

WTO ELECTRONIC COMMERCE NEGOTIATIONS

DRAFT CHAIRS TEXT

15 January 2024

The following Chair's text, dated 15 January 2024, has been prepared by the Co-convenors of the WTO JSI on E-commerce for the purpose of further review and negotiation. It is without prejudice to the positions or views of Australia, Japan and Singapore as individual WTO Members participating in the negotiation.

Australia, Singapore and Japan, as Co-convenors, take sole responsibility for this Chair's Text, which reflects our judgement on where consensus is most likely to be achieved in the agreement. This Chair's Text **does not represent the dropping of any proposals from the Consolidated Text INF/ECOM/62/Rev.5** issued on 15 November 2023, which remains a comprehensive record of proposals, attributions and drafting notes.

In the upcoming meeting (30 January – 2 February 2024), the Co-convenors propose that Members engage in a first reading of the Chair's Text in its entirety. Given the nature of negotiations at the WTO, it is unlikely that any Member will see all their drafting preferences reflected in the Chair's Text. Hence, the Co-convenors request Members to take a holistic approach in considering the Chair's Text. We trust that you share our view that this Chair's Text represents a commercially meaningful and inclusive package, reflects broadly the views and feedback of all participants since discussions began in 2019, and provides a sound basis for us to achieve a consensus agreement.

For a limited number of proposals, Co-convenors were not able to make recommendations regarding text that would most likely achieve consensus. As such, Co-convenors have not addressed these proposals in the Chair's text and, instead, will schedule specific sessions for negotiations to continue during the January round. Accordingly, we have included placeholders in the Chair's text (see page 26) for the following issues:

- ICT products that use cryptography (pages 24-25 of the Consolidated Text), Electronic Payments (pages 8-9 of the Consolidated Text) and Development (pages 37-51 of the Consolidated Text): these issues require further small group work.
- Scope and exceptions/carve-outs (page 58 paras 2-5, proposals related to government procurement, services supplied in the exercise of governmental authority, government information and financial services, page 62 indigenous peoples, page 63 taxation and page 19 protection of personal data and privacy): these issues depend on the stabilisation of the core obligations and have therefore not had sufficient opportunity for in-depth discussion.

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Section A: Enabling electronic commerce.

(1) Electronic transactions frameworks

1. Each Party 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.
2. Each Party shall endeavour to:
 - (a) avoid undue regulatory burden on electronic transactions; and
 - (b) facilitate input by interested persons in the development of its legal framework for electronic transactions.
3. The Parties recognise the importance of facilitating the use of electronic transferable records. To this end, each Party shall endeavour to adopt or maintain a legal framework which takes into account the UNCITRAL Model Law on Electronic Transferable Records 2017.

**[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.]*

(2) Electronic authentication and electronic signatures

1. For the purposes of this Article:
 - (a) "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; and

**Negotiators' note: It is understood that 'or' includes 'and' and thus encompasses situations where both or either functions are performed.*
 - (b) "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
2. Except in circumstances otherwise provided for under its laws or regulations, a Party shall not deny the legal effect, legal validity, or admissibility as evidence in legal proceedings of an electronic signature solely on the basis that the signature is in electronic form.
3. No Party 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.
4. Notwithstanding paragraph 3, a Party 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.
5. To the extent provided for under its laws or regulations, a Party shall apply paragraphs 2 to 4 to electronic seals, electronic time stamps and electronic registered delivery services.
6. Parties shall encourage the use of interoperable electronic authentication.
7. Parties 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 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

1. Unless otherwise provided for under its laws or regulations, a Party shall not deny the legal effect, legal validity, or enforceability of an electronic contract² solely on the basis that the contract has been made by electronic means.

² For greater certainty, an electronic contract includes a contract made by interaction with an automated message system.

(4) Electronic invoicing

1. For the purposes of this Article:
 - (a) "electronic invoicing" means the processing and exchange of an invoice between a seller and a buyer using a structured digital format; and
 - (b) "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.
2. Unless otherwise provided for under its laws or regulations, a Party 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.
3. Parties recognise that electronic invoicing frameworks can help improve cost effectiveness, efficiency, accuracy, and reliability of electronic commerce transactions.
4. To the extent that a Party develops a measure related to electronic invoicing frameworks, the Party shall endeavour to design the measure to support cross-border interoperability, including by taking into account international standards, guidelines or recommendations, where they exist.
5. Each Party shall endeavour to share best practices pertaining to electronic invoicing, as appropriate.

(5) Paperless trading

1. For the purposes of this Article:
 - (a) “customs authority” means any authority that is responsible under the law of each Party for the administration of its customs laws and regulations; and
 - (b) “supporting documentation” means any documentation that is required to support the information presented to a Party 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.
 - (c) “electronic format” includes, inter alia, formats suitable for automated interpretation and electronic processing without human intervention, as well as digitized images and forms.
2. With a view to creating a paperless border environment for trade of goods, each Party recognises the importance of eliminating paper forms and documents required for import, export, or transit of goods. To this end, Parties are encouraged to eliminate paper forms and documents, as appropriate, and transition toward using forms and documents in data-based formats.
3. Each Party 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.
4. Each Party 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.
5. No Party shall be required to apply paragraphs 3 and 4 if there is an international legal requirement to the contrary.
6. Each Party shall endeavour to make instructions for the submission in electronic format of the forms referred to in paragraph 3 and paragraph 4 available through the internet.
7. Each Party 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.
8. Each Party 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.
9. No Party shall be required to apply paragraphs 7 and 8 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.
10. A Party shall endeavour to notify the Committee of the list of paper forms required under paragraph 9 (a) within 2 years of the entry into force of this initiative. Each Party shall endeavour to update the list, as appropriate.
11. Parties shall endeavour to cooperate, where appropriate, in international fora to promote the use of electronic forms and documents required for import, export, or transit.
12. Recognizing that use of an international standard for utilization of electronic forms and documents required for import, export, or transit can facilitate trade, Parties shall

endeavour to take into account, as appropriate, standards of, or methods agreed by relevant international organizations.

(6) Single windows data exchange and system interoperability

1. In implementing its single window pursuant to Article 10.4.1 of the Agreement on Trade Facilitation, set out in Annex 1A of the WTO Agreement, each Party shall endeavour to enable through a single entry point the electronic submission of the documentation and/or data the Party 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:
 - (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.
4. Whenever a single window is not available or not integrated with customs authorities, paragraph 3 applies, as appropriate, to customs management systems used for processing data related to export, import and transit of goods through its territory.
5. In implementing paragraph 3, Parties 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, of data elements and customs processes.
6. Taking into consideration the interests of micro, small and medium enterprises, Parties 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 from requiring service providers to meet certain procedural requirements in order to exchange data with the single window.

Section B: Openness and electronic commerce

(1) Customs duties on electronic transmissions

1. For the purposes of this Article, "electronic transmission" means a transmission made using any electromagnetic means and includes the content of the transmission.
2. The Parties acknowledge the importance of the Work Programme on Electronic Commerce (WT/L/274) and recognise that the practice of not imposing customs duties on electronic transmissions has played an important role in the development of the digital economy.
3. No Party shall impose customs duties on electronic transmissions between a person of one Party and a person of another Party.
4. For greater certainty, paragraph 3 shall not preclude a Party from imposing internal taxes, fees or other charges on electronic transmissions in a manner consistent with the WTO Agreement.

(2) Open government data

1. For the purposes of this Article, "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. This Article applies to measures by a Party with respect to data held by the central government, disclosure of which is not restricted under domestic law, and which a Party makes digitally available for public access and use (hereafter referred to as "government data")¹.
3. Parties 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 3 to 5.
4. Parties recognise that facilitating public access to and use of government data fosters economic and social development, competitiveness, and innovation. To this end, Parties are encouraged to expand the coverage of such data, such as through engagement and consultation with interested stakeholders.
5. To the extent that a Party chooses to make government data digitally available for public access and use, a Party 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.
6. A Party shall further endeavour to make this data generally available at no or reasonable cost to the user.
7. To the extent that a Party 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.
8. Parties 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.]

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

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

(3) Access to and use of the Internet for electronic commerce

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. For the purposes of this Article, "end-user" means a person who purchases or subscribes to an Internet access service from an Internet access service provider.
2. Parties 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 advantage³;
 - (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.
3. For greater certainty, nothing in paragraph 2 shall be construed to require a Party to adopt, amend or maintain a particular measure to implement the principles set out in that paragraph.

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 agreement.

³ For the purposes of paragraph 2(a), Parties recognise that an Internet access service supplier that offers certain content only to its end-users would not be acting contrary to this principle.

Section C: Trust and electronic commerce

(1) Online consumer protection

1. Misleading, fraudulent and deceptive commercial activities include:
 - (a) making material misrepresentations⁴, 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 recognise the importance of transparent and effective measures that enhance consumer confidence and trust in electronic commerce. Each Party shall adopt or maintain measures to proscribe misleading, fraudulent and deceptive commercial activities that cause harm, or potential harm, to consumers engaged⁵ in electronic commerce.
3. To protect consumers engaged in electronic commerce, each 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 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 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 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]

⁴ 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.

⁵ For the purposes of this article, the term 'engaged' includes the pre-transaction phase of electronic commerce.

(2) Unsolicited commercial electronic messages

1. For the purposes of this Article:
 - (a) "commercial electronic message" means an electronic message which is sent for commercial purposes to an electronic address of a person⁶ through telecommunication services, comprising at least electronic mail and to the extent provided for under domestic laws and regulations, other types of messages; and
 - (b) "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 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 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, of recipients to receive commercial electronic messages; or
 - (c) otherwise provide for the minimisation of unsolicited commercial electronic messages.
3. Each Party 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 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 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.]

⁶ For greater certainty, the "electronic address of a person" does not cover IP addresses.

(3) Personal data protection

1. For the purposes of this Article, "personal data" means any information relating to an identified or identifiable natural person.
2. The Parties recognise that strong and effective protection of personal data and related individual rights contribute to enhancing consumer confidence and trust in the digital economy.
3. Each Party shall adopt or maintain a legal framework that provides for the protection of the personal data of the users of electronic commerce⁷.
4. In the development of its legal framework for the protection of personal data, each Party should take into account principles and guidelines developed by relevant international bodies or organisations.
5. Each Party/Member shall endeavour to ensure that its legal framework under paragraph 3 provides non-discriminatory protection of personal data for natural persons.
6. Each Party shall publish information on the personal data protections it provides to users of electronic commerce, including guidance on how:
 - (a) a natural person can pursue remedies; and
 - (b) enterprises can comply with legal requirements.
7. Recognising that Parties may take different legal approaches to protecting personal data, each Party should encourage the development of mechanisms to promote compatibility between these different regimes.
8. The mechanisms referred to in paragraph 7 may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks.
9. Parties shall endeavour to exchange information on mechanisms referred to in paragraph 7 that are applied in their jurisdictions.

⁷ For greater certainty, a Party may comply with the obligation in paragraph 3 by adopting or maintaining measures or a combination of measures such as a comprehensive privacy, personal data protection laws, sector-specific laws covering privacy or other laws that address privacy violations.

(5) Cybersecurity

1. The Parties recognise that threats to cybersecurity undermine confidence in electronic commerce.
2. Parties recognize the evolving nature of cyber threats. In order to identify and mitigate those threats and thereby facilitate electronic commerce the Parties shall endeavour to:
 - (a) build the capabilities of their respective national entities responsible for cybersecurity incident response; and
 - (b) collaborate to identify and mitigate malicious intrusions or dissemination of malicious code that affect electronic networks of Parties and to address cybersecurity incidents in a timely manner 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, the Parties recognise the importance of risk-based approaches in addressing those threats while minimising trade barriers. Accordingly, each Party shall endeavour to employ, and to encourage enterprises within its jurisdiction to use, risk-based 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: Transparency, domestic regulation and cooperation and development

(1) Transparency

1. Further to Article III of the GATS and Article X of the GATT 1994, each Party 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 electronic commerce.

**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. Recognising the global nature of electronic commerce, Parties shall endeavour to:

- (a) work together to facilitate the use of and access to electronic commerce by micro, small and medium-sized enterprises, indigenous peoples, rural populations, low socio-economic groups, women, and persons with disabilities;
- (b) exchange information and share experiences on laws, regulations, and policies, regarding electronic commerce;
- (c) participate actively in regional and multilateral forums to promote the development of electronic commerce.

2. Areas of collaboration could include, inter alia:

- (a) personal information protection;
- (b) online consumer protection, including means for consumer redress and building consumer confidence;
- (c) unsolicited commercial electronic messages;
- (d) security in electronic communications;
- (e) [intellectual property rights];
- (f) e-authentication;
- (g) e-government;
- (h) consumer access to products and services offered online among Parties;
- (i) digital inclusion;
- (j) cross border logistics services, including multi-model transport, and cooperation between logistic services and postal services;
- (k) trade facilitation for cross-border e-commerce, including the use of customs warehouse or free zones, regulatory cooperation in the areas like data exchange, and product safety risk warning ;
- (l) other areas as jointly agreed by the Parties.

3. Each Party 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 on matters covered by this Agreement.

Section E: Telecommunications

1. Each Party shall undertake or continue to undertake the obligations contained in the WTO Reference Paper: Negotiating group on basic telecommunications. To that end, those obligations are incorporated into and made a part of this Agreement, *mutatis mutandis*.*

Drafters' note: *The exact formulation of this paragraph may need to be adjusted in light of the legal architecture of the JSI outcome.*

2. In accordance with the scope of the WTO Reference Paper, each Party shall apply the obligations referred to in paragraph 1 to basic telecommunications services.

Telecommunications regulatory authority

3. Each Party shall ensure its telecommunications regulatory authority does not hold a financial interest or maintain an operating or management role in a supplier of public telecommunications networks and services. This paragraph shall not be construed to prohibit a government entity of a Party other than the telecommunications regulatory authority from owning equity in such supplier.
4. Each party shall ensure that its telecommunications regulatory authority has the power, including the ability to impose sanctions, to carry out the functions assigned to it by law, and exercise such power transparently and in a timely manner.
5. Each Party shall make public the functions undertaken by the telecommunications regulatory authority in an easily accessible and clear form.

Assignment of frequency bands

6. Each Party shall ensure that the assignment of frequency bands for public telecommunication services shall be carried out through an open process that takes into account the public interest, including the promotion of competition.
7. Each Party shall endeavour to carry out such assignment using market-based approaches, such as bidding procedures, where appropriate.

Essential facilities

8. For the purposes of this Article, "Network element" means a facility or equipment used in supplying a public telecommunications service, including features, functions and capabilities provided by means of that facility or equipment.
9. Each Party shall empower its telecommunications regulatory authority to:
 - (a) determine which essential facilities are made available by a major supplier to other suppliers of public telecommunications services on reasonable, non-discriminatory and transparent terms and conditions for the purpose of providing public telecommunications services; and
 - (b) require a major supplier to offer access on an unbundled basis to its network elements that are essential facilities on reasonable, non-discriminatory and transparent terms and conditions for the purpose of providing public telecommunications services.
10. A supplier of public telecommunications 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 services regarding their rights and obligations arising from paragraph 9.

11. If a telecommunications regulatory authority or other competent authority declines to initiate any action regarding a request to resolve a dispute, it shall, upon request of a supplier involved in the dispute, provide a written explanation for its decision within a reasonable period of time.
12. A supplier of public telecommunications services involved in the dispute shall not be prevented from bringing an action before judicial authorities of a Party.

Scope and general provisions

(1) Preamble

The Parties:

- a. *Building* on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization;
- b. *Recognizing* the right of Parties to adopt regulatory measures to achieve legitimate policy objectives [, including the promotion and protection of [cultural diversity] [and the rights, interests, duties and responsibilities of Indigenous Peoples/indigenous peoples]];
- c. *Reaffirming* the importance of global electronic commerce and the opportunities it creates for economic growth and for [inclusive and] sustainable [trade, investment and] development;
- d. *Emphasizing* the importance of frameworks that promote open, transparent, non-discriminatory and predictable regulatory environments for facilitating electronic commerce;
- e. *Recognizing* the importance of the safe and responsible development and use of digital technologies to foster public trust;
- f. *Determined* to [further narrow the digital divide, and to] enhance the benefits and opportunities provided by electronic commerce for businesses, consumers, and workers in the global economy, and particularly in developing countries and least developed countries;
- g. *Recognizing* the special needs of developing country and, particularly, least-developed country Parties and the importance of supporting them in implementing this Agreement [through enhanced technical assistance and capacity building]; and
- h. *Recognizing* the potential of electronic commerce as a social and economic development tool [, including to narrow the digital divide,] and the importance of enhancing interoperability, innovation, competition, and access to information and communications technologies for micro, small and medium-sized enterprises, and [vulnerable or] disadvantaged [or under-represented] [or other] groups [, including women, Indigenous Peoples/indigenous peoples, youth, and persons with disabilities],

Hereby agree as follows:

(2) Definitions

For the purposes of this Agreement:

- (a) "Dispute Settlement Understanding" means the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, set out in Annex 2 to the WTO Agreement;
- (b) "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 organization].
- (c) "GATS" means the *General Agreement on Trade in Services*, set out in Annex 1B to the WTO Agreement;
- (d) "GATT 1994" means the *General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement;
- (e) "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];
- (f) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (g) "Party" means any State or separate customs territory for which this Agreement is in force;
- (h) "person" means a natural person or an enterprise;
- (i) "service supplied in the exercise of governmental authority" has the meaning in the GATS, including, where applicable, the Annex on Financial Services; and
- (j) "WTO Agreement" means the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on 15 April 1994.

(3) Scope

1. This Agreement shall apply to measures adopted or maintained by a Party affecting trade by electronic means.

(4) Relation to other agreements

1. The Parties affirm their rights and obligations under the WTO Agreement. The Parties further affirm that this Agreement does not create either obligations or rights for Members of the WTO that have not accepted it.
2. Nothing in this Agreement shall be construed as diminishing a Party's rights and obligations under the WTO Agreement, including any market access commitments inscribed in a Party's schedule of commitments to the GATT 1994 or the GATS, respectively.

(5) General exception

For the purposes of this Agreement, Article XX of the GATT 1994 and its interpretative notes and Article XIV of the GATS shall apply, *mutatis mutandis*.

(6) Security exception

For the purposes of this Agreement, Article XXI of the GATT 1994 and Article XIV *bis* of the GATS shall apply, *mutatis mutandis*.

[Negotiator's note: This Article is without prejudice to a Party's position on the appropriate interpretation of GATT Article XXI, GATS Article XIV bis, or TRIPS Article 73.]

(7) Prudential measures

1. Nothing in this Agreement shall prevent a Party 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 financial system.
2. Where such measures do not conform with this Agreement, they shall not be used as a means of avoiding the Party's obligations under this Agreement.
3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

[Note: Negotiators to consider whether a definition of "financial service supplier" and "financial services" is required for this Article / Agreement, noting paragraph 5 of in the GATS Annex of Financial Services.]

(10) Dispute settlement

1. For any dispute concerning the interpretation or application of this Agreement, Parties shall only have recourse to the Dispute Settlement Understanding.
2. 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.

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

1. A Committee on Trade-Related Aspects of Electronic Commerce ("the Committee") is hereby established, and shall be open to all Parties. The Committee shall elect its own Chairperson and Vice-Chairperson, and shall meet at least once annually and otherwise at the request of any Party.
2. The Committee shall carry out any responsibilities assigned to it by [the General Council] and shall afford the Parties 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 Parties) and shall follow up on the relevant actions required for the implementation thereof.

PLACEHOLDERS FOR FURTHER DISCUSSION AT THE JANUARY 2024 ROUND:

The Consolidated text INF/ECOM/62/Rev.5 issued on 15 November 2023 includes proposals on the following issues that will be discussed further in dedicated sessions during the January 2024 negotiating round:

- Pages 8-9 Electronic payments, as amended by facilitator room documents
- Page 19, para 3 bis Alt 1 proposal regarding the protection of personal data and privacy
- Pages 24-25 ICT products that use cryptography, as amended by facilitator room documents
- Pages 37-51 proposals related to Development, as amended by facilitator room documents.
- Page 59 proposals related to scope exclusions
- Page 62 proposal related to Indigenous peoples
- Page 63 (9 bis) proposal related to Taxation

In the January 2024 negotiating round, we will also schedule time to discuss the final provisions proposal circulated by Australia on 10 January. While this proposal does not form part of the Chairs text, we include this proposal below for Members' consideration and comment in the lead up to the January round. Co-Convenors also plan to table a draft Review clause in due course including to address outstanding issues.

[Final provisions

(1) Acceptance and entry into force

Any Member of the WTO may accept this Agreement. Acceptance shall take place by deposit of an instrument of acceptance to this Agreement with the Director-General of the WTO ("the Depository"). This Agreement shall enter into force, for those Members of the WTO that have accepted it, on the 30th day following the date of deposit of the [X]th instrument of acceptance.¹

(2) Accession

Any Member of the WTO may accede to this Agreement after the date of its entry into force. Accession shall take place by deposit of an instrument of accession to this Agreement with the Depository. This Agreement shall enter into force for an acceding Member of the WTO on the 30th day following the date of deposit of its instrument of accession.

(3) Implementation

The Parties shall implement this Agreement from the date of its entry into force.

[Note: Placeholder for specific implementation provisions for developing country Parties and least developed country Parties, subject to the landing zone on the JSI development articles.]

(4) Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Parties.

(5) Amendments

1. The Parties may amend this Agreement. A decision to adopt an amendment and to submit it for acceptance by the Parties shall be taken by consensus.
2. An amendment shall enter into force:
 - (a) except as provided for in subparagraph (b), in respect of those Parties that accept it, upon acceptance by two thirds of the Parties and thereafter for each other Party upon acceptance by it; and
 - (b) for all Parties upon acceptance by two thirds of the Parties if it is an amendment that the Committee, by consensus, has determined to be of a nature that would not alter the rights and obligations of the Parties.

¹ For the purposes of calculation of acceptances under this Article, an instrument of acceptance by the European Union for itself and in respect of its Member States shall be counted as a number of instruments of acceptance equal to the number of Member States of the European Union which are Members to the WTO.

(6) Withdrawal

1. Any Party may withdraw from this Agreement by providing written notification of its intent to withdraw to the Depository. The withdrawal shall take effect upon the expiration of 60 days from the date of receipt of the notification by the Depository. Any Party may, upon being informed of such notification pursuant to paragraph 10 (Deposit), request an immediate meeting of the Committee.
2. If a Party to this Agreement ceases to be a Member of the WTO, it shall cease to be a Party to this Agreement with effect on the date on which it ceases to be a Member of the WTO.

(7) Non-application of this Agreement between particular Parties

This Agreement shall not apply as between any two Parties where either Party, at the time either Party accepts or accedes to this Agreement, does not consent to such application.

(8) Secretariat

This Agreement shall be serviced by the WTO Secretariat.

(9) Deposit

This Agreement shall be deposited with the Depository. The Depository shall promptly furnish to each Party a certified copy of this Agreement, of each notification of accession pursuant to paragraph 2 (Accession), of each amendment pursuant to paragraph 6 (Amendments) and each notification of acceptance thereof, and of each withdrawal pursuant to paragraph 7 (Withdrawal).

(10) Registration

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

[Done at Geneva this [date], in a single copy in the English, French and Spanish languages, each text being authentic.]]
