



WTO ELECTRONIC COMMERCE NEGOTIATIONS

UPDATED CONSOLIDATED NEGOTIATING TEXT – SEPTEMBER 2021

Revision

This Updated 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 and consultations that have been considered in plenary sessions.

No attributions have been made at this stage. For transparency, a box has been included under most provisions to indicate which Members' proposals the text is based on. For text that has been cleaned and endorsed by the group in plenary session, such a box has not been included.

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 prejudice 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

Co-convenors' note: This article was cleaned in informal discussions then endorsed at the 20 April 2021 plenary meeting.

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.

**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 data message that may be used to identify the signatory in relation to the data message and indicate the signatory's approval of the information contained in the data message.¹
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 authentication methods, or electronic signature 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 method of authentication or the electronic signature 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 its laws or regulations, a [Party/Member] shall apply paragraphs 3 to 5 to electronic seals, electronic time stamps and electronic registered delivery services.
7. [Parties/Members] shall encourage the use of interoperable electronic authentication.
8. [Parties/Members] may work together, on a voluntary basis, to encourage the mutual recognition of electronic signatures.

¹ For greater certainty, nothing in this provision prevents a [Party/Member] from according greater legal effect to an electronic signature that satisfies certain requirements, such as indicating that the electronic data message has not been altered or verifying the identity of the signatory.

(3) Electronic contracts

Co-convenors' note: This article was cleaned in informal discussions then endorsed at the 22 July 2021 plenary meeting.

1. Unless otherwise provided for under its laws or regulations, a [Party/Member] shall not deny the legal effect, legal validity, or enforceability of an electronic contract¹ solely on the basis that the contract has been made by electronic means.

¹ For greater certainty, an electronic contract includes a contract made by interaction with an automated message system.

(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 AU, SG and NZ.

Paragraph 3:

- Based on text proposals by AU, SG and NZ.

Paragraph 4:

- Based on text proposal by AU, SG and NZ.

(5) [Electronic payments services / Facilitation of e-payment]

1. Each [Party/Member] recognizes the importance of safe and secure, efficient, and interoperable e-payment systems, as appropriate, while taking into account the readiness of each Party/Member in terms of capacity, infrastructure, and regulation of e-payment systems.
2. Each [Party/Member] shall encourage the use of safe and secure, efficient, and interoperable e-payment systems, as appropriate, to facilitate e-commerce in accordance with its laws and regulations.
3. 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.
4. 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 in 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].
5. [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.
6. [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 1-2:

- Based on text proposal by ID.

Paragraphs 3-6:

- Based on text proposal by CN.

A.2. Digital trade facilitation and logistics

(1) Paperless trading

1. ['Customs authority' means any authority that is responsible under the legislation of each Party/Member for the administration and enforcement of its customs laws and regulations.]

1bis. ['Supporting documentation' means any documentation that is required to support the information presented on the forms issued or controlled by Parties/Members for import, export or transit of goods through its territory.]

1ter. **[Alt 1:**

With a view to creating a paperless border environment for trade of goods, each Party/Member shall work towards the elimination of its paper forms for import, export, and transit. Such efforts shall include, as appropriate, the transition from the use of digitized images and forms to the use of electronically processable formats, which are considered electronically processable formats for purposes of the below.]

[Alt 2:

Parties/Members recognise the importance of eliminating unnecessary paper-based forms and documents required for import, export and transit of goods in promoting the creation of a paperless border environment and building on opportunities provided by electronic commerce. To this end, Parties/Members are encouraged to facilitate, as appropriate, the transition toward using forms and documents in data-based formats that can be processed electronically without human intervention.]

[For the purpose of paragraphs 2 and 3, 'electronic format' includes, inter alia, data-based formats suitable for automated interpretation and electronic processing without human intervention.]

2. Each [Party/Member] shall [endeavour to], make any form issued or controlled by customs for import, export, or transit of goods through its territory available to the public in an [~~electronically processable format~~ / electronic format].

2bis. Each [Party/Member] shall endeavour to make any form issued or controlled by any government agency other than customs for import, export, or transit of goods through its territory available to the public in [~~electronically processable format~~ / electronic format].

No Party/Member shall be required to make a form under paragraphs 2 and 2bis available to the public in an electronically processable format where there is an international legal requirement to the contrary.

2ter. [Each, [Party/Member] shall [endeavour to] make instructions for the electronic submission of the forms referred to in paragraph 2 and paragraph 2bis available through the internet.]

3. Each [Party/Member] shall [endeavour to] accept for processing electronically any form issued or controlled by customs and supporting documentation (such as invoices bills of lading packing lists, and money transfers) required by customs for import, export or transit of goods through its territory as the legal equivalent of the paper version of those documents.

3bis. Each [Party/Member] shall endeavour to accept for processing electronically any form issued or controlled and supporting documentation (such as invoices bills of lading, packing lists, and money transfers) required by any government agency other than customs for import, export, or transit of goods through its territory as the legal equivalent of the paper version of those documents.

3ter. No [Party/Member] shall be required to apply paragraphs 3 and 3bis where:

a) there is an international legal requirement to the contrary; or

- b) [on circumstances specified in domestic legislation,] doing so would reduce the effectiveness of the customs or other trade [administrative] procedures required for import, export or transit of goods through its territory.
4. [If a [Party/Member] accepts any form or supporting document under paragraphs (3) and (3bis) for processing electronically it shall not require submission of the paper version of the form or supporting document required for import, export, or transit of goods.]
5. [Parties/Members] shall endeavour to cooperate, where appropriate, in international fora to promote the use of electronic forms and documents required for import, export and transit.
6. Recognizing that use of an international standard for utilization of electronic forms and documents required for import, export and transit can facilitate trade, [Parties/Members] shall endeavour to take into account [,as appropriate,] standards of, and/or methods agreed by relevant international organizations [./[Parties/Members] recognize in particular:
- (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).]

Paragraph 1:

- Based on text proposals by HK, BR, KR, NZ, CN, TH, UK, US, AU and NO.

Paragraph 1bis:

- Based on text proposal by BR.

Paragraph 1ter:

- Based on text proposals by AU and US.

Paragraph 2 and 2bis:

- Based on text proposals by JP, UA, KR, CN, BR, SG, NZ, UK, NO, AU and US.

Paragraph 2ter:

- Based on text proposals by BR.

Paragraph 3 and 3bis:

- Based on text proposal by JP, HK, UA, KR, NZ, SG, BR, CN, UK, NO, AU and US.

Paragraph 4:

- Based on text proposal by US.

Paragraph 5:

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

Paragraph 6:

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

(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) Unique Consignment Reference Numbers

1. Each [Party/Member] shall endeavour to implement a reference number to uniquely identify data relating to an export consignment which is the subject of an individual export declaration.

Paragraph 1:

- Based on text proposal by BR.
-

(4) 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.

(5) 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.

(6) 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, favour 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.

(7) 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.

(8) 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.

(9) 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 cargos 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.

(10) 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.]

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 the business of a covered person.]

[Alt 2]:

Each [Party/Member] shall allow the cross-border transfer of information by electronic means when this activity is for the conduct of the 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:**

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:

- (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 3:

[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 6 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. This article does not apply with respect to financial service suppliers, which are addressed by Article [X] (Financial Information)
- 9. Paragraphs 5 and 7 shall not prevent a developing or least-developed [Party/Member] from adopting or maintaining any measure regulating the cross-border transfer of information, including personal information, by electronic means, that it considers appropriate. For greater certainty, if a [Party/Member] invokes this paragraph in a dispute, the body or mechanism hearing the matter shall find that it applies.

Paragraph 1:

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

Paragraph 2:

- Based on text proposals by AU, JP, SG, US, UK, CT, NZ, CA and KR.

Paragraph 3:

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

Paragraph 4:

- Based on text proposals by BR and KR.

Paragraph 5:

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

Paragraph 6:

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

Paragraph 7:

- Based on text proposals by US and CT.

Paragraph 8:

- Based on text proposal by UK.

Paragraph 9:

- Based on text proposal by NG.

(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.]
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. No [Party/Member] shall require a covered person to use or locate computing facilities in that [Party's/Member's] 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. This article does not apply with respect to [covered] financial service suppliers, which are addressed by Article [X] ([Financial Information/Location of financial computing facilities]).
9. Paragraph 5 shall not prevent a developing or least developed [Party/Member] from adopting or maintaining any measure regulating the use or location of computing facilities in its territory, that it considers appropriate. For greater certainty, if a [Party/Member] invokes this paragraph in a dispute, the body or mechanism hearing the matter shall find that it applies.

Paragraph 1:

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

Paragraph 2:

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

Paragraph 3:

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

Paragraph 4:

- Based on text proposals by KR.

Paragraph 5:

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

Paragraph 6:

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

Paragraph 7:

- Based on text proposal by KR.

Paragraph 8:

- Based on text proposal by US and UK.

Paragraph 9:

- Based on text proposal by NG.

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

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. "Financial service supplier" has the meaning given to it in the GATS Annex on Financial Services;
9. 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.
10. **[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.]

11. **[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.]

12. 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.
13. Paragraphs 9 and 10 shall not prevent a developing or least-developed [Party/Member] from adopting or maintaining any measure regulating the cross-border transfer of financial information, including by electronic means, or regulating the use or location of financial service computing facilities, or requiring the processing of information in its territory, that it considers appropriate. For greater certainty, if a [Party/Member] invokes this paragraph in a dispute, the body or mechanism hearing the matter shall find that it applies.

Paragraphs 1-4:

- Based on text proposal by US.

Paragraph 5:

- Based on text proposal by US and UK.

Paragraph 6-7:

- Based on text proposal by US.

Paragraph 8-9:

- Based on text proposal by UK.

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Paragraph 10:

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

Paragraph 11:

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

Paragraph 12:

- Based on text proposal by UK.

Paragraph 13:

- Based on text proposal by NG.

B.3. Customs duties on electronic transmissions

1. [Alt 1:

"Electronic transmission" or "transmitted electronically" means a transmission made using any electromagnetic means.]

[Alt 2:

"Electronic transmission" means a transmission made using any electromagnetic means and includes the content of the transmission.]

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 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 or other internal charges on electronic transmissions in a manner consistent with Articles I and III of the GATT 1994 or Articles II and XVII of the GATS.

Negotiators' note: The [Parties/Members] understand that exceptions in the GATT and the GATS will apply to the provisions finalized under this Initiative, including the provision on customs duties. This understanding will be further clarified, as necessary, before the conclusion of the negotiations.

Paragraph 1:

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

Paragraph 2:

- Alt 1 based on text proposals by JP, US, SG, HK, BR, KR, NZ, CA, EU, UA, AU, CH, 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

Co-convenors' note: This article was cleaned in informal discussions in July 2021 and will be presented to the 13 September 2021 plenary meeting.

1.
 - (a) This Article applies to measures by a [Party/Member] with respect to data held by the central government, disclosure of which is not restricted under domestic law, and which a Party/Member makes digitally available for public access and use (hereafter referred to as "government data")¹.
 - (b) Parties/Members recognize the benefit of making data held by a regional or local government digitally available for public access and use in a manner consistent with paragraphs 2 to 4.

"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 context.

2. [Parties/Members] recognise that facilitating public access to and use of government data fosters economic and social development, competitiveness, and innovation. To this end, [Parties/Members] are encouraged to expand the coverage of such data, such as through engagement and consultation with interested stakeholders.
3. To the extent that a [Party/Member] chooses to make government data digitally available for public access and use, a [Party/Member] shall endeavour, to the extent practicable, to ensure that such data is:
 - (a) made available in a machine-readable and open format;
 - (b) searchable and retrievable;
 - (c) updated, as applicable, in a timely manner; and
 - (d) accompanied by metadata that is, to the extent possible, based on commonly used formats that allow the user to understand and utilise the data.

A [Party/Member] shall further endeavour to make this data generally available at no or reasonable cost to the user.

4. To the extent that a [Party/Member] chooses to make government data digitally available for public access and use, it shall endeavour to avoid imposing conditions² that unduly prevent or restrict the user of such data from:
 - (a) reproducing, redistributing, or republishing the data;
 - (b) regrouping the data; or
 - (c) using the data for commercial and non-commercial purposes, including in the process of production of a new product or service.
5. [Parties/Members] shall endeavour to cooperate in matters that facilitate and expand public access to and use of government data, including exchanging information and experiences on practices and policies, with a view to encouraging the development of electronic

¹ For greater certainty, this Article is without prejudice to a [Party's/Member's] laws pertaining to intellectual property and personal data protection.

² For greater certainty, nothing in this paragraph prevents a [Party/Member] from requiring a user of such data to link to original sources.

commerce and creating business opportunities, especially for small and medium-sized enterprises.

[Drafting note: Turkey mentioned its concern on future interpretation of "unduly" in the chapeau of paragraph 4 as imposing a necessity test and accepted the term "unduly" based on the shared understanding by small group Members that "unduly" is not to be interpreted as imposing a necessity test.]

(2) [Alt 1: Open internet access / Alt 2: Principles on Access to and Use of the Internet for electronic commerce/Digital Trade] [FN]

[FN: This Article is without prejudice to rights and obligations of Members arising from the GATS Annex on Telecommunications.]

[Negotiators' note:

Alt. of 18 June:

Discussion on the relation between the disciplines foreseen under the OIA and the GATS, including its Annex on Telecom, is deferred to future discussions on Scope and General Provisions (Annex 1).

Alt. of 7 July:

While noting that this Article is without prejudice to rights and obligations of Members arising from the GATS Annex on Telecommunications, delegations are aware that provisions capturing this principle horizontally are foreseen under Section 5 of Annex 1 "Relation to other Agreements".

Alt. of 15 July

While noting that delegations view this Article as being without prejudice to rights and obligations of Members arising from the GATS Annex on Telecommunications, discussion on the relation between the disciplines foreseen under the OIA section and the GATS, including its Annex on Telecom, is deferred to future discussions on Scope and General Provisions (Annex 1).]

1. **Alt 1 c/d**

"End-user" means a natural person or juridical person accessing the Internet except for the purpose of providing such access to other end-users. [FN]

Alt 2

"End-user" means a natural or juridical person who [is a [direct] subscriber to an Internet access service provider for the purposes of accessing the Internet ~~/ purchaser of Internet access from an Internet access service provider~~] / who purchases an Internet access service from an Internet access service provider].

Negotiators' note: The choice of the final wording between 'juridical person' and 'enterprise' is pending the result of a discussion on these terms and their usage across the whole Consolidated text.

[FN: Alt 2: For greater certainty, "access to Internet" shall not cover the services provided through network infrastructure by natural or juridical persons within their premises, which are used exclusively for individual or organisational needs without any commercial intention to provide any Internet access to third parties or to public.]

2. **Alt 1:**

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

Alt 2:

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

- (a) access [, distribute/provide] and use services and applications of their choice available on the Internet, subject to:

Alt 1 reasonable network management; **FN**

Alt 2 reasonable network management that does not discriminate between traffic of the same category; **FN**

Alt 3 reasonable network management which does not block or slow down traffic based on commercial reasons;

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

- (b) connect the end-user devices of their choice to the Internet, provided that such devices do not harm the network; and

- (c) **Alt 1** access [transparent and clear] information on the network management [practices / policies] of their internet access service supplier.
~~**Alt 2** access information on the network management policies of their internet access service supplier~~

Title

- Alt 2: based on text proposal by CT and BR.
- **FN**: text proposed by TK.

Paragraph 1:

- Alt. 1 c/d: based on text proposal by SG, JP and US.
- Alt. 2: text proposed by CA.
- **FN alt. 2**: text proposed by TK.

Paragraph 2 chapeau:

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

Paragraph 2 a:

- Alt 3: text proposed by AU.

Paragraph 2 c:

- ~~Alt 2: text proposed by TK.~~

(3) Access to Online Platforms / Competition

1. Recognizing that [Members/Parties] can benefit by sharing their experience in enforcing competition law and in developing and implementing policies to address the additional challenges that may arise from digital trade, the [Members/Parties] shall endeavour to:
 - (a) exchange information and share best practices on the promotion and protection of a competitive environment in digital markets;
 - (b) strengthen cooperation in order to identify and mitigate anticompetitive practices in the digital markets;
 - (c) ensure, as appropriate, that any user of any other [Member/Party] is accorded equal treatment when accessing and using online intermediation services.
2. Each [Member/Party], at the request of any other [Member/Party], shall endeavour to enter into consultations with a view to ensuring the equal treatment referred to in paragraph 1(c). The [Member/Party] addressed shall accord full and sympathetic consideration to such a request and shall endeavour to provide the requesting [Member/Party] with relevant information in a manner compatible with its respective laws and regulations.

Paragraphs 1 and 2:

- Based on text proposals by BR and KR.

Section C: Trust and electronic commerce

C.1. Consumer Protection

(1) Online consumer protection

Co-convenors' note: This article was cleaned in informal discussions in August 2021 and will be presented to the 13 September 2021 plenary meeting.

1. Misleading, fraudulent and deceptive commercial activities include:
 - (a) making material misrepresentations¹, including implied factual misrepresentations, or false claims as to matters such as qualities, price, suitability for purpose, quantity or origin of goods or services.
 - (b) advertising goods or services for supply without intention or reasonable capability to supply;
 - (c) failing to deliver goods or provide services to a consumer after the consumer is charged unless justified on reasonable grounds; or
 - (d) charging a consumer for services or goods not requested.
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 to proscribe misleading, fraudulent and deceptive commercial activities that cause harm, or potential harm, to consumers engaged² in electronic commerce.
3. To protect consumers engaged in electronic commerce, each [Member/Party] shall endeavour to adopt or maintain measures that aim to ensure:
 - (a) that suppliers of goods and services deal fairly and honestly with consumers;
 - (b) that suppliers provide complete, accurate, and transparent information on goods and services including any terms and conditions of purchase; and
 - (c) the safety of goods and, where applicable, services during normal or reasonably foreseeable use.
4. The [Parties/Members] recognise the importance of affording to consumers who are engaged in electronic commerce consumer protection at a level not less than that afforded to consumers who are engaged in other forms of commerce.
5. 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, where mutually agreed.
6. [Parties/Members] shall promote access to, and awareness of, consumer redress or recourse mechanisms, including for consumers transacting cross-border.

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

¹ For the purposes of this article, material misrepresentations refer to misrepresentations that are likely to affect a consumer's conduct or decision to use or purchase a good or service.

² For the purposes of this article, the term 'engaged' includes the pre-transaction phase of electronic commerce.

(2) Unsolicited commercial electronic messages

Co-convenors' note: This article was cleaned in informal discussions then endorsed at the 5 February 2021 plenary meeting.

1. "Commercial electronic message" means an electronic message which is sent for commercial purposes to an electronic address of a person¹ 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 adopt or maintain measures that:
 - (a) require suppliers of 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. Each [Party/Member] shall endeavour to ensure that commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are sent, 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.
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]

¹ 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 trademark 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 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 does not include software used for critical public infrastructure¹.]

4. [Alt 1:

[Nothing in this Article shall preclude a "Developing Country" and LDCs [Party/Member] from requiring the transfer of, or access to, source code of software, or an algorithm expressed in that source code, by a person of another [Party/Member] for software and products containing that software that is imported, distributed, sold and used in its territory for maintenance and or repair of such software and products.]

[Alt 2:

[For greater certainty, paragraph 2 does not apply to the voluntary transfer of or granting of access to source code on a commercial basis by a natural or juridical person, for instance in the context of a public procurement transaction or a freely negotiated contract.]

Suggestion regarding 'open source licences':

[For greater certainty, nothing in paragraph 2 shall prevent a person of a Party from licensing its software on a free and open source basis.]

5. This Article [does/shall] not preclude a [government agency,] regulatory body [, an enforcement 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 available² 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].

¹ For clarity, this includes critical public infrastructures whether publicly or privately owned such as communications, power, and water infrastructures.

² [[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/if it has such a status under the laws and regulations of a [Member/Party].]

Paragraph 1:

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

Paragraph 2:

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

Paragraph 3:

- Based on text proposal by NG.

Paragraph 4:

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

Paragraph 5:

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

(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

Co-convenors' note: Following informal discussions, this article was 'parked' at the 22 July 2021 plenary meeting, subject to the final scope of provisions and legal architecture.

1. [Further to Article III of the GATS and Article X of the GATT], each [Party/Member] shall promptly publish or otherwise make publicly available and, except in emergency situations, at the latest by the time of their entry into force, all measures* of general application pertaining to or affecting [digital trade / electronic commerce / the operation of this Agreement].**

**Negotiators' note: the definition of "measures", including the need for such a definition, is subject to negotiations and cross-cutting considerations to ensure consistency across the provisions finalized under this Initiative.*

***Negotiators' note: This provision will be re-examined before the conclusion of the negotiations, in light of the scope of the finalized provisions and of the chosen legal architecture.*

(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 test 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 / with the capacity] to do so shall provide targeted technical assistance and capacity [and skill] building on mutually agreed terms and conditions to developing [Parties/Members], in particular [low-income developing countries and] LDCs, in [order to improve their digital ecosystems and to allow them to develop / improving, promoting, and protecting the development of] electronic commerce [to allow them to / and] 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 [those of low income and] LDCs [to improve development of electronic commerce and implement WTO rules on electronic commerce]. [This Program shall constitute a framework for consultation between [Parties/Members] and between [Parties/Members] and the international agencies and organizations concerned.]
3. **[Alt 1:**
 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.]
[Alt 2:
 Developed and developing [Parties/Members] with the capacity to do so undertake to adopt practical measures that contribute to bridging the digital divide and improving the infrastructure and technical conditions of developing [Parties/Members], so as to help their micro, small and medium sized enterprises and their citizens realize digital transition and participate in electronic commerce and the digital economy.]
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 facilitation] and implement capacity building among Members and international organizations, to promote the common [and inclusive] development of electronic commerce.

Paragraph 1:

- Based on text proposal by ID and CI.

Paragraph 2:

- Based on text proposals by CN, ID and CI.

Paragraph 3:

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

Paragraph 4:

- Based on text proposal by CN and CI.

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, NO, UA and UK.
-

(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, NO, UA and UK.

(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, NO, UA and UK.

(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, NO, UA and UK.

(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, NO, UA and UK.

(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, NO, UA and UK.

(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, NO, UA and UK.

(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, NO, UA and UK.

(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, NO, UA and UK.

(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, NO, UA and UK.

(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, NO, UA and UK.
- 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 favourable 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 COMMITMENTS¹

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
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 ²	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	
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 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.

² 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		
e. Technical testing and analysis services (CPC 8676)	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. COMMUNICATION SERVICES					
2.B. <u>Courier Services</u> (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			
2.C. <u>Telecommunication Services</u>	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.

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
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] ³ 2) None [or make/improve commitments] 3) None [or make/improve commitments] ⁴ 4) Unbound, except as indicated in horizontal section ⁵	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 ⁵	
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 ⁵	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 ⁵	
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 ⁵	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 ⁵	

³ 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.

⁴ 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.

⁵ 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	
4. DISTRIBUTION SERVICES A. Commission agents' services (CPC 621, 61111, 6113, 6121) B. Wholesale trade services (CPC 622, 61111, 6113, 6121) C. Retailing services (CPC 631, 632, 61112, 6113, 6121, 613)		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	
7. FINANCIAL SERVICES B. Banking and Other Financial Services (excluding insurance) (viii) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts (CPC 81339**)		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 b. Freight transportation (CPC 7212, less cabotage 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		

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
C. Air Transport Services ⁶ - d. Maintenance and repair of aircraft (CPC8868), - Selling and marketing of air transport services - Computer reservation system (CRS) 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	
E. Rail Transport Services b. Freight transportation (CPC 7112)		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	
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	

⁶ 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	
H. <u>Services auxiliary to all modes of transport</u> a. <u>Cargo-handling services</u> (CPC 741) b. <u>Storage and warehouse service</u> (CPC 742) c. <u>Freight transport agency services</u> (CPC 748) d. <u>Other</u> (CPC 749)	1) None [or <i>make/improve commitments</i>] 2). None [or <i>make/improve commitments</i>] 3) None [or <i>make/improve commitments</i>] 4) Unbound, except as indicated in horizontal section	1) None [or <i>make/improve commitments</i>] 2) None [or <i>make/improve commitments</i>] 3) None [or <i>make/improve commitments</i>] 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 strong synergies that exist between enhanced and more affordable access to products of information technology for business and consumers and their ability to participate in electronic commerce.
2. Within [X] years of [the date of approval/date of entry into force of this initiative]*, each [Party/Member] shall be a party to the WTO Ministerial Declaration on Trade in Information Technology Products, 13 December 1996, commonly referred to as the Information Technology Agreement, and a participant in the WTO Ministerial Declaration on the Expansion of Trade in Information Technology Products, 16 December 2015, and have started and, to the extent practicable, completed all procedures for the modification and rectification of its Schedule of Concessions, in accordance with these Declarations and Decision of 26 March 1980 on Procedures for Modification and Rectification of Schedules of Tariff Concessions.

**Drafters' note: The phrase in brackets shall be changed to reflect the legal form of the outcome of the WTO e-commerce negotiations.*

3. [Negotiations will cover improvements to commitments for relevant goods (GATT).]

Paragraphs 1-2:

- Based on text proposal by CA, CT and EU.

Paragraph 3:

- 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. [Parties/Members] recognize that despite some improvement, the traditional size of the digital divide in terms of digital connectivity and readiness to benefit from the digital economy and electronic commerce remains of concern in many developing countries, in particular those of low income and LDCs.
3. Considering the potential of digital [electronic commerce/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/electronic commerce];
 - (b) Interoperability, innovation and competition; [and]
 - (c) Increased participation in digital trade by micro, small and medium sized enterprises [; and
 - (d) The common and inclusive development of electronic commerce]
4. [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]

5. [Parties/Members] recognize the importance of avoiding barriers that constitute a disguised restriction on digital trade.
6. 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.
7. The provisions of this Agreement from Article () to Article () take into account the readiness of each [Party/Member] in terms of capacity, infrastructure and regulation, as well as the needs of developing [Parties/Members] and LDCs.
8. Assistance and support should be provided to developing [Parties/Members] and LDCs to help them bridge the digital divide and to build their capacity to implement the provisions of this Agreement, in accordance with their nature and scope.

Paragraph 1:

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

Paragraph 2:

- Based on text proposal by CI.

Paragraph 3

- Based on text proposal by BR and CI.

Paragraph 4:

- Based on text proposal by BR and CT.

Paragraph 5-6:

- Based on text proposal by BR.

Paragraphs 7-8:

- Based on text proposals by CI.

(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.
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(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.
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