifiable natural person.]

**[Alt 3:**

"Personal information" means various types of information, recorded by electronic or other means, that can be used individually or in combination with other information for identifying the identity of a natural person.]

2. "Significant Harm" includes bodily harm, humiliation, damage to reputation or relationships, loss of employment, business or professional opportunities, financial loss, identity theft, negative effects on the credit record and damage to or loss of property.

3. **[Alt 1:**

The [Parties/Members] recognise the economic and social benefits of protecting the personal [information/data] of users of [electronic commerce/digital trade] and the contribution that this makes to enhancing consumer confidence in [electronic commerce/digital trade].

**[Alt 2:**

[Parties/Members] recognise that the protection of personal data and privacy is a fundamental right and that high standards in this regard contribute to trust in the digital economy and to the development of trade.]

**[Alt 3:**

The [Parties/Members] recognise the importance of ensuring compliance with measures to protect personal information and ensuring that any restrictions on cross-border flows of personal information are necessary and proportionate to the risks presented.]

4. **[Alt 1:**

[To this end,] each [Party/Member] shall adopt or maintain [a legal framework/measures] that provides for the protection of the personal [information/data] of [individuals/the users of electronic commerce/the users of digital trade].

**[Alt 2:**

Parties may adopt and maintain the safeguards they deem appropriate to ensure the protection of personal data and privacy, including through the adoption and application of rules for the cross-border transfer of personal data. Nothing in the agreed disciplines and commitments shall affect the protection of personal data and privacy afforded by the [Parties/Members'] respective safeguards.]

**[Alt 3:]**

To this end, the [Parties/Members] shall adopt or maintain measures that ensure the protection of personal data, including the cross-border transfer and processing of personal data and the conditions and requirements relating to it to promote the fundamental values of respect for privacy and protection of personal data.]

5. **[Alt 1:]**

In the development of its [legal framework/measures] for the protection of personal [information/data], each [Party/Member] [should/may/shall] take into account [principles and guidelines/international standards and the criteria] of relevant international [bodies/organisations] [such as the OECD Recommendation of the Council concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data (2013)].]

**[Alt 2:]**

To the extent possible, the legal framework for the protection of personal information shall take into account principles and guidelines of relevant international bodies.]

6. For greater certainty, a [Party/Member] may comply with the obligation in paragraph [3/(3 and 4)] by adopting or maintaining measures such as a comprehensive privacy, personal information or personal data protection laws, sector-specific laws covering privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to privacy.

7. **[Alt 1:]**

Each [Party/Member] shall endeavour to adopt [or maintain] non-discriminatory practices in protecting users of [electronic commerce/digital trade] from personal [information/data] protection violations [occurring within its jurisdiction/and criminal acts occurring within its jurisdiction].]

**[Alt 2:]**

Each [Party/Member] shall endeavour to adopt non-discriminatory practices in protecting citizens, consumers and medical patients from personal information protection violations occurring within its jurisdiction.]

8. The [Parties/Members] shall ensure obtaining the directly expressed individual's consent for cross-border transfer and processing of his personal data.

9. Each [Party/Member] [shall/should] publish information on the personal [information/data] protections it provides to [users of digital trade/users of electronic commerce/citizens, consumers and medical patients], including how:

- (a) [individuals/a natural person] can pursue remedies; and
- (b) [an enterprise/business] can comply with [any] legal requirements.

10. Recognising that [Parties/Members] may take different legal approaches to protecting personal [information/data], each Party [should/shall] encourage the development of mechanisms to promote [compatibility/interoperability] between these different regimes.

11. The mechanisms referred to in paragraph 9 may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks [or where practicable, appropriate recognition of comparable protection afforded by their respective legal frameworks, national trustmark or certification frameworks, or other avenues of transfer of personal information between the [Parties/Members].]

12. [To this end,] [Parties/Members] shall endeavour to exchange information on [the/any] mechanisms [referred to in paragraph 9 that are] applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.
13. No Member shall use the personal information of natural persons obtained from enterprises operating within their jurisdiction in a manner which constitutes targeted discrimination on manifestly wrongful grounds such as race, colour, sex, sexual orientation, gender, language, religion, political or other opinion, national or social origin, property, medical, birth, or other status, genetic identity, age, ethnicity, or disability.
14. Each Member shall endeavour to ensure that any personal information disclosed to a government authority by an enterprise is protected against loss or theft, as well as unauthorized access, disclosure, copying, use or modification.
15. Each Member shall ensure that any personal information disclosed to a government authority by an enterprise is not accessed, disclosed, used or modified by a government authority in a manner that can reasonably be expected to cause significant harm to a natural person. **[FN]**

**FN:** For greater certainty, the public disclosure of personal information that can reasonably be expected to cause significant harm does not constitute a violation of this obligation provided that it is not inconsistent with paragraph X.1. of this Article and that it is done for the purposes of legitimate law enforcement activities, judicial proceedings, compliance with regulatory requirements, or national security.

*Paragraph 1:*

- Alt 1 based on text proposals by JP, US, HK, KR, CA and UK.
- Alt 2 based on text proposals by EU, RU and BR.
- Alt 3 based on text proposal by CN.

*Paragraph 2:*

- Based on text proposal by CA

*Paragraph 3:*

- Alt 1 based on text proposals by JP, SG, HK, KR, CN, RU, CA and UK.
- Alt 2 based on text proposal by EU.
- Alt 3 based on text proposal by US.

*Paragraph 4:*

- Alt 1 based on text proposals by JP, US, SG, HK, BR, UA, KR, CN, CA and UK.
- Alt 2 based on text proposal by EU.
- Alt 3 based on text proposal by RU.

*Paragraph 5:*

- Alt 1 based on text proposals by JP, HK, BR, KR, CN, CA and UK.
- Alt 2 based on text proposal by SG.

*Paragraph 6:*

- Based on text proposals by JP, US, CN and UK.

*Paragraph 7:*

- Alt 1 based on text proposals by JP, HK, UA, KR, CN, SG, CA and UK.
- Alt 2 based on text proposal by BR.

*Paragraph 8:*

- Based on text proposal by RU.

*Paragraph 9:*

- Based on text proposals by JP, US, SG, HK, BR, KR, CN, CA and UK.

*Paragraph 10:*

- Based on text proposals by JP, US, SG, BR, UA, CN, CA and UK.

*Paragraph 11:*

- Based on text proposals by JP, SG and UK.

*Paragraph 12:*

- Based on text proposals by JP, SG, UA, CN, CA and UK.

*Paragraphs 13-15:*

- Based on text proposal by CA

## C.3. Business trust

## (1) Source code

1. ["Algorithm" means a defined sequence of steps [,] taken to solve a problem or obtain a result.]
2. No [Party/Member] shall require the transfer of, or access to, source code of software owned by [a person/a natural or juridical person] of another [Party/Member], [or the transfer of, or access to, an algorithm expressed in that source code,] as a condition for the import, distribution, sale, or use of that software, or of products containing that software, in its territory.
3. [For the purposes of this Article, software subject to paragraph 2 is limited to mass-market software or products containing such software and does not include software used for critical infrastructure.]

## 4. [Alt 1:

Nothing in this Article shall preclude:

- (a) the inclusion or implementation of terms and conditions related to provision of source code in commercially negotiated contracts; or
- (b) a [Party/Member] from requiring the modification of source code of software necessary for that software to comply with laws or regulations which are not inconsistent with this Agreement [; or
- (c) a [Party/Member] from requiring the transfer of, or access to, source code of software as a means of imposing ex-post regulation].

## [Alt 2:

[For greater certainty:]

- (a) the general exception, the security exception as well as [the exceptions in the paragraph 2 of the GATS Annex on Financial Services / prudential exception] apply to measures adopted or maintained [by a [Party/Member] inconsistent with paragraph 2, including] in the context of a certification [or assurance] procedure;
- (b) paragraph 2 does not apply to the voluntary transfer of or granting of access to source code [of software, or an algorithm expressed in that source code,] by [a person of another [Party/Member]/ a natural or juridical person] [:]
  - (i) [under open source licences, such as in the context of open source coding; or]
  - (ii) on a commercial basis, for instance in the context of [a public procurement transaction or] a freely negotiated contract.]

## 5. [Alt 1:

This Article [does/shall] not preclude a regulatory body or judicial authority of a [Party/Member] [, or a [Party/Member] with respect to a conformity assessment body,] from requiring a person of another [Party/Member] [:]

- (a) to preserve and make available [FN] the source code of software, or an algorithm expressed in that source code, for [an / a specific] investigation, inspection, examination, enforcement action, or judicial proceeding, [or the monitoring of compliance with codes of conduct and other standards,] subject to safeguards against unauthorised disclosure [; and



- (b) to transfer or provide access to the source code of software, or an algorithm expressed in that source code, for the purpose of the imposition or enforcement of a remedy granted in accordance with that [Party's/Member's] law following an investigation, inspection, examination, enforcement action, or a judicial proceeding].

**FN:** [[Parties/Members] understand that] this making available shall not be construed to negatively affect the status of source code of software or algorithm expressed in that source code as a trade secret [, if such status is claimed by the trade secret owner].]

**[Alt 2:**

Paragraph 2 is without prejudice to:

- (a) requirements by a court, administrative tribunal, or by a competition authority to remedy a violation of competition law;
- (b) the protection and enforcement of intellectual property rights; and
- (c) the right to take any action or not disclose any information that is considered necessary for the protection of essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.]

**[Alt 3:**

Nothing in this Article shall be construed to affect requirements that relate to patent applications or granted patents, including any orders made by a judicial authority in relation to patent disputes, subject to safeguards against unauthorised disclosure under the laws or regulations or practice of a [Party/Member].]

**Paragraph 1:**

- Based on text proposals by CA, CT, JP, MX, PE, UA, US and UK.

**Paragraph 2:**

- Based on text proposals by CA, CT, JP, MX, KR, PE, UA, US, SG, UK and EU.

**Paragraph 3:**

- Based on text proposals by KR.

**Paragraph 4:**

- Alt 1 based on text proposal by KR.
- Alt 2 based on text proposals by EU and UK.

**Paragraph 5:**

- Alt 1 based on text proposals by CA, CT, JP, MX, PE, UA, US and UK.
- Alt 2 based on text proposal by EU.
- Alt 3 based on text proposals by KR and SG.

## (2) ICT products that use cryptography

## 1. For the purposes of this Article:

- (a) "Cipher" or "cryptographic algorithm" means a mathematical procedure or formula for combining a key with plaintext to create a ciphertext;
- (b) ["Ciphertext" means data in a form that cannot be easily understood without subsequent decryption.]
- (c) "Cryptography" means the principles, means or methods for the transformation of data in order to conceal or disguise its content, prevent its undetected modification, or prevent its unauthorised use; and is limited to the transformation of information using one or more secret parameters, for example, crypto variables, or associated key management;
- (d) "Encryption" means the conversion of data (plaintext) through the use of a cryptographic algorithm into a [ciphertext / form that cannot be easily understood without subsequent reconversion (ciphertext)] [and/using] the appropriate [cryptographic] key;
- (e) "[Commercial] Information and communication technology product ([commercial] ICT product)" means a product [, including digital products,] [that is designed for commercial applications and] whose intended function is information processing and communication by electronic means, including transmission and display, or electronic processing applied to determine or record physical phenomena, or to control physical processes; and
- (f) "Key" means a parameter used in conjunction with a cryptographic algorithm that determines its operation in such a way that [an entity / a person] with knowledge of the key can reproduce or reverse the operation, while [an entity / a person] without knowledge of the key cannot.

## 2. This Article shall apply to [commercial] ICT products that use cryptography [FN1]. This Article does not apply to:

- (a) a [Party's/Member's] law enforcement authorities requiring service suppliers using encryption [they control] to provide [access to encrypted and] unencrypted communications pursuant to that [Member's/Party's] legal procedures;
- (b) the regulation of financial instruments;
- (c) a requirement that a [Party/Member] adopts or maintains relating to access to networks, including user devices, that are owned or controlled by [that [Party/Member] / the government of that [Party/Member]], including those of central banks;
- (d) a measure [taken] by a [Party/Member] [adopted or maintained] pursuant to supervisory, investigatory, or examination authority relating to financial [institutions / service suppliers] or financial markets; or
- (e) the manufacture, sale, distribution, import, or use of [a commercial / the] ICT product by or for [the government of] a [Party/Member].

[FN1: For greater certainty, for the purposes of this Article, a commercial ICT product does not include a financial instrument.]

## 3. [With respect to an ICT product that uses cryptography and is designed for commercial applications,] no [Party/Member] shall require a manufacturer or supplier of [a commercial ICT product that uses cryptography / the ICT product], as a condition of the manufacture, sale, distribution, import or use of the [commercial] ICT product, to:

- (a) transfer or provide access to any proprietary information relating to cryptography, including by disclosing a particular technology or production process or other information, for example, a private key or other secret parameter, algorithm specification, or other design detail, to that [Party/Member] or a person in the territory of that [Party/Member] [FN2];
- (b) partner or otherwise cooperate with a person in the territory of that [Party's/Member] in the development, manufacture, sale, distribution, import, or use of the [commercial] ICT product; or
- (c) use or integrate a particular cryptographic algorithm or cipher.

[FN2: For greater certainty, this Article does not affect the rights and obligations of a [Party/Member] under Article X (Source Code).]

4. This Article shall not preclude a regulatory body or judicial authority of a [Party/Member] from requiring a manufacturer or supplier of a commercial ICT product that uses cryptography:
- (a) to preserve and make available [FN3] any information to which paragraph 3(a) applies for an investigation, inspection, examination, enforcement action or a judicial proceeding, subject to safeguards against unauthorised disclosure; or
  - (b) to transfer or provide access to any information to which paragraph 3(a) applies for the purpose of imposing or enforcing a remedy granted in accordance with that [Party's/Member's] competition law following an investigation, inspection, examination, enforcement action or a judicial proceeding.

**FN3:** [Parties/Members] understand that this making available shall not be construed to negatively affect the status of any proprietary information relating to cryptography as a trade secret.

*Paragraphs 1-3:*

- Based on text proposals by JP and UK.

*Paragraph 4:*

- Based on text proposal by UK.

Section D: Cross-cutting issues

D.1. Transparency, domestic regulation and cooperation

(1) Transparency

1. Each [Party/Member] shall:

**[Alt 1:**

publish, or otherwise make publicly available, promptly and, except in emergency situations, at the latest by the time of their entry into force, all measures **[FN]** of general application pertaining to or affecting [digital trade / electronic commerce].

**FN:** definition of "measures" subject to negotiations and cross-cutting consideration to ensure consistency across the agreement.]

**[Alt 2:**

ensure that all measures of general application which pertain to or affect the operation of this Agreement are published promptly, except in emergency situations, at the latest by the time of their entry into force, or made publicly available.]

*Paragraph 1:*

- Alt 1 based on text proposals by CA and JP.
- Alt 2 based on text proposal by CN.

## (2) Electronic availability of trade related information

1. [Parties/Members] are encouraged to maintain a publicly accessible official website containing information regarding:
  - (a) the items (a) to (j) of the article 1.1 of the Agreement on Trade Facilitation;
  - (b) electronic trade administration documents accepted or issued by the [Party/Member];
  - (c) instructions for the submission of electronic trade administration documents;
  - (d) requirements for system interoperability with the national single window, when available.
  
2. [Parties/Members] shall endeavour to provide, to the extent possible and practicable, on an official website a database that is electronically searchable by tariff nomenclature code and other relevant information, and that includes the following information with respect to access to its market:
  - [(a) rates of most-favoured nation (MFN);
  - (b) preferential customs duties and quotas;]
  - (c) rules of origin;
  - (d) [customs or other fees at the border;
  - (e) excise duties;
  - (f) taxes (value added tax / sales tax);
  - (g) other tariff measures;
  - (h) deferral, or other types of relief that reduce, refund, or waive customs duties;
  - (i) criteria used to determine the customs value of the good;
  - (j) if applicable, country of origin marking requirements, including placement and method of marking;
  - (k) information needed for import procedures;]
  - (l) information related to non-tariff measures or regulations [such as quantities restrictions, import licensing, trade remedies measures.
  - (m) the items (a) to (j) of the article 1.1 of the Agreement on Trade Facilitation;
  - (n) detailed import statistics, including preferential trade, with duty scheme breakdown by partner/beneficiary for each calendar year.]

**Paragraph 1:**

- Based on text proposal by BR.

**Paragraph 2:**

- Based on text proposals by BR and RU.

(3) Domestic regulation

1. **[Alt 1:**

Each [Party/Member] shall ensure that all its measures affecting electronic commerce, including measures related to its collection of information, are administered in a transparent, objective, reasonable and impartial manner, and are not more burdensome than [required/necessary] to meet legitimate public policy objectives.]

**[Alt 2:**

[Parties/Members] agree that provisions in Article VI of the General Agreement on Trade in Services concerning domestic regulation shall apply to this Agreement to the extent applicable. To this end, the provisions shall be incorporated into and made an integral part of this Agreement, mutatis mutandis. Nothing in this Agreement shall be construed to affect any [Party's/Member's] right to conduct a content review for the purposes of achieving legitimate public policy objectives.]

*Paragraph 1:*

- Alt 1 based on text proposal by JP.
- Alt 2 based on text proposal by CN.

## (4) Cooperation

## 1. [Alt 1:

Recognising the global nature of electronic commerce, [Parties/Members] [shall endeavour to/affirm the importance of]:

- (a) work together to [facilitate the use of electronic commerce by micro, small and medium-sized enterprises] [assist small and medium-sized enterprises to overcome obstacles to its use];
- (b) exchange information and share experiences on [laws,] regulations, policies, [enforcement and compliance] regarding electronic commerce, including:
  - (i) personal information protection;
  - (ii) [online] consumer protection, [including means for consumer redress and building consumer confidence];
  - (iii) [unsolicited commercial electronic messages];
  - (iv) security in electronic communications;
  - (v) [intellectual property rights];
  - (vi) authentication;
  - (vii) e-government; and
  - (viii) [consumer access to products and services offered online among [Parties/Members]];
- [(c) working together to maintain cross-border information flows as an essential element in the promotion of a dynamic environment for electronic commerce;]
- (d) participate actively in regional and multilateral forums to promote the development of electronic commerce; and
- (e) [encourage development by the private sector of methods of self-regulation that foster electronic commerce including/encouraging electronic commerce by promoting the development of], codes of conduct, model contracts, [seals of approval] guidelines and [enforcement] mechanisms [used by the private sector].

## [Alt 2:

[Parties/Members] shall maintain cooperation and dialogue on the regulatory issues raised by digital trade on the basis of mutually agreed terms and conditions, which shall address, *inter alia*, the following issues:

- (a) the recognition and facilitation of interoperable cross-border electronic signature and authentication services;
- (b) cross-border transfer of information by electronic means;
- (c) the liability of intermediary service providers with respect to the transmission or storage of information;
- (d) the treatment of direct marketing communications;
- (e) the protection of consumers in the ambit of digital trade;
- (f) data privacy;

- (g) cybersecurity;
- (h) methodologies to measure digital trade flows, including cross-border;
- (i) the promotion of paperless trading;
- (j) the promotion of digital trade by micro, small and medium-sized enterprises;
- (k) electronic government; and
- (l) any other issue relevant to the development of digital trade.

Such cooperation shall focus on exchange of information on the [Parties'/Members'] respective legislation on these issues as well as on the implementation of such legislation.]

**Paragraph 1:**

- Alt 1 based on text proposals by JP, CL, CO, MX and PE.
- Alt 2 based on text proposal by BR.



(5) Cooperation Mechanism

1. Each [Party/Member] shall, within its available resources, establish or maintain one or more enquiry points to:
  - (a) Be responsible for notification and consultation procedure related to the implementation of this Agreement.
  - (b) Answer reasonable enquiries of other [Parties/Members] on matters covered by this Agreement.
  - (c) Facilitate communications between the [Parties/Members] on any matter covered by this Agreement.
2. The enquiry points shall answer enquiries within a reasonable time period, which may vary depending on the nature or complexity of the request.
3. Each [Party/Member] shall notify the [Secretariat/Committee on E-commerce] of the contact information of the enquiry points referred to in paragraph 1
4. When the notification or consultation may have a significant effect on trade, each [Party/Member] shall notify or request to consult other [Parties/Members] and shall provide the information in the paragraph 1(b) through the [Secretariat/Committee on E-commerce].
5. For greater certainty, the consultation procedure in accordance with the paragraph 1(a) is separate from the consultation of the Dispute Settlement Understanding.

*Paragraphs 1-5:*

- Based on text proposal by KR.

## D.2. Cybersecurity

## 1. [Alt 1:

The [Parties/Members] recognise that threats to cybersecurity undermine confidence in digital trade.]

## [Alt 2:

The [Parties/Members] recognise that the rising level of cybercrime and fraud in terms of increasing the number of information systems that use personal data is a challenge, whose impact should be minimised.]

## 2. [Alt 1:

The [Parties/Members] [shall endeavour to / recognise the importance of]:

- (a) building the capabilities of their respective national entities responsible for cybersecurity incident response [, taking into account the evolving nature of cybersecurity threats];
- (b) [using/strengthening] existing collaboration mechanisms to [cooperate to [anticipate,] identify and mitigate malicious intrusions or dissemination of malicious code that affect electronic networks [of [Parties/Members]] [and use those mechanisms to swiftly address cybersecurity incidents, as well as for the sharing of information for awareness and best practices].]

## [Alt 2:

The [Parties/Members] shall endeavour to build their capabilities to prevent and respond to cybersecurity incidents by adopting, *inter alia*, risk-based approaches to mitigating threats that avoid trade restrictive and trade distortive outcomes.]

## [Alt 3:

Members should respect the internet sovereignty, exchange best practices, enhance electronic commerce security, deepen cooperation, and safeguard the cyber security. (To be further drafted)]

3. Given the evolving nature of cybersecurity threats, the [Parties/Members] recognise that risk-based approaches may be more effective than prescriptive [regulation/approaches] in addressing those threats. Accordingly, each [Party/Member] shall endeavour to employ, and [shall] encourage enterprises within its jurisdiction to use, risk-based approaches that rely on [open and transparent industry / consensus-based] standards and risk management best practices to identify and protect against cybersecurity risks and to detect, respond to, and recover from cybersecurity events.

**Paragraph 1:**

- Alt 1 based on text proposals by US and UK.
- Alt 2 based on text proposal by UA.

**Paragraph 2:**

- Alt 1 based on text proposals by KR, US, JP, UA and UK.
- Alt 2 based on text proposal by BR.
- Alt 3 based on text proposal by CN.

**Paragraph 3:**

- Based on text proposals by US and UK.

## D.3. Capacity building

## (1) Options for capacity building and technical assistance

1. Upon request of a developing [Party/Member] or LDC, developed and developing [Parties/Members] in a position to do so shall provide targeted technical assistance and capacity building on mutually agreed terms and conditions to developing [Parties/Members], in particular LDCs, in improving, promoting, and protecting the development of electronic commerce to allow them implement WTO rules on electronic commerce.
2. Electronic Commerce for Development Program: [Parties/Members] should explore the way to establish an Electronic Commerce for Development Program under the WTO framework to encourage, manage and coordinate the contributions that [Parties/Members] voluntarily provide, with the aim of assisting developing [Parties/Members], especially LDCs [to improve development of electronic commerce and implement WTO rules on electronic commerce].
3. Bridge the Digital Divide: Members are encouraged to adopt recommendations and practical measures that contribute to improving the electronic commerce infrastructure and technical conditions of developing Members, to help enterprises and citizens realize digital transition.
4. Research, Training and Communication: Members are encouraged to conduct information exchange, joint study and cooperative training, share best practices of electronic commerce development and implement capacity building among Members and international organizations, to promote the common development of electronic commerce.

*Paragraph 1:*

- Based on text proposal by ID.

*Paragraph 2:*

- Based on text proposals by CN and ID.

*Paragraphs 3-4:*

- Based on text proposal by CN.

Section E: Telecommunications

E.1. Updating the WTO Reference Paper on Telecommunications Services

(1) Scope

1. The following are definitions and principles on the regulatory framework for telecommunications services.

*Paragraphs 1:*

- Based on text proposal by EU.

(2) Definitions

*[The following terms are used in multiple provisions in this Section. Definitions for terms used in only one provision are listed with that provision.]*

1. "Major supplier" means a supplier of telecommunications networks or services which has the ability to materially affect the terms of participation (having regard to price and supply) in a relevant market for telecommunications services as a result of:
  - (a) control over essential facilities; or
  - (b) use of its position in the market;
2. "Public telecommunications network" means the telecommunications infrastructure used for the provision of public telecommunications services between and among defined network termination points;
3. "Public telecommunications service" means any telecommunications service that is offered to the public generally;
4. "Telecommunications regulatory authority" means the body or bodies charged by a [Party/Member] with the regulation of telecommunications networks and services covered by these principles;
5. "Telecommunications service" means a service consisting of the transmission and reception of signals by any electromagnetic means irrespective of the technology used;

**Paragraphs 1-5:**

- Based on text proposal by EU.

(3) Competitive safeguards

1. Appropriate measures shall be maintained for the purpose of preventing suppliers of telecommunications networks or services who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
2. The anti-competitive practices referred to in paragraph 1 shall include in particular:
  - (a) engaging in anti-competitive cross-subsidisation;
  - (b) using information obtained from competitors with anti-competitive results; and,
  - (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

*Paragraphs 1-2:*

- Based on text proposal by EU.

(4) Interconnection

1. "Interconnection" means linking with suppliers of public telecommunications networks or services in order to allow users of one supplier to communicate with users of the same or another supplier or to access services provided by the suppliers involved or any other supplier who has access to the network;
2. "User" means a service consumer or a service supplier;
3. Interconnection with a major supplier shall be ensured at any technically feasible point in the network. Such interconnection shall be provided:
  - (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
  - (b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
  - (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.
4. The procedures applicable for interconnection to a major supplier shall be made publicly available.
5. Major suppliers shall make publicly available either their interconnection agreements or a reference interconnection offer.

*Paragraphs 1-5:*

- Based on text proposal by EU.

(5) Universal service

1. Any [Party/Member] has the right to define the kind of universal service obligations it wishes to maintain and to decide on their scope and implementation.
2. Universal service obligations shall be administered in a transparent, objective and non-discriminatory manner, which is neutral with respect to competition and not more burdensome than necessary for the kind of universal service defined by the [Party/Member].
3. The designation of universal service suppliers shall be made through an efficient, transparent and non-discriminatory mechanism that is open to all suppliers of public telecommunications networks or services.
4. Where suppliers of public telecommunications networks or services are compensated for the provision of universal service, such compensation shall not exceed the financial needs directly attributable to the universal services obligations.

*Paragraphs 1-4:*

- Based on text proposal by EU.



(6) Licensing and authorisation

1. Authorisation to provide public telecommunications networks or services should in principle be granted without a formal licencing procedure, so that the supplier may start providing its networks or services without having to wait for a decision by the telecommunications regulatory authority.
2. Where a licence is required, the following shall be made publicly available:
  - (a) the types of networks or services requiring a licence;
  - (b) all the licensing criteria, applicable procedures and the period of time normally required to reach a decision concerning an application for a licence; and
  - (c) the terms and conditions of individual licences.
3. An applicant for a licence shall receive, on request, the reasons for any denial of a license, imposition of supplier-specific conditions on a license, revocation of a license, or refusal to renew a license.

*Paragraphs 1-3:*

- Based on text proposal by EU.

(7) Telecommunications regulatory authority

1. The telecommunications regulatory authority shall be separate from, and not accountable to, any supplier of telecommunications networks or services. To this end, the telecommunications regulatory authority shall not hold a financial interest or maintain an operating or management role in any such supplier.
2. Tasks shall be assigned by law to the telecommunications regulatory authority to enforce the obligations set out in these principles, and shall be made public in an easily accessible and clear form.
3. The telecommunications regulatory authority shall have the power, including the ability to impose sanctions, to carry out the tasks assigned to it by law. Such power shall be exercised transparently and in a timely manner.
4. The decisions of and the procedures used by the telecommunications regulatory authority shall be impartial with respect to all market participants.

**Paragraphs 1-4:**

- Based on text proposal by EU.

(8) Allocation and use of scarce resources

1. Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner.
2. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.
3. The assignment of frequency bands for public telecommunication services shall be carried out via an open process that takes into account the overall public interest, including the promotion of competition. Such assignment should in principle be carried out using market-based approaches, including through mechanisms such as auctions where appropriate.

*Paragraphs 1-3:*

- Based on text proposal by EU.

(9) Essential facilities

1. "Essential facilities" means facilities of a public telecommunications network or service that:
  - (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
  - (b) cannot feasibly be economically or technically substituted in order to provide a service;
2. "Network element" means a facility or equipment used in supplying a telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;
3. A major supplier shall make its essential facilities available to suppliers of public telecommunications networks or services on reasonable, transparent and non-discriminatory terms and conditions for the purpose of providing public telecommunications services, when this is necessary to achieve effective competition.
4. Where a decision by the telecommunications regulatory authority is required to ensure compliance with paragraph 3:
  - (a) such decision shall be justified on the basis of the facts collected and the assessment of the market conducted by the telecommunications regulatory authority;
  - (b) the telecommunications regulatory authority shall be empowered to:
    - (i) determine those essential facilities required to be made available by a major supplier;
    - (ii) require a major supplier to offer access on an unbundled basis to its network elements that are essential facilities.

*Paragraphs 1-4:*

- Based on text proposal by EU.

(10) Resolution of disputes

1. A supplier of telecommunications networks or services shall have recourse, within a reasonable and publicly available period of time, to the telecommunications regulatory authority or other competent authority to resolve disputes regarding the measures relating to matters set out in these principles.

**Paragraph 1:**

- Based on text proposal by EU.

(11) Transparency

1. [Alt 1:

Further to Article 4 of the GATS Annex on Telecommunications and to other dispositions in these principles pertaining to publication of information, any measure relating to telecommunications networks or services shall be made publicly available.]

[Alt 2:

[Parties/Members] shall ensure that all measures relating to public telecommunications networks or services are made publicly available. Where a measure involves a license, it shall include:

- (a) the circumstances in which a license is required;
- (b) all applicable licensing procedures;
- (c) the period of time generally required to reach a decision on a license application;
- (d) the cost of, or fees for applying for or obtaining a license; and
- (e) the period of validity of a license.]

*Paragraph 1:*

- Alt 1 based on text proposal by EU.
- Alt 2 based on text proposal by CN.

## E.2. Network equipment and products

## (1) Electronic commerce-related network equipment and products

1. "Electronic commerce-related network equipment and products" refer to all hardware and related software and services that can be used to support transactions done by electronic means, including telecommunication network equipment, products, resources, and related services such as installation, trial operation, testing, optimization, maintenance and repair services and etc., and other related equipment, products, resources and related services.
2. [Parties/Members] recognize the importance of electronic commerce-related network equipment and products and their supply chains to ensure the sustainable development of electronic commerce.
3. With respect to all measures affecting the production, supply, rental, sale, export and import of electronic commerce-related network equipment and products, each [Party/Member] shall accord to enterprises and electronic commerce-related network equipment and products of any other Member treatment no less favorable than that it accords to any other like enterprises or any other like electronic commerce-related network equipment and products.
4. No [Party/Member] shall, whether in written form or not, exclude or limit the supply of electronic commerce-related network equipment and products or other normal business operations of enterprises from any other [Party/Member], unless in a way consistent with the WTO Agreement, and based on the conduct of an investigation pursuant to legitimate public policy objectives, a conclusion thereof with concrete evidences, and advance notices.
5. No [Party/Member] shall prevent public telecommunications networks or their services suppliers, including value-added services, from choosing the supporting technologies of their networks and services, and/or electronic commerce-related network equipment and products related to the technologies.
6. No [Party/Member] shall, whether in written form or not, block the supply chains of electronic commerce-related network equipment and products, in particular those based on long-term commercial cooperation, including cutting or prohibiting the supply to enterprises of any other [Party/Member] of necessary raw materials, components, parts, software, technologies and their updates for electronic commerce-related network equipment and products, unless in a way consistent with the WTO Agreement, and based on the conduct of an investigation pursuant to legitimate public policy objectives, a conclusion thereof with concrete evidences, and advance notices.

*Paragraphs 1-6:*

- Based on text proposal by CN.

## Section F: Market access

## (1) Services market access

[The following compilation of proposals was circulated by the facilitator for this issue in July 2020 under his responsibility, at the request of proponents CN, CT, EU and US (INF/ECOM/55).]

LIST OF RELEVANT SECTORS AND POSSIBLE COMMITMENTS<sup>3</sup>

Sector or Subsector	Modes of supply:				Additional Commitments
	1) Cross-border	2) Consumption abroad	3) Commercial presence	4) Presence of natural persons	
	Limitations on Market Access		Limitations on National Treatment		
1. BUSINESS SERVICES					
1.A. Computer and related services	The commitments in this sector are scheduled in accordance with the Understanding on the scope of coverage of CPC 84 - Computer and Related Services (TN/S/W/60 and S/CSC/W/51)				
a. - e. (CPC 84)	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section <sup>4</sup>	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section <sup>2</sup>	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section <sup>2</sup>		
1.F. Other Business Services					
a. Advertising Service (CPC 871)	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section		
e. Technical testing and analysis services (CPC 8676)	1) None [or make/improve commitments]	1) None [or make/improve commitments]	1) None [or make/improve commitments]		

<sup>3</sup> The sectors and subsectors in this schedule are defined by the corresponding items in the United Nations Provisional Central Product Classification, 1991 (CPC), unless otherwise indicated. This schedule is drafted by facilitator at his responsibility for informal communication only, without prejudice to Members' respective negotiating position.

<sup>4</sup> No exclusion from horizontal Mode 4 commitments. No additional limitations beyond horizontal limitations, at least for Intra-corporate transferees (ICTs).



Modes of supply:		1) Cross-border	2) Consumption abroad	3) Commercial presence	4) Presence of natural persons
Sector or Subsector		Limitations on Market Access	Limitations on National Treatment	Additional Commitments	
2. COMMUNICATION SERVICES		2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	
2.B. Courier Services (CPC 7512)		1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	
2.C. Telecommunication Services		This sector is scheduled in accordance with the Chairman's Notes on Notes for Scheduling Basic Telecom Services Commitments (S/GBT/W/2/Rev.1) and on Market Access Limitations on Spectrum Availability (S/GBT/W/3)			[Member] undertakes additional commitments as indicated in the attached Reference Paper on regulatory principles.
Facilities-based: a. Voice telephone services b. Packet-switched data transmission services c. Circuit-switched data transmission services d. Telex services e. Telegraph services		1) None [or make/improve commitments] <sup>5</sup> 2) None [or make/improve commitments] 3) None [or make/improve commitments] <sup>6</sup>	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section <sup>5</sup>	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section <sup>5</sup>	

<sup>5</sup> Commitments with no substantial limitations. No unbound, no requirement to use networks of specific suppliers, no requirement of commercial presence and no requirement for commercial arrangements.

<sup>6</sup> Commitments with no substantial limitations. No limitations on the establishment or number of service suppliers (e.g. quotas, exclusive service suppliers, or geographic restrictions within a Member's territory); No economic needs tests; No restrictions on the types of legal entity permitted; No limitations on nationality or residency; and Majority foreign capital participation and effective control to be allowed.

Modes of supply: 1) Cross-border 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
f. Facsimile services g. Private leased circuit Services	4) Unbound, except as indicated in horizontal section <sup>7</sup>		
Resale (non-facilities based): a. Voice telephone services b. Packet-switched data transmission services c. Circuit-switched data transmission services d. Telex services e. Telegraph services f. Facsimile services g. Private leased circuit Services	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section <sup>5</sup>	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section <sup>5</sup>	
h. Electronic mail i. Voice mail j. On-line information and database retrieval k. Electronic data interchange l. Enhanced/Value-added facsimile services (including store and forward, store and retrieve) m. Code and protocol conversion n. On-line information and/or data processing (including transaction processing) o. Other	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section <sup>5</sup>	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section <sup>5</sup>	
4. DISTRIBUTION SERVICES A. Commission agents' services (CPC 621, 61111, 61113, 6121) B. Wholesale trade services (CPC 622, 61111, 61113, 6121) C. Retailing services (CPC 631, 632, 61112, 61113, 6121, 613)	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments]	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments]	

<sup>7</sup> No additional limitations beyond horizontal limitations, at least for Intra-corporate transferees (ICTs), and no exclusion of telecommunications services.

Modes of supply:		1) Cross-border	2) Consumption abroad	3) Commercial presence	4) Presence of natural persons
Sector or Subsector		Limitations on Market Access	Limitations on National Treatment	Additional Commitments	
7. FINANCIAL SERVICES		4) Unbound, except as indicated in horizontal section	4) Unbound, except as indicated in horizontal section	4) Unbound, except as indicated in horizontal section	
B. Banking and Other Financial Services (excluding insurance)		1) None [or make/improve commitments] 2). None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2). None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	
11. TRANSPORT SERVICES					
A. Maritime Transport Services		1) None [or make/improve commitments] 2). None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2). None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	
b. Freight transportation (CPC 7212, less cabotage transport services)					
C. Air Transport Services <sup>a</sup>		1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	
- d. Maintenance and repair of aircraft (CPC8868), - Selling and marketing of air transport services - Computer reservation system (CRS) services					
E. Rail Transport Services		1) None [or make/improve commitments]	1) None [or make/improve commitments]	1) None [or make/improve commitments]	
b. Freight transportation					

<sup>a</sup> This sector and its subsectors shall not apply to measures affecting air traffic rights, however granted, or measures affecting services directly related to the exercise of air traffic rights.

Modes of supply:	1) Cross-border	2) Consumption abroad	3) Commercial presence	4) Presence of natural persons
Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments	
(CPC 7112)	2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	
F. Road Transport Services b. Freight transportation (CPC 7123)	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	
H. Services auxiliary to all modes of transport a. Cargo-handling services (CPC 741) b. Storage and warehouse service (CPC 742) c. Freight transport agency services (CPC 748) d. Other (CPC 749)	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	

## (2) Temporary Entry and Sojourn of Electronic Commerce-Related Personnel

1. Each [Party/Member] shall, in accordance with its domestic laws and regulations, encourage the movement of electronic commerce-related personnel, permit temporary entry into its territory of electronic commerce-related personnel associated with a commercial presence of any other [Party/Member] that has been or is being established within its territory. These personnel include business visitors, intra-corporate transferees and contractual services suppliers.
2. Further to the specific commitments undertaken in their GATS schedules, [Parties/Members] shall:
  - (a) publish promptly and, if possible, through the internet, information related to temporary entry authorization as well as the adjustment and amendment thereof, including explanatory materials, relevant forms and documents, and average processing time, so as to enable natural persons of other [Parties/Members] to become acquainted with them;
  - (b) process applications for temporary entry expeditiously within a reasonable period of time, including applications for extension;
  - (c) after receipt of an application for temporary entry, notify the applicant the receipt, status and decision of the application within a reasonable time period;
  - (d) ensure that fees and charges of the application for temporary entry are reasonable and do not in themselves constitute unreasonable barriers to the movement of electronic commerce-related personnel of other [Parties/Members].
3. This Article shall not apply to measures affecting natural persons seeking access to the employment market of a [Parties/Member], nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

**Paragraphs 1-3:**

- Based on text proposal by CN.

(3) Goods market access

1. The [Parties/Members] recognize the broad social and economic benefits stemming from open and liberalized trade in information technology products, including enhanced and more affordable access to information technology products for businesses and consumers, as well as the benefits stemming from the ability for businesses and consumers to participate in the digital economy.
2. The [Parties/Members] further recognize the strong synergies that exist between enhanced and more affordable access to products of information technology and the facilitation of participation in electronic commerce and the digital economy.
3. **[Alt 1:**  
  
Within three years of the date of entry into force of this Agreement, each [Party/Member] shall be a party to the WTO Ministerial Declaration on Trade in Information Technology Products, 13 December 1996 and the WTO Ministerial Declaration on the Expansion of Trade in Information Technology Products, 18 December 2015 and have completed all procedures for the modification and rectification of its Schedule of Concessions, in accordance with the Decision of 26 March 1980 on Procedures for Modification and Rectification of Schedules of Tariff Concessions.]  
  
**[Alt 2:**  
  
[Parties/Members] will join the Information Technology Agreement and its expansion.]
4. [Negotiations will cover improvements to commitments for relevant goods (GATT).]

*Paragraphs 1-2:*

- Based on text proposal by CA.

*Paragraph 3:*

- Alt 1 based on text proposal by CA.
- Alt 2 based on proposal by EU.

*Paragraph 4:*

- Based on proposal by US.

Annex 1: Scope and general provisions

(1) Preamble

1. **[Alt 1:**

[Members/Parties],

Reaffirming the importance of global electronic commerce and the opportunities it creates for inclusive trade and development; and

Determined to further enhance the benefits of electronic commerce for businesses, consumers and the global economy;

Hereby agree as follows:]

**[Alt 2:**

The [Parties/Members]:

Building on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization;

Reaffirming the importance of global digital trade and the opportunities it creates for inclusive trade and investment and specifically the importance of promoting an open, transparent, non-discriminatory and predictable digital trading environment;

Seeking to enhance the benefits and opportunities stemming from digital trade for businesses and consumers;

Fostering improved economic opportunities and access to information and communications technologies for micro, small and medium-sized enterprises, as well as disadvantaged and under-represented groups, such as women, Indigenous persons, youth, and persons with disabilities;

Hereby agree as follows:]

*Paragraph 1*

- Alt 1 based on text proposal by JP.
- Alt 2 based on text proposal by CA.

## (2) Definitions

1. "[Digital trade/e-commerce]" means the production, distribution, marketing, sale or delivery of goods and services by electronic means;
2. "Enterprise" means [an/any] entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including [any branch, / a / any] corporation, trust, partnership, sole proprietorship, joint venture, [or other association / association or similar organisation].
3. "GATS" means the General Agreement on Trade in Services, set out in Annex 1B to the WTO Agreement.
4. "Government procurement" means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services [for commercial sale or resale];
5. "Investment" means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:
  - (a) an enterprise;
  - (b) shares, stock and other forms of equity participation in an enterprise;
  - (c) bonds, debentures, other debt instruments and loans; **[FN1, FN2]**
  - (d) futures, options and other derivatives;
  - (e) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;
  - (f) intellectual property rights;
  - (g) licenses, authorizations, permits and similar rights conferred pursuant to the Party's law; **[FN3]** and,
  - (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges, but investment does not mean an order or judgment entered in a judicial or administrative action.

**FN1:** Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

**FN2:** A loan issued by one [Party/Member] to another [Party/Member] is not an investment.

**FN3:** Whether a particular type of license, authorization, permit or similar instrument (including a concession to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the [Party's/Member's] law. Among such instruments that do not have the characteristics of an investment are those that do not create any rights protected under the [Party's/Member's] law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.



6. **[Alt 1:**

"Measure" means any measure by a [Party/Member], whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;]

**[Alt 2:**

"Measure" includes any law, regulation, procedure, requirement, or practice]

7. "Party" means any State or separate customs territory for which this Agreement is in force.

8. "Person" means a natural person or an enterprise.

9. "User" means a consumer and an enterprise.

*Paragraph 1:*

- Based on text proposals by BR and CA.

*Paragraph 2:*

- Based on text proposals by CA, KR and JP.

*Paragraph 3:*

- Based on text proposals by KR.

*Paragraph 4:*

- Based on text proposals by CA and KR.

*Paragraph 5:*

- Based on text proposal by KR.

*Paragraph 6:*

- Alt 1 based on text proposal by JP.
- Alt 2 based on text proposals by CA and KR.

*Paragraph 7:*

- Based on text proposal by KR.

*Paragraph 8:*

- Based on text proposals by JP and KR.

*Paragraph 9:*

- Based on text proposal by KR.

## (3) Principles

1. **[Alt 1:**

[Parties/Members] recognise the economic growth and opportunities provided by [digital trade/electronic commerce] and the importance of frameworks that promote consumer confidence in [digital trade/electronic commerce] and of avoiding unnecessary barriers to its use and development.

**[Alt 2:**

The Parties recognize that electronic commerce supports inclusive economic growth and trade opportunities in many sectors and confirm the applicability of relevant WTO rules to electronic commerce.]

## 2. Considering the potential of digital trade as a social and economic development tool, [Parties/Members] recognize the importance of:

- (a) Clarity, transparency and predictability in their domestic regulatory frameworks in facilitating, to the maximum extent possible, the development of digital trade;
- (b) Interoperability, innovation and competition; and
- (c) Increased participation in digital trade by micro, small and medium sized enterprises.

## 3. [The] Internet should remain free and open for all legitimate commercial and development purposes, including by allowing increased access to information, knowledge and new technologies.

*[Drafting Note: this was discussed under the Open Internet Access provision]*

## 4. [Parties/Members] recognize the importance of avoiding barriers that constitute a disguised restriction on digital trade.

## 5. Having regard to their national policy objectives, [Parties/Members] shall endeavour to avoid measures that:

- (a) unduly hinder electronic commerce; or
- (b) have the effect of treating commerce by electronic means in a more restrictive manner than commerce conducted by other means.

**Paragraph 1:**

- Alt 1 based on text proposals by JP and KR.
- Alt 2 based on text proposal by CA.

**Paragraph 2:**

- Based on text proposal by BR.

**Paragraph 3:**

- Based on text proposal by BR and CT.

**Paragraph 4-5:**

- Based on text proposal by BR.

## (4) Scope

1. **[Alt 1:**

This Agreement shall apply to measures adopted or maintained by a [Party/Member] [affecting/that affect] trade by electronic means.]

**[Alt 2:**

This Agreement shall apply to measures affecting the production, distribution, marketing, sale or delivery of goods and services by electronic means.]

2. This Agreement does not apply to government procurement.
3. This Agreement does not apply to a service supplied in the exercise of governmental authority.
4. This Agreement does not apply to [, except for paragraphs 13, 14, and 15 of Article X (Personal Information Protection),] information held or processed by or on behalf of a Party, or measures related to that information, including measures related to its collection; or.
5. This Agreement does not apply to [measures affecting the supply of] financial services [which are/as] defined in GATS Annex on Financial Services.

**Paragraph 1:**

- Alt 1 based on text proposals by CA, CN, JP, KR, US.
- Alt 2 based on text proposal by CN.

**Paragraphs 2:**

- Based on text proposals by CA, CN, JP, KR, US.

**Paragraph 3:**

- Based on text proposal by US.

**Paragraph 4:**

- Based on text proposals by CA, JP, KR, US.

**Paragraph 5:**

- Based on text proposals by CA and KR.

## (5) Relation to other agreements

1. The [Parties/Members] affirm their rights and obligations under the GATS, GATT 1994 and TRIPS Agreement.
2. **[Alt 1:**  
Nothing in this Agreement [shall be construed as diminishing/affects] the [rights and] obligations of the [Parties/Members] under the agreements listed in Annexes 1A to 1C and Annex 4 to the WTO Agreement.]  
**[Alt 2:**  
This Agreement shall build on existing WTO agreements and frameworks. Where this Agreement is inconsistent with the provisions of the agreements in Annex 1 to the Marrakesh Agreement Establishing the World Trade Organization, the Annex 1 to the Marrakesh Agreement Establishing the World Trade Organization shall prevail.]
3. For greater certainty, this Agreement shall not be construed to have changed or modified [Parties'/Members'] market access commitments made under the General Agreement on Tariffs and Trade 1994 and the General Agreement on Trade in Services respectively.

*Paragraph 1:*

- Based on text proposal by CA.

*Paragraphs 2:*

- Alt 1 based on text proposals by CA and JP.
- Alt 2 based on text proposal by CN.

*Paragraph 3:*

- Based on text proposal by CN.

## (6) General exceptions

## 1. [Alt 1:

For the purposes of this Agreement, Article XX of GATT 1994 and its interpretative note and Article XIV of the General Agreement on Trade in Services in Annex 1B to the WTO Agreement shall apply [to the extent applicable. To this end, the provisions above shall be incorporated into and made an integral part of this Agreement], *mutatis mutandis*.

[[Parties/Members ]further agree that, in view of the challenges brought by the global nature of the internet, this Agreement shall not prevent Members from adopting or maintaining any measures for the purposes of guaranteeing cybersecurity, safeguarding cyberspace sovereignty, protecting the lawful rights and interests of its citizens, juridical persons and other organizations and achieving other legitimate public policy objectives, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade, and are no more than necessary to achieve the objectives.]]

## [Alt 2:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade and cross-border transfer of information by electronic means, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any [Party/Member] of measures:

- (a) necessary to protect public morals or to maintain public order;
- (b) necessary to ensure the equitable or effective imposition or collection of direct taxes in respect of trade through electronic means;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; and
  - (iii) safety.]

**Paragraph 1:**

- Alt 1 based on text proposals by CA, CN and JP.
- Alt 2 based on text proposal by BR.

## (7) Security exception

## 1. [Alt 1:

For the purposes of this Agreement, Article XXI of the GATT 1994 set out in Annex 1A to the WTO Agreement and Article XIV bis of the GATS set out in Annex 1B to the WTO Agreement apply, mutatis mutandis.]

## [Alt 2:

Nothing in this Agreement shall be construed:

- (a) to require any [Party/Member] to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any [Party/Member] from taking any action which it considers necessary for the protection of its essential security interest; or
- (c) to prevent any [Party/Member] from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

## [Alt 3:

Nothing in this Agreement shall be construed:

- (a) to require any [Party/Member] to furnish any information, the disclosure of which it considers
- (b) contrary to its essential security interests; or
- (c) to prevent any [Party/Member] from taking any action which it considers necessary for the protection of its essential security interests:
  - (i) relating to the cross-border transfer of information carried out directly or indirectly for military communication;
  - (ii) taken in time of war or other emergency in international relations; or
  - (iii) to prevent any [Party/Member] from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.]

**Paragraph 1:**

- Alt 1 based on text proposals by CA and JP.
- Alt 2 based on text proposal by CN.
- Alt 3 based on text proposal by BR.

(8) Prudential measures

1. Nothing in this Agreement shall prevent a [Party/Member] from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the [Party's/Member's] financial system.
2. Where such measures do not conform with this Agreement, they shall not be used as a means of avoiding the Member's obligations under this Agreement.
3. Nothing in this Agreement shall be construed to require a [Party/Member] to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

*Paragraphs 1-3:*

- Based on text proposal by JP.

(9) Taxation

[Placement holder]

- Based on proposal by JP.



(10) Dispute Settlement

1. Articles XXII and XXIII of the GATT 1994 and Articles XXII and XXIII of the GATS, as elaborated and applied by the Dispute Settlement Understanding, apply to consultations and the settlement of disputes arising under this Agreement.

*Paragraph 1:*

- Based on text proposals by CA and JP.

(11) Committee on Trade-Related Aspects of Electronic Commerce

1. A Committee on Trade-Related Aspects of Electronic Commerce (hereinafter referred to in this Agreement as the "Committee") is hereby established, and shall be open to all [Parties/Members]. The Committee shall elect its own Chairman and Vice-Chairman, and shall meet not less than once a year and otherwise at the request of any [Party/Member].
2. The Committee shall carry out responsibilities assigned to it by [the General Council] and shall afford [Parties/Members] the opportunity to consult on any matters relating to the operation and implementation of this Agreement.
3. The Committee shall monitor the operation and implementation of this Agreement and shall report thereon annually to [the General Council].

*Paragraphs 1-3:*

- Based on text proposal by JP.
-