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WTO ELECTRONIC COMMERCE NEGOTIATIONS

UPDATED CONSOLIDATED NEGOTIATING TEXT - AUGUST 2023

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 has been prepared under the responsibility of the co-convenors. This text incorporates outcomes of small group discussions, consultations, and members' additional submissions.

For transparency, a box has been included under most provisions to indicate Members' positions or which Members' proposals the text is based on. For text on which discussion has been concluded in the small group, 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 "Scope and General Provisions".

Proposals (other than cross-cutting issues) that have not yet been the subject of small group negotiations have been included in a separate Annex.

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; a service supplied in the exercise of governmental authority; or, except as otherwise indicated, 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, the legal architecture of the JSI outcome, and existing WTO agreements.
- Some Members have noted that the Article D.1.(1) (Cross-border transfer of information by electronic means) would not apply with respect to financial service suppliers, which are addressed by Article D.1.(3) (Financial Information).

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

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

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

Table of Contents

SECTION A: ENABLING ELECTRONIC COMMERCE	4
A.1. Facilitating Electronic Transactions	4
(1) Electronic transactions frameworks	4
(2) Electronic authentication and electronic signatures	5
(3) Electronic contracts.....	6
(4) Electronic invoicing	7
A.2. Digital trade facilitation and logistics.....	8
(1) Paperless trading	8
(2) Single windows data exchange and system interoperability / Unique Consignment Reference Numbers	10
SECTION B: OPENNESS AND ELECTRONIC COMMERCE	11
B.1. Customs duties on electronic transmissions	11
B.2. Access to internet and data	12
(1) Open government data.....	12
(2) Access to and Use of the Internet for [electronic commerce/Digital Trade].....	14
SECTION C: TRUST AND ELECTRONIC COMMERCE	15
C.1. Consumer Protection	15
(1) Online consumer protection	15
(2) Unsolicited commercial electronic messages.....	16
C.2. Privacy.....	17
(1) [Personal information protection / Personal data protection]	17
C.3. Business trust.....	20
(1) Source code.....	20
(2) ICT products that use cryptography	22
C.4. Cybersecurity	24
SECTION D: CROSS-CUTTING ISSUES	25
D.1. Flow of information	25
(1) [Cross-border transfer of information by electronic means / Cross-border data flows]	25
(2) Location of computing facilities.....	27
(3) [Financial information / Location of financial computing facilities for covered financial service suppliers]	29
D.2. Transparency, domestic regulation and cooperation.....	33
(1) Transparency	33
(2) Cooperation	34
D.3. Capacity building	37
(1) Options for capacity building and technical assistance	37
D.4. Implementation Periods for developing and least developed country Members	38
(1) Implementation Periods for developing and least developed country Members.....	38
D.5. Special and Different Treatment Provisions for Developing Country Members and Least Developed Country Members	39

(1) Options for capacity building and technical assistance	39
SECTION E: TELECOMMUNICATIONS	48
E.1. Disciplines relating to Telecommunications Services	48
SCOPE AND GENERAL PROVISIONS	50
(1) Preamble	50
(2) Definitions	51
(3) Principles	53
(4) Scope	55
(5) Relation to other agreements	56
(6) General exceptions	57
(7) Security exception	58
(8) Indigenous peoples	59
(9) Prudential measures	60
(9 bis) Taxation	60
(10) Dispute Settlement	61
(11) Committee on Trade-Related Aspects of Electronic Commerce	62
ANNEX	64
(1) Logistics Services	64
(2) Enhanced trade facilitation for cross-border e-commerce	65
(3) Use of technology for the release and clearance of goods	66
(4) [Electronic payments services / Electronic Payments]	67
(6) Non-discriminatory treatment of digital products	68
(7) Access to Online Platforms / Competition	69
(8) Domestic regulation	70
(9) Electronic Commerce-Related Network Products	71
(10) Services market access	72
(11) Temporary Entry and Stay of Electronic Commerce-Related Business Persons	77
(12) Goods market access	79

Section A: Enabling Electronic Commerce

A.1. Facilitating Electronic Transactions

(1) Electronic transactions frameworks

Co-convenors' note: Small group discussion on this article were concluded in October 2022. Co-convenors and the facilitator remain available for discussions with any interested delegations.

1. Each [Party/Member] shall endeavour to adopt or maintain a legal framework governing electronic transactions that is consistent with the principles of the UNCITRAL Model Law on Electronic Commerce 1996.

[Alt: Each [Party/Member] shall adopt or maintain a legal framework governing electronic transactions that takes into account the principles of the UNCITRAL Model Law on Electronic Commerce 1996.]

2. Each [Party/Member] shall endeavour to:

(a) avoid undue* regulatory burden on electronic transactions;

[Alt: avoid undue regulatory burden on electronic transactions with respect to the administrative procedures for applications to competent authorities.]

(b) facilitate input by interested persons in the development of its legal framework for electronic transactions.

**[Drafting note: [Several participants] mentioned [their] concern on future interpretation of "undue" in paragraph 2(a) as imposing a necessity test and accepted the term "undue" based on the shared understanding by small group Members that "undue" is not to be interpreted as imposing a necessity test.]*

3. The [Parties/Members] recognise the importance of facilitating the use of electronic transferable records. To this end, each [Party/Member] shall endeavour to adopt or maintain a legal framework which takes into account the UNCITRAL Model Law on Electronic Transferable Records 2017.

(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

Co-convenors' note: Small group discussion on this article were concluded in February 2023. Co-convenors and the facilitator remain available for discussions with any interested delegations.

Definition:

- (1) "electronic invoicing" means the processing and exchange of an invoice between a seller and a buyer using a structured digital format.
 - (2) "electronic invoicing framework" means a system that facilitates the processing and exchange of an invoice between a seller and a buyer using a structured digital format [and that allows a buyer and a seller to each use a different access point service supplier to exchange an invoice].
1. Unless otherwise provided for under its laws or regulations, a [Party/Member] shall not deny the legal effect or admissibility as evidence in a legal proceeding of an invoice solely on the basis that the invoice is in electronic form.
 2. [Parties/Members] recognise that electronic invoicing frameworks can help improve cost effectiveness, efficiency, accuracy, and reliability of electronic commerce transactions.
 3. To the extent that a [Party/Member] develops a measure related to electronic invoicing frameworks, the [Party/Member] shall endeavour to design the measure to support cross-border interoperability, including by taking into account international standards, guidelines or recommendations, where they exist [and by promoting the adoption of electronic invoicing frameworks that are based on discovery, delivery and data components that utilize open standards].
 4. Each [Party/Member] shall endeavour to share best practices pertaining to electronic invoicing, as appropriate.

A.2. Digital trade facilitation and logistics

(1) Paperless trading

Co-convenors' note: Small group discussion on this article were concluded in January 2022. Co-convenors and the facilitator remain available for discussions with any interested delegations.

1. 'Customs authority' means any authority that is responsible under the law of each Party/Member for the administration of its customs laws and regulations.
 - 1bis. 'Supporting documentation' means any documentation that is required to support the information presented to a Party/Member for import, export, or transit of goods through its territory. Supporting documentation may include documents such as invoices, bills of lading, packing lists and money transfers.
 - 1ter. With a view to creating a paperless border environment for trade of goods, each Party/Member recognises the importance of eliminating paper forms and documents required for import, export, or transit of goods. To this end, Parties/Members are encouraged to eliminate paper forms and documents, as appropriate, and transition toward using forms and documents in data-based formats.
- For the purpose of paragraphs 2 and 3, 'electronic format' includes, inter alia, formats suitable for automated interpretation and electronic processing without human intervention, as well as digitized images and forms.
2. Each [Party/Member] shall make any form issued or controlled by its customs authority for import, export, or transit of goods through its territory available to the public in an electronic format.
 - 2bis. Each [Party/Member] shall endeavour to make any form issued or controlled by any government agency other than its customs authority for import, export, or transit of goods through its territory available to the public in electronic format.
- No Party/Member shall be required to apply paragraphs 2 and 2bis if there is an international legal requirement to the contrary.
- 2ter. Each, [Party/Member] shall endeavour to make instructions for the submission in electronic format of the forms referred to in paragraph 2 and paragraph 2bis available through the internet.
 3. Each [Party/Member] shall accept any form issued or controlled by customs authorities and, as appropriate, supporting documentation, required by customs authorities for import, export, or transit of goods through its territory submitted in electronic format as the legal equivalent of the paper version of those documents.
 - 3bis. Each [Party/Member] shall endeavour to accept any form issued or controlled by any government agency other than customs authorities and, as appropriate, supporting documentation, required by any government agency other than customs authorities for import, export, or transit of goods through its territory submitted in electronic format as the legal equivalent of the paper version of those forms.
 - 3ter. No [Party/Member] shall be required to apply paragraphs 3 and 3bis if:
 - (a) there is a domestic or an international legal requirement to the contrary; or,
 - (b) doing so would reduce the effectiveness of the customs or other trade procedures required for import, export, or transit of goods through its territory.

3quater. A [Party/Member] shall [endeavour to] [publish / notify the Committee [X] of] the list of paper forms required under paragraph 3ter (a) within [X] years of [the date of approval / date of entry into force of this initiative]. Each [Party/Member] shall [endeavour to] update the list, as appropriate.

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

4. [Parties/Members] shall endeavour to cooperate, where appropriate, in international fora to promote the use of electronic forms and documents required for import, export, or transit.
5. Recognizing that use of an international standard for utilization of electronic forms and documents required for import, export, or transit can facilitate trade, [Parties/Members] shall endeavour to take into account, as appropriate, standards of, or methods agreed by relevant international organizations.

(2) Single windows data exchange and system interoperability / Unique Consignment Reference Numbers

Co-convenors' note: Small group discussion on this article were concluded in July 2023. Co-convenors and the facilitator remain available for discussions with any interested delegations.

1. In implementing its single window pursuant to TFA Article 10.4.1, each [Party/Member] shall endeavour to enable through a single entry point the electronic submission of the documentation [and/or] data the [Party/Member] requires for import, export, or transit of goods through its territory for all its participating authorities or agencies.
2. Whenever possible, the single window should allow the electronic submission of documentation [and/or] 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.
3. In building and maintaining its single window, each [Party/Member]:
 - (a) shall endeavour to incorporate, as appropriate, the World Customs Organization Data Model or other international standards for data elements;
 - (b) shall ensure the protection and confidentiality of the data exchanged with other single window, whenever this exchange is permitted; and
 - (c) is encouraged to implement a reference number or other identity verification tool to uniquely identify data relating to an individual transaction.

Whenever a single window is not available or not integrated with customs authorities, this paragraph applies, as appropriate, to customs management systems used for processing data related to export, import and transit of goods through its territory.

4. In implementing paragraph 3, [Parties/Members] shall endeavour to:
 - (a) share with each other their respective experiences in developing and maintaining their single window; and
 - (b) work towards a harmonization, to the extent [practicable/possible], of data elements and customs processes.
5. Taking into consideration the interests of micro, small and medium enterprises, [a/each] [Party/Member] shall endeavour to allow traders and other stakeholders to use service providers to exchange data with a single window on their behalf or, where a single window is not available, with customs management systems [on their behalf] **FN**.

[FN - For greater certainty, this provision does not preclude a [Party/Member] from requiring service providers to meet certain procedural requirements in order to exchange data with the single window.]

Section B: Openness and electronic commerce
B.1. Customs duties on electronic transmissions

[Alt 1:

1. "Electronic transmission" means a transmission made using any electromagnetic means and includes the content of the transmission.
2. No [Party/Member] shall impose customs duties **FN** on electronic transmissions [between a person of one [Party/Member] and a person of another [Party/Member].*

FN: For the purposes of this provision, customs duties include fees or other charges of any kind imposed on or in connection with importation or exportation.

**Negotiators' note: The bracketed text 'between a person of one [Party/Member] and a person of another [Party/Member]' will be re-examined at a later stage in the negotiations, in light of the legal architecture of the negotiated outcome in the JSI.*

[Alt 2:

1. [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:

1. 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 17 June 2022 (WT/MIN(22)/32) and any further WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.]

Paragraph 3 (if attached to **Alt 1**) or Paragraph 2 (if attached to **Alt 2**)

For greater certainty, paragraph 2 shall not preclude a [Party/Member] from imposing internal taxes, fees or other charges on electronic transmissions in a manner consistent with the WTO Agreement.

Current State of Play – Members' Positions

Alt 1:

- Support: AU, CA, CH, CL, CT, EU, GT, HKC, JP, KR, NO, NZ, SG, UA, UK, and US.

Alt 2:

- Support: ID, AR.

Alt 3:

- Support: CN, KSA, TR.

B.2. Access to internet and data

(1) Open government data

Co-convenors' note: This article was cleaned in informal discussions and then endorsed at 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.

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.

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 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) Access to and Use of the Internet for [electronic commerce/Digital Trade]

Co-convenors' note: Small group discussion on this article were concluded in September 2022. Co-Convenors and the facilitator remain available for discussions with any interested delegations.

Negotiators note: The delegations view this Article as being without prejudice to rights and obligations of Members arising from the GATS Annex on Telecommunications. The delegations also understand that the relationship between the disciplines foreseen under this Initiative, including this Article, and the GATS, including its Annex on Telecommunications, will be further discussed in the context of the Scope and General Provisions.

1. "End-user" means a natural or juridical person who purchases or subscribes to 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.

2. [Parties/Members] recognise the benefits of end-users in their territories having the ability to:
 - (a) access and use lawful services and applications of their choice available on the Internet, subject to reasonable network management [which does not block or slow down traffic for unfair commercial advantage;] **[FN]**

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

 - (b) connect the devices of their choice to the Internet, provided that such devices do not harm the network; and
 - (c) access transparent and clear information on the network management practices of their internet access service supplier.

For greater certainty, nothing in this paragraph shall be construed to require a [Party/Member] to adopt, amend or maintain a particular measure to implement the principles set out in this paragraph.

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 then endorsed at 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 information[,including data] [about/relating to] an identified or identifiable natural person.] **[FN]**
- [FN:** Data means recorded information, regardless of form or the media on which the data is recorded.]
- [Alt 3: Facilitator's proposal**
"Personal information or personal data, means any information [about/relating to/about or relating to] an identified or identifiable natural person". **[FN]**
- FN:** For the purposes of this article, the terms "data" and "information" are considered [interchangeable/to have the same meaning].]
2. **[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 individuals have a right to privacy and the protection of personal data and that [high/enforceable] 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.]
- Proposed redraft of paragraph 2: merge of the 3 ALT
The [Parties/Members] recognise the importance of protecting the personal [information/data] of users of [electronic commerce/digital trade] and that high standards in this regard contribute to enhancing consumer confidence and trust in the digital economy and [electronic commerce/digital trade]. [Any restrictions on cross-border flows of personal information should be necessary and proportionate to the risks presented].
3. Each [Party/Member] shall adopt or maintain a legal framework that provides for the protection of the personal [information/data] of [individuals/the users of electronic commerce/the users of digital trade].
- 3bis. [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.]
4. In the development of its legal framework for the protection of personal [information/data], each [Party/Member] should take into account principles and guidelines developed by relevant international bodies or organisations.
5. For greater certainty, a [Party/Member] may comply with the obligation in paragraph 4 by adopting or maintaining [measures or a combination of] 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.

6. **[Alt 1]:**

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

[Alt 2]:

Each [Party/Member] [shall endeavour to/shall] adopt or maintain measures that protect individuals without discrimination, on such bases as nationality or residence, from personal [information/data] protection violations occurring within its jurisdiction.

7. Each [Party/Member] [shall/should] publish information on the personal [information/data] protections it provides to [users of digital trade/users of electronic commerce], including guidance on how:

(a) [individuals/a natural person] can pursue remedies; and,

(b) enterprises can comply with legal requirements.

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

9. The mechanisms referred to in paragraph 8 may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks.

10. [Parties/Members] shall endeavour to exchange information on mechanisms referred to in paragraph 8 that are applied in their jurisdictions [and explore ways to extend these or other suitable arrangements to promote compatibility between them].

11. Each [Party/Member] shall endeavour to avoid using personal information obtained from an enterprise in a manner that discriminates against the natural person whose personal information was obtained.

12. Each [Party/Member] shall endeavour to protect personal information disclosed to a government authority by an enterprise such that the access, disclosure, use, retention, or modification of that personal information does not cause unnecessary damage to the interests of the natural person whose personal information was obtained.^[1]

13. "Personal data" means any direct or indirect information that relates to an identified or identifiable natural person.

14. The Members recognise the economic and social benefits of protecting the personal data of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.

15. To this end, the 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.

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

^[1] [For greater certainty, the public disclosure of personal information that can reasonably be expected to cause unnecessary damage to an individual does not constitute a violation of this obligation provided that it is not inconsistent with paragraph (x) 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, BR and US.
- Alt 3 based on text proposal by facilitator.

Paragraph 2:

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

Paragraph 3:

- Paragraph 3 based on text proposals by JP, US, SG, HK, BR, UA, KR, CN, CA and UK.
- Paragraph 3bis based on text proposal by EU.

Paragraph 4:

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

Paragraph 5:

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

Paragraph 6:

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

Paragraph 7:

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

Paragraph 8:

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

Paragraph 9:

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

Paragraph 10:

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

Paragraphs 11-12:

- Based on text proposal by CA.

Paragraphs 13-16:

- Based on text proposal by RU.

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] [to the extent practicable] 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 greater certainty, paragraph 2 does not apply to the voluntary transfer of [source code,] 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.]
4. This Article/Paragraph 2 [does/shall] not preclude a competent authority of a [Party/Member] from requiring a person of another [Party/Member] [:]

[Alt 1

- (a) to preserve and make available^[1] 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, [including those relating to non-discrimination and the prevention of bias,] 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.]

[Alt 2

to preserve and make available^[1] the source code of software [, or an algorithm expressed in that source code,] for [an / a specific] investigation, inspection, examination, or judicial proceeding, [to determine compliance with its laws and regulations, including those relating to non-discrimination and the prevention of bias;] or to preserve, make available, or transfer the source code of software [, or an algorithm expressed in that source code,] for an enforcement action, subject to safeguards against unauthorized disclosure.]

5. When source code of software has been preserved, made available, or transferred [for the purposes referred to in paragraph 4], that [Party/Member] shall adopt or maintain [measures / safeguards] to prevent the unauthorised disclosure of that source code.

¹ [[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 proposals by CA, CT, JP, KR, MX, PE, UA, US, SG and UK.

Paragraph 2:

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

Paragraph 3:

- Based on text proposal by EU and CN.

Paragraph 4:

- Alt 1 based on text proposals by CA, CT, JP, KR, MX, PE, UA, US, SG, UK, EU and NZ.
- Alt 2 based on text proposals by small group facilitator and NZ.

Paragraph 5:

- Based on text proposal by CA and JP.

(2) ICT products that use cryptography

1. For the purposes of this Article:
 - (a) "Cipher" or "cryptographic algorithm" means a [defined method of transforming data using cryptography]/ [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 [principles, means or methods where]/[the transformation of information using,] one or more secret parameters, for example, crypto variables, or associated key management [is required in order to transform the data or to perform a corresponding reverse transformation];
 - (d) "Encryption" means the conversion of data (plaintext) through the use of a cryptographic algorithm into a ciphertext using the appropriate key;
 - (e) "Information and communication technology product (ICT product)" means a product 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.

FN: For greater certainty, an ICT product does not include a financial instrument.

 - (f) "Key" means a parameter used in conjunction with a cryptographic algorithm that determines its operation in such a way that a person with knowledge of the key can reproduce or reverse the operation, while a person without knowledge of the key cannot.
2. With respect to an ICT product that uses cryptography and is [designed or] [used] for commercial applications, no [Party/ Member] shall require a manufacturer or supplier [or developer] of the ICT product, as a condition of the manufacture, sale, distribution, import or use of the ICT product, to:
 - (a) transfer or provide access to any proprietary information relating to cryptography, including by disclosing a particular technology, production process, or other information, for example, a private key or other secret parameter, algorithm specification or other design detail, to that [Member/Party] or a person in the territory of that [Member/Party];
 - (b) partner or otherwise cooperate with a person in the territory of that [Member/Party] in the development, manufacture, sale, distribution, import or use of the ICT product; or
 - (c) use or integrate a particular cipher or cryptographic algorithm.
3. [This Article shall apply to ICT products that use cryptography [and are [designed or] used for commercial applications].] [This Article]/ [Paragraph 2] shall not apply to:
 - [(a) a [Party's/Member's] law enforcement authorities requiring service suppliers using encryption they control to provide unencrypted communications pursuant to that [Member's/Party's] legal procedures;]
 - (a) the regulation of financial instruments;
 - (b) a requirement that a [Member/ Party] adopts or maintains relating to access to networks, including user devices, that are owned or controlled by [the government

of] that [Member/ Party] [and are exclusively for use in the exercise of government functions], including [those of] central banks;

- (c) a measure adopted or maintained by a [Member/Party] pursuant to supervisory, investigatory, or examination authority relating to financial [institutions/service suppliers] or financial markets; or
- (d) the manufacture, sale, distribution, import, or use of an ICT product by or for [the government of] a [Member/Party].
- [(e) a requirement imposed or enforced, or a commitment or undertaking enforced, by a judicial authority, a regulatory body, or a competition authority pursuant to a [Member's/Party's] competition law, to prevent or remedy a restriction or a distortion of competition; or]
- [(f) a decision, by a regulatory [body] or a judicial authority of a [Member/Party], requiring a manufacturer, [developer] or supplier of an ICT product that uses cryptography to preserve and make available [FN1] any information to which subparagraph 2(a) applies in furtherance of an investigation, inspection, examination, enforcement action or a judicial proceeding.]

FN1: [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.]

4. [Where proprietary information relating to cryptography of an ICT product that uses cryptography and that is [designed or] used for commercial applications has been revealed to a [Member/Party] upon its request, that [Member/Party] shall adopt or maintain measures to prevent the unauthorised disclosure of proprietary information contained in or related to the ICT product that uses cryptography. To this end, each [Member/Party] shall provide for appropriate preventative measures against that disclosure, including by limiting the access to and use of that information to those who are essential to the performance of those activities only.]

[5. Nothing in this Article shall be construed to:

- (a) affect the rights and obligations of a [Member/Party] under Article [X.X] (Source Code); and]
- [(b) preclude a [Member's/Party's] law enforcement authorities from requiring a service supplier using encryption to provide, access to encrypted and unencrypted communications, pursuant to that [Member's/Party's] legal procedures.]

Paragraphs 1-5:

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

C.4. Cybersecurity

Co-convenors' note: Small group discussion on this article were concluded in October 2022. Co-convenors and the facilitator remain available for discussions with any interested delegations.

1. The [Parties/Members] recognise that threats to [cybersecurity/information security] undermine confidence in [digital trade/electronic commerce].
2. [Parties/Members] recognize the evolving nature of cyber threats. In order to identify and mitigate those threats and thereby facilitate [digital trade/electronic commerce] the [Parties/Members] shall endeavour to:
 - (a) build the capabilities of their respective national entities responsible for cybersecurity incident response;
 - (b) collaborate to identify and mitigate malicious intrusions or dissemination of malicious code that affect electronic networks of [Parties/Members] and to address cybersecurity incidents in a timely manner, [combat cybercrime], as well as to share information for awareness and best practices.
3. Given the evolving nature of cyber threats and their negative impact on [electronic commerce/digital trade], the [Parties/Members] recognise the importance of risk [-based/management] approaches in addressing those threats while minimising trade barriers. Accordingly, [where appropriate] each [Party/Member] shall endeavour to employ, and to encourage enterprises within its jurisdiction to use, risk [-based/management] approaches that rely on risk management best practices and on standards developed in a consensus-based, transparent, and open manner, to identify and protect against cybersecurity risks, to detect [cybersecurity events], and to respond to and recover from cybersecurity incidents.

Drafting note: The delegations' understanding of standards developed in a consensus-based manner draws on the TBT Committee Principles for the Development of International Standards, Guides and Recommendations. In this context, consensus need not imply unanimity.

Section D: Cross-cutting issues

D.1. Flow of information

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

1. "Covered person" means a national of a [Party/Member] or an enterprise of a [Party/Member].
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. **[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 [compatible and interoperable with the requirements and limitations established in this Section].
5. **[Alt 1:**
 No [Party/Member] shall prohibit or restrict the cross-border transfer of information, including personal information, by electronic means, if this activity is for the conduct of the business of a covered person.]
[Alt 2:
 [Unless otherwise provided for under its laws or regulations,] [each\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/measures] 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:

[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.]

6bis. For greater certainty, legitimate public policy objectives include the protection or promotion of the rights, interests, duties and responsibilities of indigenous peoples.

7. This article does not apply with respect to financial service suppliers, which are addressed by Article [X] (Financial Information)

8. 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:

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

Paragraph 2:

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

Paragraph 3:

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

Paragraph 4:

- Based on text proposals by BR and CN.

Paragraph 5:

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

Paragraph 6:

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

Paragraph 6bis:

- Based on text proposal by NZ.

Paragraph 7:

- Based on text proposal by UK.

Paragraph 8:

- Based on text proposal by NG.

The UK has also tabled communication (INF/ECOM/79) related to "CROSS-BORDER TRANSFER OF INFORMATION BY ELECTRONIC MEANS" and "LOCATION OF COMPUTING FACILITIES".

(2) Location of computing facilities

1. "Computing facility" means a [computer servers/computer server] [and/or] storage device for processing or storing information for commercial use.
2. "Covered person" means a national of a [Party/Member] or an enterprise of a [Party/Member].
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 / any] corporation, trust, partnership, sole proprietorship, joint venture, or [other association/ association or similar organisation].
4. [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. [Unless otherwise provided for under its laws or regulations], [no\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 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.
- 6bis. For greater certainty, legitimate public policy objectives include the protection or promotion of the rights, interests, duties and responsibilities of indigenous peoples.
7. 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]).
8. 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, JP, US, KR, CA and UK.

Paragraph 2:

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

Paragraph 3:

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

Paragraph 4:

- Based on text proposals by CN.

Paragraph 5:

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

Paragraph 6:

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

Paragraph 6 bis:

- Based on text proposal by NZ.

Paragraph 7:

- Based on text proposals by US and UK.

Paragraph 8:

- Based on text proposal by NG.

The UK has also tabled communication (INF/ECOM/79) related to "CROSS-BORDER TRANSFER OF INFORMATION BY ELECTRONIC MEANS" and "LOCATION OF COMPUTING FACILITIES".

(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 proposals by US and UK.

Paragraph 6-7:

- Based on text proposal by US.

Paragraph 8-9:

- Based on text proposal by UK.

Paragraph 10:

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

Paragraph 11:

- 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.

D.2. Transparency, domestic regulation and cooperation

(1) Transparency

Co-convenors' note: Small group discussion on this article were concluded in July 2021. Co-convenors and the facilitator remain available for discussions with any interested delegations.

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) 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][promote access to E-commerce and] [assist [micro,] small and medium-sized enterprises [, indigenous peoples, rural populations, low socio-economic groups, women, and persons with disabilities,] 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].
- [(f) Recognise the importance of digital inclusion and that all people and businesses can participate in, contribute to, and benefit from electronic commerce. To promote digital inclusion, the Parties/Members shall endeavour to cooperate on matters relating to digital inclusion. This may include:
 - i. identifying and addressing barriers to accessing e-commerce opportunities;
 - ii. developing programmes to promote participation of all groups in the digital economy, including for example improving digital skills and access to online business tools;
 - iii. sharing methods and procedures for the responsible collection of disaggregated data, the use of indicators, and the analysis of statistics related to participation in the digital economy;

- iv. sharing experiences and best practices, including exchange of experts, with respect to digital inclusion; and,
- v. other areas as jointly agreed by the Parties/Members.]

[Cooperation activities relating to digital inclusion may be carried out through the coordination, as appropriate, of the Parties'/Members' respective indigenous peoples, agencies, companies, labour unions, civil society, academic institutions, and non-governmental organizations, among others.]

[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.]

2. 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.
3. The enquiry points shall answer enquiries within a reasonable time period, which may vary depending on the nature or complexity of the request.

4. Each [Party/Member] shall notify the [Secretariat/Committee on e-commerce] of the contact information of the enquiry points referred to in paragraph 1.
5. 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].
6. For greater certainty, the consultation procedure in accordance with the paragraph 1(a) is separate from the consultation of the Dispute Settlement Understanding.

Paragraph 1:

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

Paragraphs 2-6:

- Based on text proposal by KR.

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 proposals 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 proposals by CN and CI.

D.4. Implementation Periods for developing and least developed country Members

(1) Implementation Periods for developing and least developed country Members

1. Developing or least developed country Members may designate specific (articles/issues) requiring public policy, institutional or legislative changes for implementation on a date following an implementation period not exceeding three (3) years from the entry into force of this Agreement.
2. Developing or least developed country Members shall submit their lists of articles/issues that are subject to the deadline, on the day of entry into force of the Agreement.
3. Developing or least developed country Members requiring an extension of up to two (2) additional years to the implementation period for certain specific articles/issues, in accordance with paragraph 1, shall communicate this extension to the Committee on Trade Related Aspects of Electronic Commerce, detailing the relevant actions required to complete the implementation thereof. The developing or least developed country Member requiring the extension shall inform the Committee no later than one hundred and twenty (120) days before the expiry of the implementation date.

Paragraph 1-3:

- Based on text proposal by EC, GT and PY.

D.5. Special and Different Treatment Provisions for Developing
Country Members and Least Developed Country Members

(1) Options for capacity building and technical assistance

ARTICLE X+1: GENERAL PRINCIPLES

1. The provisions contained in Articles 1 to X of this Agreement shall be implemented by developing and least-developed country Members in accordance with this Section.
2. Assistance and support for capacity building should be provided to help developing and least-developed country Members implement the provisions of this Agreement, in accordance with their nature and scope. The extent and the timing of implementation of the provisions of this Agreement shall be related to the implementation capacities of developing and least-developed country Members. Where a developing or least-developed country Member continues to lack the necessary capacity, implementation of the provision(s) concerned will not be required until implementation capacity has been acquired.
3. Least-developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.
4. These principles shall be applied through the provisions set out in Section II.

ARTICLE X+2: CATEGORIES OF PROVISIONS

1. There are three categories of provisions:
 - (a) Category A contains provisions that a developing country Member or a least-developed country Member designates for implementation upon entry into force of this Agreement, or in the case of a least-developed country Member within one year after entry into force, as provided in Article X+3.
 - (b) Category B contains provisions that a developing country Member or a least-developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement, as provided in Article X+4.
 - (c) Category C contains provisions that a developing country Member or a least-developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement and requiring the acquisition of implementation capacity through the provision of assistance and support for capacity building, as provided for in Article X+4.
2. Each developing country and least-developed country Member shall self-designate, on an individual basis, the provisions it is including under each of the Categories A, B and C.

ARTICLE X+3: NOTIFICATION AND IMPLEMENTATION OF CATEGORY A

1. Upon entry into force of this Agreement, each developing country Member shall implement its Category A commitments. Those commitments designated under Category A will thereby be made an integral part of this Agreement.
2. A least-developed country Member may notify the Committee of the provisions it has designated in Category A for up to one year after entry into force of this Agreement. Each least-developed country Member's commitments designated under Category A will thereby be made an integral part of this Agreement.

ARTICLE X+4: NOTIFICATION OF DEFINITIVE DATES FOR IMPLEMENTATION OF CATEGORY B AND CATEGORY C

1. With respect to the provisions that a developing country Member has not designated in Category A, the Member may delay implementation in accordance with the process set out in this Article.

Developing Country Member Category B

- (a) Upon entry into force of this Agreement, each developing country Member shall notify the Committee of the provisions that it has designated in Category B and their corresponding indicative dates for implementation.
- (b) No later than one year after entry into force of this Agreement, each developing country Member shall notify the Committee of its definitive dates for implementation of the provisions it has designated in Category B. If a developing country Member, before this deadline, believes it requires additional time to notify its definitive dates, the Member may request that the Committee extend the period sufficient to notify its dates.

Developing Country Member Category C

- (c) Upon entry into force of this Agreement, each developing country Member shall notify the Committee of the provisions that it has designated in Category C and their corresponding indicative dates for implementation. For transparency purposes, notifications submitted shall include information on the assistance and support for capacity building that the Member requires in order to implement.
- (d) Within one year after entry into force of this Agreement, developing country Members and relevant donor Members, taking into account any existing arrangements already in place, notifications pursuant to paragraph 1 of Article X+10 and information submitted pursuant to subparagraph (c) above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C. The participating developing country Member shall promptly inform the Committee of such arrangements. The Committee shall also invite non-Member donors to provide information on existing and concluded arrangements.
- (e) Within 18 months from the date of the provision of the information stipulated in subparagraph (d), donor Members and respective developing country Members shall inform the Committee of the progress in the provision of assistance and support for capacity building. Each developing country Member shall, at the same time, notify its list of definitive dates for implementation.

2. With respect to those provisions that a least-developed country Member has not designated under Category A, least-developed country Members may delay implementation in accordance with the process set forth in this Article.

Least-Developed Country Member Category B

- (a) No later than one year after entry into force of this Agreement, a least-developed country Member shall notify the Committee of its Category B provisions and may notify their corresponding indicative dates for implementation of these provisions, taking into account maximum flexibilities for least-developed country Members.
- (b) No later than two years after the notification date stipulated under subparagraph (a) above, each least-developed country Member shall notify the Committee to confirm designations of provisions and notify its dates for implementation. If a least-developed country Member, before this deadline, believes it requires additional time to notify its definitive dates, the Member may request that the Committee extend the period sufficiently to notify its dates.

Least-Developed Country Member Category C

- (c) For transparency purposes and to facilitate arrangements with donors, one year after entry into force of this Agreement, each least-developed country Member shall notify the Committee of the provisions it has designated in Category C, taking into account maximum flexibilities for least-developed country Members.
 - (d) One year after the date stipulated in subparagraph (c) above, least-developed country Members shall notify information on assistance and support for capacity building that the Member requires in order to implement.
 - (e) No later than two years after the notification under subparagraph (d) above, least-developed country Members and relevant donor Members, taking into account information submitted pursuant to subparagraph (d) above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C. The participating least-developed country Member shall promptly inform the Committee of such arrangements. The least-developed country Member shall, at the same time, notify indicative dates for implementation of corresponding Category C commitments covered by the assistance and support arrangements. The Committee shall also invite non-Member donors to provide information on existing and concluded arrangements.
 - (f) No later than 18 months from the date of the provision of the information stipulated in subparagraph (e), relevant donor Members and respective least-developed country Members shall inform the Committee of the progress in the provision of assistance and support for capacity building. Each least-developed country Member shall, at the same time, notify the Committee of its list of definitive dates for implementation.
3. Developing country Members and least-developed country Members experiencing difficulties in submitting definitive dates for implementation within the deadlines set out in paragraphs 1 and 2 because of the lack of donor support or lack of progress in the provision of assistance and support for capacity building should notify the Committee as early as possible prior to the expiration of those deadlines. Members agree to cooperate to assist in addressing such difficulties, taking into account the particular circumstances and special problems facing the Member concerned. The Committee shall, as appropriate, take action to address the difficulties including, where necessary, by extending the deadlines for the Member concerned to notify its definitive dates.
 4. Three months before the deadline stipulated in subparagraphs 1(b) or (e), or in the case of a least-developed country Member, subparagraphs 2(b) or (f), the Secretariat shall remind a Member if that Member has not notified a definitive date for implementation of provisions that it has designated in Category B or C. If the Member does not invoke paragraph 3, or in the case of a developing country Member subparagraph 1(b), or in the case of a least-developed country Member subparagraph 2(b), to extend the deadline and still does not notify a definitive date for implementation, the Member shall implement the provisions within one year after the deadline stipulated in subparagraphs 1(b) or (e), or in the case of a least-developed country Member, subparagraphs 2(b) or (f), or extended by paragraph 3.
 5. No later than 60 days after the dates for notification of definitive dates for implementation of Category B and Category C provisions in accordance with paragraphs 1, 2, or 3, the Committee shall take note of the annexes containing each Member's definitive dates for implementation of Category B and Category C provisions, including any dates set under paragraph 4, thereby making these annexes an integral part of this Agreement.

ARTICLE X+5: EARLY WARNING MECHANISM: EXTENSION OF IMPLEMENTATION DATES FOR PROVISIONS IN CATEGORIES B AND C

1.
 - (a) A developing country Member or least-developed country Member that considers itself to be experiencing difficulty in implementing a provision that it has designated in Category B or Category C by the definitive date established under subparagraphs 1(b) or (e) of Article X+4, or in the case of a least-developed country Member

subparagraphs 2(b) or (f) of Article X+4, should notify the Committee. Developing country Members shall notify the Committee no later than 120 days before the expiration of the implementation date. Least-developed country Members shall notify the Committee no later than 90 days before such date.

- (b) The notification to the Committee shall indicate the new date by which the developing country Member or least-developed country Member expects to be able to implement the provision concerned. The notification shall also indicate the reasons for the expected delay in implementation. Such reasons may include the need for assistance and support for capacity building not earlier anticipated or additional assistance and support to help build capacity.
2. Where a developing country Member's request for additional time for implementation does not exceed 18 months or a least-developed country Member's request for additional time does not exceed 3 years, the requesting Member is entitled to such additional time without any further action by the Committee.
 3. Where a developing country or least-developed country Member considers that it requires a first extension longer than that provided for in paragraph 2 or a second or any subsequent extension, it shall submit to the Committee a request for an extension containing the information described in subparagraph 1(b) no later than 20 days in respect of a developing country Member and 90 days in respect of a least-developed country Member before the expiration of the original definitive implementation date or that date as subsequently extended.
 4. The Committee shall give sympathetic consideration to granting requests for extension taking into account the specific circumstances of the Member submitting the request.
These circumstances may include difficulties and delays in obtaining assistance and support for capacity building.

ARTICLE X+6: IMPLEMENTATION OF CATEGORY B AND CATEGORY C

1. In accordance with paragraph 2 of Article X+1, if a developing country Member or a least-developed country Member, having fulfilled the procedures set forth in paragraphs 1 or 2 of Article X+4 and in Article X+5, and where an extension requested has not been granted or where the developing country Member or least-developed country Member otherwise experiences unforeseen circumstances that prevent an extension being granted under Article X+5, self-assesses that its capacity to implement a provision under Category C continues to be lacking, that Member shall notify the Committee of its inability to implement the relevant provision.
2. The Committee shall establish an Expert Group immediately, and in any case no later than 60 days after the Committee receives the notification from the relevant developing country Member or least-developed country Member. The Expert Group will examine the issue and make a recommendation to the Committee within 120 days of its composition.
3. The Expert Group shall be composed of five independent persons that are highly qualified in the fields of e-commerce facilitation and assistance and support for capacity building. The composition of the Expert Group shall ensure balance between nationals from developing and developed country Members. Where a least-developed country Member is involved, the Expert Group shall include at least one national from a least-developed country Member. If the Committee cannot agree on the composition of the Expert Group within 20 days of its establishment, the Director-General, in consultation with the chair of the Committee, shall determine the composition of the Expert Group in accordance with the terms of this paragraph.
4. The Expert Group shall consider the Member's self-assessment of lack of capacity and shall make a recommendation to the Committee. When considering the Expert Group's recommendation concerning a least-developed country Member, the Committee shall, as appropriate, take action that will facilitate the acquisition of sustainable implementation capacity.

5. The Member shall not be subject to proceedings under the Dispute Settlement Understanding on this issue from the time the developing country Member notifies the Committee of its inability to implement the relevant provision until the first meeting of the Committee after it receives the recommendation of the Expert Group. At that meeting, the Committee shall consider the recommendation of the Expert Group. For a least-developed country Member, the proceedings under the Dispute Settlement Understanding shall not apply to the respective provision from the date of notification to the Committee of its inability to implement the provision until the Committee makes a decision on the issue, or within 24 months after the date of the first Committee meeting set out above, whichever is earlier.
6. Where a least-developed country Member loses its ability to implement a Category C commitment, it may inform the Committee and follow the procedures set out in this Article.

ARTICLE X+7: SHIFTING BETWEEN CATEGORIES B AND C

1. Developing country Members and least-developed country Members who have notified provisions under Categories B and C may shift provisions between such categories through the submission of a notification to the Committee. Where a Member proposes to shift a provision from Category B to Category C, the Member shall provide information on the assistance and support required to build capacity.
2. In the event that additional time is required to implement a provision shifted from Category B to Category C, the Member may:
 - (a) use the provisions of Article X+5, including the opportunity for an automatic extension; or
 - (b) request an examination by the Committee of the Member's request for extra time to implement the provision and, if necessary, for assistance and support for capacity building, including the possibility of a review and recommendation by the Expert Group under Article X+6; or
 - (c) in the case of a least-developed country Member, any new implementation date of more than four years after the original date notified under Category B shall require approval by the Committee. In addition, a least-developed country Member shall continue to have recourse to Article X+5. It is understood that assistance and support for capacity building is required for a least-developed country Member so shifting.

ARTICLE X+8: PROVISION OF ASSISTANCE AND SUPPORT FOR CAPACITY BUILDING

1. Donor Members agree to facilitate the provision of assistance and support for capacity building to developing country and least-developed country Members on mutually agreed terms either bilaterally or through the appropriate international organizations. The objective is to assist developing country and least-developed country Members to implement the provisions of Section I of this Agreement.
2. Given the special needs of least-developed country Members, targeted assistance and support should be provided to the least-developed country Members so as to help them build sustainable capacity to implement their commitments. Through the relevant development cooperation mechanisms and consistent with the principles of technical assistance and support for capacity building as referred to in paragraph 3, development partners shall endeavour to provide assistance and support for capacity building in this area in a way that does not compromise existing development priorities.
3. Members shall endeavour to apply the following principles for providing assistance and support for capacity building with regard to the implementation of this Agreement:
 - (a) take account of the overall developmental framework of recipient countries and regions and, where relevant and appropriate, ongoing reform and technical assistance programs;
 - (b) include, where relevant and appropriate, activities to address regional and sub-regional challenges and promote regional and sub-regional integration;

- (c) ensure that ongoing e-commerce facilitation reform activities of the private sector are factored into assistance activities;
 - (d) promote coordination between and among Members and other relevant institutions, including regional economic communities, to ensure maximum effectiveness of and results from this assistance. To this end:
 - (i) coordination, primarily in the country or region where the assistance is to be provided, between partner Members and donors and among bilateral and multilateral donors should aim to avoid overlap and duplication in assistance programs and inconsistencies in reform activities through close coordination of technical assistance and capacity building interventions;
 - (ii) for least-developed country Members, the Enhanced Integrated Framework for trade-related assistance for the least-developed countries should be a part of this coordination process; and
 - (iii) Members should also promote internal coordination between their trade and development officials, both in capitals and in Geneva, in the implementation of this Agreement and technical assistance.
 - (e) encourage use of existing in-country and regional coordination structures such as roundtables and consultative groups to coordinate and monitor implementation activities; and
 - (f) encourage developing country Members to provide capacity building to other developing and least-developed country Members and consider supporting such activities, where possible.
4. The Committee shall hold at least one dedicated session per year to:
- (a) discuss any problems regarding implementation of provisions or sub-parts of provisions of this Agreement;
 - (b) review progress in the provision of assistance and support for capacity building to support the implementation of the Agreement, including any developing or least-developed country Members not receiving adequate assistance and support for capacity building;
 - (c) share experiences and information on ongoing assistance and support for capacity building and implementation programs, including challenges and successes;
 - (d) review donor notifications as set forth in Article X+10; and,
 - (e) review the operation of paragraph 2.

ARTICLE X+9: INFORMATION ON ASSISTANCE AND SUPPORT FOR CAPACITY BUILDING TO BE SUBMITTED TO THE COMMITTEE

1. To provide transparency to developing country Members and least-developed country Members on the provision of assistance and support for capacity building for implementation of Section I, each donor Member assisting developing country Members and least-developed country Members with the implementation of this Agreement shall submit to the Committee, at entry into force of this Agreement and annually thereafter, the following information on its assistance and support for capacity building that was disbursed in the preceding 12 months and, where available, that is committed in the next 12 months:
- (a) a description of the assistance and support for capacity building;
 - (b) the status and amount committed/disbursed;
 - (c) procedures for disbursement of the assistance and support;
 - (d) the beneficiary Member or, where necessary, the region; and,

- (e) the implementing agency in the Member providing assistance and support.

The information shall be provided in the format specified in Annex 1. In the case of the Organisation for Economic Co-operation and Development (referred to in this Agreement as the "OECD") Members, the information submitted can be based on relevant information from the OECD Creditor Reporting System. Developing country Members declaring themselves in a position to provide assistance and support for capacity building are encouraged to provide the information above.

2. Donor Members assisting developing country Members and least-developed country Members shall submit to the Committee:
- (a) contact points of their agencies responsible for providing assistance and support for capacity building related to the implementation of Section I of this Agreement including, where practicable, information on such contact points within the country or region where the assistance and support is to be provided; and,
 - (b) information on the process and mechanisms for requesting assistance and support for capacity building.

Developing country Members declaring themselves in a position to provide assistance and support are encouraged to provide the information above.

3. Developing country Members and least-developed country Members intending to avail themselves of e-commerce facilitation-related assistance and support for capacity building shall submit to the Committee information on contact point(s) of the office(s) responsible for coordinating and prioritizing such assistance and support.
4. Members may provide the information referred to in paragraphs 2 and 3 through internet references and shall update the information as necessary. The Secretariat shall make all such information publicly available.
5. The Committee shall invite relevant international and regional organizations (such as the International Monetary Fund, the OECD, the United Nations Conference on Trade and Development, the WCO, United Nations Regional Commissions, the World Bank, or their subsidiary bodies, and regional development banks) and other agencies of cooperation to provide information referred to in paragraphs 1, 2, and 4.

ARTICLE X+10: E-COMMERCE FACILITATION FUNDING FACILITY

Objectives

1. The role of the E-Commerce Facilitation Funding Facility (ECFFF) is to support the Committee's work in relation to assisting developing Members and LDCs in implementing the Agreement. Guidance concerning the nature of such support will be provided by the Committee.

Operational Directives

(a) Priorities

2. To fulfil its role, the ECFFF will prioritize the following activities:
- (i) The grant programme;
 - (ii) Technical assistance and capacity building;
 - (iii) Engagement with Annex D and development partners;
 - (iv) Maintain the website.
3. These priority activities will be conducted respecting the Paris Principles of Aid Effectiveness, namely ownership, alignment, harmonization, managing for results and mutual accountability.

(b) Modes of Delivery

- (i) Grant programme: The ECFFF will administer a grant programme to which, when no other funding is available, a Member having notified Category C provisions may apply. The procedures of the grant programme are established in its Operational Rules.
- (ii) Technical assistance and capacity building: The ECFFF will respond to requests from developing Members and LDC Members for technical assistance and capacity building on the Agreement which relate to the following outcomes: identifying implementation assistance, ratification of the Agreement, notifications under the Agreement, and strengthening the operation of national e-commerce facilitation committees. Activities may be organized to address the needs of an individual Member, group of Members or a regional grouping.
- (iii) Engagement with Annex D and development partners: The ECFFF will maintain close contact with Annex D and development partners so as to share information and allow for coordination and non-duplication of efforts on e-commerce facilitation. The ECFFF may respond to requests from those organizations to participate in activities to further support these objectives.
- (iv) Maintain the website: The ECFFF website underpins the three modes of delivery described above. In addition, the maintenance of up-to-date e-commerce facilitation resources on the website ensures that it constitutes a comprehensive information sharing/exchange platform.

Management and Transparency**Planning**

5. The ECFFF working jointly with a representative group composed of interested Members shall prepare a work plan for the upcoming calendar year.
6. This work plan shall be drawn up based on *inter alia* the following:
 - (i) Priorities identified by the Committee as conveyed during a formal meeting held before mid-year, under a specific agenda item entitled "ECFFF Work Plan"; and
 - (ii) E-commerce facilitation needs identified in the UNCTAD eTrade Readiness Assessment on Members' technical assistance needs as well as needs identified in Category C notifications.
7. The work plan, accompanied by a draft budget based on the activities identified, shall be reviewed by the Committee during its dedicated session on assistance and capacity building. Requests for activities will be submitted throughout the year, via the activity request form on the ECFFF website and shared with interested Members via the online tracker to enhance transparency.

Monitoring

8. Activities undertaken by the ECFFF will be monitored using a log frame which will be updated as required during the annual work planning phase.
9. Each activity request will identify the targeted outcomes of the activity in the context of the annual work plan priorities, and reports evaluating these activities will be posted thus allowing for results-based management, ensuring transparency and contributing to avoiding duplication of efforts.
10. Requests for grants will be submitted using the online expression of interest process, which may progress to a grant application which is then reviewed according to the operational rules of the grant programme. This process should help ensure transparency, non-duplication of activities and enhanced monitoring of the requested grant.

Reporting

11. The ECFFF shall provide the Committee with an annual report by the end of June of the following year. The report will be composed of two Sections.
12. Section I will cover the following elements:
 - (i) a presentation and assessment of achieved outputs and outcomes compared to their aims and presented in the context of the log-frame and work plan priorities;
 - (ii) An estimation of impact; and
 - (iii) An outline of risks identified prior to and during implementation of the ECFFF's activities since the last report and how these risks have been mitigated, as well as lessons-learned for the future.
13. Section II will cover the following elements:
 - (i) The financial report which will describe the use of funds in the ECFFF since the last report and be set up in accordance with WTO financial rules and regulations including, as appropriate, any outcomes from the current discussions on trust funds in the context of the Budget Committee. The financial report will be based on the draft budget presented alongside the corresponding work plan, with additional expenditure related to the activities approved by the request forms received throughout the year.
14. The ECFFF shall also provide an update of its activities (either orally or in writing) to each regular formal meeting of the Committee.

The ECFFF Secretariat

15. The ECFFF Secretariat is housed within the WTO and its responsibilities comprise the delivery of the operational guidelines, as supplemented by this document.
16. The ECFFF continues to be subject to the regular audit procedures of the WTO.

Article X+1-X+10:

- Based on text proposal by CI.

Section E: Telecommunications

E.1. Disciplines relating to Telecommunications Services

1. Each [Party/Member] shall adopt or maintain the definitions and principles contained in the WTO Reference Paper: Negotiating group on basic telecommunications. To that end, the definitions and principles shall be incorporated into and made an integral part of this [Agreement], *mutatis mutandis*.
2. When adopting or maintaining the definitions and principles contained in the WTO Reference Paper: Negotiating group on basic telecommunications, each [Party/Member] shall [to the extent applicable] ensure they apply to [all telecommunication services/value-added telecommunications services in addition to basic telecommunications services].
3. Each [Party/Member] shall adopt or maintain the definitions and principles [on the regulatory framework for telecommunications services] included in paragraphs 5-14.
4. [The definitions and principles referred to in Paragraphs 1-3 shall not apply to services providing, or exercising editorial control over, content transmitted using telecommunications networks and services.] [To be considered further if other exceptions are required].

Telecommunications regulatory authority

5. The telecommunications regulatory authority shall not hold a financial interest or maintain an operating or management role in any supplier of telecommunications networks and services. This paragraph shall not be construed to prohibit a government entity of a [Party/Member] other than the telecommunications regulatory authority from owning equity in such supplier.
6. The telecommunications regulatory authority shall have the power, including the ability to impose sanctions, to carry out the [tasks/functions] assigned to it by law. Such power shall be exercised transparently and in a timely manner.
7. [Tasks/functions] to be undertaken by the telecommunications regulatory authority shall be made public in an easily accessible and clear form.

[Assignment/allocation] of frequency bands

8. The [assignment/allocation] 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.
9. [Parties/Members] [shall endeavour] carry out such [assignment/allocation] using market based approaches[, such as bidding procedures].

Essential Facilities

10. "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.
11. A major supplier of public telecommunications networks or services shall make its essential facilities available to other suppliers of public telecommunications services on reasonable, non-discriminatory and transparent terms and conditions for the purpose of providing public telecommunications services.

12. [The telecommunications regulatory authority shall be empowered to/Each [Party/Member] shall]:
- (a) determine those essential facilities required to be made available by a major supplier; and,
 - (b) require a major supplier to offer access on an unbundled basis to its network elements that are essential facilities.
13. A supplier of public telecommunications networks or services shall have access to recourse, within a reasonable period of time, to the telecommunications regulatory authority or other competent authority to resolve disputes with other suppliers of public telecommunications networks or services regarding their rights and obligations arising from ~~this article~~ paragraphs 11-12. The period of time referred to in this paragraph shall be made publicly available.
14. Paragraph 13 shall not preclude a party involved in the dispute from bringing an action before judicial authorities.

Paragraphs 1-14

- Based on text proposals by EU, NO, UA and UK

Scope and general provisions

1. **[Alt 1:** (1) Preamble

[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;

[Reaffirming the inherent right of [Parties/Members] to regulate to achieve legitimate policy objectives, such as the protection of human, animal or plant life or health, social services, public education, safety, the environment including climate change, public morals, social or consumer protection, animal welfare, privacy and data protection, and the promotion and protection of cultural diversity and the rights, interests, duties and responsibilities of indigenous peoples in its territory;]

[Recognising the increasing social and economic importance of the use of digital technologies, and the importance of the safe and responsible development and use of such technology including in respect of source code to foster public trust;]

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 proposals by CA and NZ.

(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 proposal 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 Access to and Use of the Internet for [electronic commerce/Digital Trade] provision]

5. [Parties/Members] recognize the importance of avoiding barriers that constitute a disguised restriction on digital trade.
6. 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.
7. 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:

- Based on text proposal by BR.

Paragraphs 6-7:

- 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.]

[Alt 2:

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 3:

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 and JP.
- Alt 2 based on text proposals by CN.
- Alt 3 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) Indigenous peoples

1. Nothing in this Agreement shall preclude a [Party/Member] from adopting or maintaining measures it deems necessary to protect or promote rights, interests, duties, and responsibilities of indigenous peoples in its territory, including in fulfilment of its obligations under its legal, constitutional or Treaty arrangements with those indigenous peoples.
2. The [Parties/Members] agree that the interpretation of a [Party's/Member's] legal, constitutional or Treaty arrangements with indigenous peoples in its territory, including as to the nature of its rights and obligations under it, shall not be subject to the dispute settlement provisions in this agreement.

Paragraphs 1-2:

- Based on text proposal by NZ.

(9) 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.

(9 bis) Taxation

1. [Placeholder on Taxation]

(9) and (9bis):

- Based on text proposal by JP.

(10) Dispute Settlement

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

Paragraph 1:

- Based on text proposals by CA and JP.

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

1. A Committee on Trade-Related Aspects of Electronic Commerce (hereinafter referred to in this Agreement as the "Committee") is hereby established, and shall be open to all [Parties/Members]. The Committee shall elect its own Chairman and Vice-Chairman, and shall meet not less than once a year and otherwise at the request of any [Party/Member].
2. The Committee shall carry out responsibilities assigned to it by [the General Council] and shall afford [Parties/Members] the opportunity to consult on any matters relating to the operation and implementation of this Agreement.
3. The Committee shall monitor the operation and implementation of this Agreement and shall report thereon annually to [the General Council].
4. The Committee shall take note of extension communications received under Article XX (implementation periods for developing and least developed country Members) and shall follow up on the relevant actions required for the implementation thereof.

Paragraphs 1-3:

- Based on text proposal by JP.

Paragraph 4

- Based on text proposal by EC, GT and PY.

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Annex

(1) Logistics Services¹

1. [Parties/Members] recognise the importance of efficient cross border logistics which help lower the cost and improve the efficiency and reliability of supply chains.
2. [Parties/Members] recognise the importance of logistics services capacity and relevant infrastructure connectivity, as well as the synergetic development of the logistics services and cross-border electronic commerce.
3. To enhance delivery efficiency and promote trade development, [Parties/Members] shall endeavour to cooperate, where appropriate, to promote international multimodal transport and inter-connectivity between different modes of transport, formulate standard and compatible transport rules.
4. [Parties/Members] agree to support the cooperation between logistics services and postal services on the operational basis of the Universal Postal Union.
5. [Parties/Members] shall endeavour to share best practices and general information regarding the logistics sector, including but not limited to the following:
 - (a) Last mile deliveries, including on-demand and dynamic routing solutions;
 - (b) The use of electric, remote controlled and autonomous vehicles;
 - (c) Facilitating the availability of cross-border options for the delivery of goods, such as federated lockers; and,
 - (d) New delivery and business models for logistics.

Paragraphs 1-5:

- Based on text proposal by CN.

¹ 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 and courier services. Logistics services do not include traffic rights, or services directly related to the exercise of traffic rights as contained in the GATS Annex on Air Transport Services.

(2) Enhanced trade facilitation for cross-border e-commerce

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.

FN: Cross-border E-commerce means a trade mode that products are sold online and later physically delivered to consumers or buyers within or outside their territories.

2. To the extent practicable, [Parties/Members] shall improve 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 endeavour to apply, as appropriate, various types of models of revenue collection for duties and/or taxes.
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. To this end, [Parties/Members] shall take the following measures.
 - (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.
 - (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.
5. [Parties/Members] shall endeavour to enhance the regulatory cooperation in areas of electronic data exchange, product quality responsibility tracing, product safety risk warning, quick reaction to unqualified product and etc.

Paragraphs 1-5:

- Based on text proposal by CN.

(3) 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, use electronic 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, as appropriate, up-to-date 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.

(4) [Electronic payments services / Electronic Payments¹]

1. Noting the rapid growth of electronic payments, in particular, those provided by new payment service providers, [Parties/Members] agree to support the development of efficient, safe and secure cross border electronic payments by fostering the adoption and use of internationally accepted standards, promoting interoperability and the interlinking of payment infrastructures, and encouraging useful innovation and competition in the payments ecosystem.
2. To this end, and in accordance with their respective laws and regulations, [Parties/Members] recognise the following principles:
 - a) [Parties/Members] shall endeavour to make their respective regulations on electronic payments, including those pertaining to regulatory approval, licensing requirements, procedures and technical standards, publicly available in a timely manner.
 - b) [Parties/Members] shall endeavour to take into account, for relevant payment systems, internationally accepted payment standards to enable greater interoperability between payment systems.
 - c) [Parties/Members] shall endeavour to promote the use of Application Programming Interface (API) and to encourage financial institutions and payment service providers to make available APIs of their financial products, services and transactions to third party players where possible to facilitate greater interoperability and innovation in the electronic-payments ecosystem.
 - d) [Parties/Members] shall endeavour to enable cross-border authentication and electronic know-your-customer of individuals and businesses using digital identities.
 - e) [Parties/Members] recognise the importance of upholding safety, efficiency, trust and security in electronic payment systems through regulation. The implementation of regulation should, where appropriate, be proportionate to and commensurate with the risks posed by the provision of electronic payment systems.
 - f) [Parties/Members] agree that policies should promote innovation and competition in a level playing field and recognise the importance of enabling the introduction of new financial and electronic payment products and services by incumbents and new entrants in a timely manner such as through adopting regulatory and industry sandboxes.
3. Each [Party/Member] shall grant electronic payment services providers of another [Party/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.²
4. Each [Party/Member] shall take such reasonable measures as may be available to it to ensure that the rules of general application adopted or maintained by self-regulatory organizations of the [Party/Member] are promptly published or otherwise made publicly available.

Paragraphs 1:

- Based on text proposal by ID.

Paragraphs 2-4:

- Based on text proposal by CN.

¹ For greater certainty, nothing in this Article shall be construed to impose an obligation on a Party to modify its domestic rules on payments, including, inter alia, the need to obtain licences or permits or the approval of access applications.

² For greater certainty, nothing under this Article shall be construed to require a Party to allow foreign service providers to engage in the services on which it has not undertaken specific commitments.

(6) 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

(7) 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 competition policies to address the additional challenges that may arise from digital trade, subject to available resources, the Members shall endeavour to:
 - (a) exchange information and share best practices on the promotion and protection of a competitive environment in digital markets, and
 - (b) strengthen cooperation in order to identify and mitigate anti-competitive practices in the digital markets.
2. To the extent possible, each [Member/Party] shall endeavour to encourage, suppliers of online intermediation services not to accord any business user from any other [Member/Party] less favourable treatment than other like business users when accessing and using online intermediation services.

For greater certainty, 'business user' means any natural or legal person which, through online intermediation services offers goods or services to consumers.

For greater certainty, 'online intermediation services' means services that allow business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers. Online intermediation services are provided to business users on the basis of contractual relationships between the provider of those services and business users which offer goods or services to consumers

Paragraphs 1 and 2:

- Based on text proposals by BR and KR.

(8) Domestic regulation

1. [Alt 1:

Each [Party/Member] shall ensure that all its measures of general application 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.

(9) Electronic Commerce-Related Network Products

1. Members recognize the importance of electronic commerce-related network products and their supply chains that ensure the sustainable development of electronic commerce.
2. No Member shall exclude or limit the supply of electronic commerce-related network products from any other Member, unless in a way consistent with the WTO Agreement, and based on the conduct of an investigation pursuant to legitimate public policy objectives, and a conclusion thereof with positive evidences, and duly and timely notices.

For greater certainty, "the supply of electronic commerce-related network products" includes the production, distribution, marketing, sale and delivery of electronic commerce-related network products.

3. No member shall prevent the suppliers of public telecommunications transport networks or services, including value-added services, from using the technologies supporting their networks and services, and/or electronic commerce-related network products related to the technologies, which are of their own independent choice based on commercial consideration.
4. No member shall, block the supply chains of electronic commerce-related network products, in particular those based on long-term commercial relationship, unless in a way consistent with the WTO Agreement, and based on the conduct of an investigation pursuant to legitimate public policy objectives, and a conclusion thereof with positive evidences, and duly and timely notices.

For greater certainty, suspending or prohibiting the supply of necessary raw materials, components, parts, software, technologies and their updates for electronic commerce-related network products to enterprises of any other Member, shall be regarded as blocking the supply chains of electronic commerce-related network equipment and products.

5. Definition:

"Electronic commerce-related network products" refer to all products under the Chapter 85 of HS2022 that can be used to support transactions done by electronic means, as well as software and services related to such products, such as installation, trial operation, testing, optimization, maintenance and repair services.

Paragraphs 1-5:

- Based on text proposal by CN.

(10) 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, and EU (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			
a. - e. (CPC 84)	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)		
	1) None [or make/improve commitments]	1) None [or make/improve commitments]	
	2) None [or make/improve commitments]	2) None [or make/improve commitments]	
	3) None [or make/improve commitments]	3) None [or make/improve commitments]	
	4) Unbound, except as indicated in horizontal section ²	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]	1) None [or make/improve commitments]	
	2) None [or make/improve commitments]	2) None [or make/improve commitments]	
	3) None [or make/improve commitments]	3) None [or make/improve commitments]	
	4) Unbound, except as indicated in horizontal section	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	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.B. <u>Courrier 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)		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 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 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	1)	None	1)	None	1)	None
	2)	[or make/improve commitments] ³	2)	[or make/improve commitments]	2)	[or make/improve commitments]	2)	[or make/improve commitments]
	3)	None	3)	None	3)	None	3)	None
	4)	[or make/improve commitments] ⁴	4)	[or make/improve commitments] ⁴	4)	[or make/improve commitments]	4)	[or make/improve commitments]
		Unbound, except as indicated in horizontal section ⁵		Unbound, except as indicated in horizontal section ⁵		Unbound, except as indicated in horizontal section ⁵		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. <u>Banking and Other Financial Services</u> (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	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. <u>Maritime Transport Services</u> 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	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		
H. Services auxiliary to all modes of transport	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		
a. Cargo-handling services (CPC 741)	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section		
b. Storage and warehouse service (CPC 742)	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		
c. Freight transport agency services (CPC 748)	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section		
d. Other (CPC 749)	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section	1) None [or make/improve commitments] 2) None [or make/improve commitments] 3) None [or make/improve commitments] 4) Unbound, except as indicated in horizontal section		

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.

(11) Temporary Entry and Stay of Electronic Commerce-Related Business Persons

1. To the extent provided for in their commitments under the WTO Agreement, each Member shall grant temporary entry or extension of temporary stay to electronic commerce-related business persons of any other Member, provided that those business persons:
 - (a) follow the granting Member's prescribed application procedures for the relevant temporary entry formality; and
 - (b) meet all relevant eligibility requirements for temporary entry or extension of temporary stay.
2. To the extent provided for in their commitments under the WTO Agreement, each Member shall:
 - (a) promptly publish or otherwise make publicly available, to the extent practicable via electronic means, information on the temporary entry and extension of temporary stay.
 - (b) expeditiously process a completed application for temporary entry and extension of temporary stay, and make a decision on the application and inform the applicant of the decision including, if approved, the period of stay and other conditions.
 - (c) ensure that fees and charges charged by its competent authorities for the processing of an application for temporary entry or extension of temporary stay are reasonable, or in the principle of reciprocity.
3. This Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
4. Nothing in this Agreement shall prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment in GATS.

The sole fact of requiring a visa for natural persons of certain Members and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment in GATS.

5. **Electronic commerce-related business person** means:

- (a) a natural person who has the nationality of a Member under its law; or,
- (b) a permanent resident of a Member that, prior to the date of entry into force of this Agreement, has made a notification consistent with Article XXVIII(k)(ii)(2) of GATS that that Member accords substantially the same treatment to its permanent residents as it does to its nationals,¹⁸

who is engaged in trade in goods or the supply of services in relation to electronic commerce.

Temporary entry means entry into the territory of a Member by a business person of another Member who does not intend to establish permanent residence.

¹⁸ For the purposes of this subparagraph, "nationals" has the meaning it bears in Article XXVIII(k)(ii)(2) of GATS.

Temporary entry formality means a visa, permit, pass or other document or electronic authority granting temporary entry.

Paragraphs 1-5:

- Based on text proposal by CN.

(12) 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.*

Paragraphs 1-2:

* Based on text proposals by CA, CT and EU.