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## **WTO ELECTRONIC COMMERCE NEGOTIATIONS**

### DRAFT CHAIR'S TEXT

*21 February 2024*

*Revision*

The following Chair's text, dated 21 February 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.

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.

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Preamble

The Parties:

- a. *Building* on their respective rights and obligations under the WTO Agreement;
- b. *Recognizing* the right of Parties to adopt regulatory measures to achieve legitimate policy objectives;
- c. *Reaffirming* the importance of global electronic commerce and the opportunities it creates for economic growth and for sustainable 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 and the importance of enhancing interoperability, innovation, competition, and access to information and communications technologies for all peoples, particularly disadvantaged groups, and micro, small and medium-sized enterprises;

Hereby agree as follows:

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## SECTION A: SCOPE AND GENERAL PROVISIONS

### Article 1: Scope

- 1.1 This Agreement shall apply to measures adopted or maintained by a Party affecting trade by electronic means.
- 1.2 This Agreement does not apply to:
- (a) [except for Article 16 (Customs duties on electronic transmissions)] government procurement; or
  - (b) a service supplied in the exercise of governmental authority; or
  - (c) except for Article 13 (Paperless Trading) Article 14 (Single Windows data exchange and system interoperability), Article 16 (Customs Duties) and Article 17 (Open Government Data) to information held or processed by or on behalf of a Party, or measures related to that information, including measures related to its collection.

### Article 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 any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any branch, corporation, trust, partnership, sole proprietorship, joint venture, or association;
- (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" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers, including, where applicable,
  - (i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

- (ii) activities forming part of a statutory system of social security or public retirement plans; and
  - (iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government; and
- (j) "WTO Agreement" means the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on 15 April 1994.

#### Article 3: Relation to other agreements

- 3.1 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.
- 3.2 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.

#### Article 4: 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*.

#### Article 5: 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*.

#### Article 6: Prudential measures

For the purposes of this Agreement, paragraph 2 of the GATS Annex on Financial Services shall apply, *mutatis mutandis*.

#### Article 7: Personal Data Protection exception

Nothing in [Articles 9 to 15 or in Articles 17 to 27] shall prevent a Party from adopting or maintaining measures on the protection of personal data and privacy, including with respect to cross-border data transfers, provided that the law of the Party provides for instruments enabling transfers under conditions of general application<sup>1</sup> for the protection of the data transferred.

#### Article 8: Indigenous Peoples

- 8.1 Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of another Party or as a disguised restriction on trade by electronic means, nothing in this Agreement shall preclude a Party from adopting or maintaining measures it deems necessary to accord more favourable treatment to Indigenous Peoples in its territory in respect of matters covered by this Agreement, including in fulfilment of its obligations under its legal, constitutional or treaty arrangements with those Indigenous Peoples.
- 8.2 The Parties agree that the interpretation of a Party's legal, constitutional or treaty arrangements with its Indigenous Peoples in its territory, including as to the nature of the rights and obligations arising under such legal, constitutional or treaty arrangements, shall not be subject to the dispute settlement provisions of this Agreement. Article 28 (Dispute Settlement) shall otherwise apply.

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<sup>1</sup> For greater certainty, "conditions of general application" refer to conditions formulated in objective terms that apply horizontally to an unidentified number of economic operators and thus cover a range of situations and cases.

## **SECTION B: ENABLING ELECTRONIC COMMERCE**

### Article 9: Electronic transactions frameworks

- 9.1 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.
- 9.2 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.
- 9.3 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.

Article 10: Electronic authentication and electronic signatures

- 10.1. 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
  - (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.<sup>2</sup>
- 10.2. 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.
- 10.3. 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.
- 10.4. Notwithstanding paragraph 10.3, 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.
- 10.5. To the extent provided for under its laws or regulations, a Party shall apply paragraphs 10.2 to 10.4 to electronic seals, electronic time stamps and electronic registered delivery services.
- 10.6. Parties shall encourage the use of interoperable electronic authentication.
- 10.7. Parties may work together, on a voluntary basis, to encourage the mutual recognition of electronic signatures.

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<sup>2</sup> 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.



[Article 11: Electronic contracts](#)

Unless otherwise provided for under its laws or regulations, a Party shall not deny the legal effect, legal validity, or enforceability of an electronic contract<sup>3</sup> solely on the basis that the contract has been made by electronic means.

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<sup>3</sup> For greater certainty, an electronic contract includes a contract made by interaction with an automated message system.

Article 12: Electronic invoicing

- 12.1. 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.
- 12.2. 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.
- 12.3. Parties recognise that electronic invoicing frameworks can help improve cost effectiveness, efficiency, accuracy, and reliability of electronic commerce transactions.
- 12.4. 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.
- 12.5. Each Party shall endeavour to share best practices pertaining to electronic invoicing, as appropriate.

### Article 13: Paperless trading

- 13.1. 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.
- 13.2 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.
- 13.3 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.
- 13.4 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.
- 13.5 No Party shall be required to apply paragraphs 13.3 and 13.4 if there is an international legal requirement to the contrary.
- 13.6 Each Party shall endeavour to make instructions for the submission in electronic format of the forms referred to in paragraphs 13.3 and 13.4 available through the internet.
- 13.7 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.
- 13.8 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.
- 13.9 No Party shall be required to apply paragraphs 13.7 and 13.8 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.
- 13.10 A Party shall endeavour to notify the Committee of the list of paper forms required under paragraph 13.9 (a) within 2 years of the entry into force of this Agreement. Each Party shall endeavour to update the list, as appropriate.

- 13.11 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.
- 13.12 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.

**Article 14: Single windows data exchange and system interoperability**

- 14.1. 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.
- 14.2. 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.
- 14.3. 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.
- 14.4. Whenever a single window is not available or not integrated with customs authorities, paragraph 14.3 applies, as appropriate, to customs management systems used for processing data related to export, import and transit of goods through its territory.
- 14.5. In implementing paragraph 14.3, 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.
- 14.6. Taking into consideration the interests of micro, small and medium-sized 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.<sup>4</sup>

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<sup>4</sup> 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.

### Article 15: Electronic Payments

- 15.1 For the purposes of this Article:
- (a) electronic payments means the payer's transfer of a monetary claim on a person that is acceptable to the payee and made through electronic means excluding payment services of central banks that involve settlement between financial service suppliers; and
  - (b) self-regulatory organization means any non-governmental body that is recognized by each Party as a self-regulatory body that exercises regulatory or supervisory authority over electronic payment service suppliers or financial service suppliers by statute or delegation from central or regional government.
- 15.2 Noting the rapid growth of electronic payments, in particular those supplied by new electronic payment services suppliers, Parties recognize:
- (a) the benefit of supporting the development of efficient, safe and secure cross-border electronic payments by fostering the adoption and use of internationally accepted standards, promoting interoperability of electronic payment infrastructures, and encouraging useful innovation and competition in the electronic payments services;
  - (b) the importance of upholding safety, efficiency, trust and security in electronic payment systems through regulation that should, where appropriate, account for the risks posed by the provision of electronic payment systems; and
  - (c) the importance of enabling the introduction of financial and electronic payment products and services in a timely manner.
- 15.3 In accordance with their respective laws and regulations, Parties shall endeavour to:
- (a) further to Article 24 (Transparency), 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) take into account, for relevant electronic payment systems, internationally accepted payment standards to enable greater interoperability between payment systems; and
  - (c) promote partnerships between third party players and financial service suppliers and electronic payment service providers, and to encourage financial service suppliers and electronic payment service suppliers to make available open platforms and architectures such as tools and protocols provided for through application programming interfaces of their financial products, services and transactions to third party players where possible to facilitate greater interoperability and innovation in the electronic payments ecosystem.
- 15.4 (a) the Parties recognise the commitment made by Members in paragraph C1 of the *Understanding on Commitments in Financial Services*, including with respect to granting, on terms that accord national treatment, financial service suppliers access to payment and clearing systems operated by a public entity;<sup>5</sup>
- (b) for the purposes of this Agreement:

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<sup>5</sup> For greater certainty, "access to payment and clearing systems" can be granted both through direct access, and indirect access via a financial service supplier that qualifies for and has direct access under the law of the relevant Party.

- (i) Parties who have undertaken the commitment referred to in paragraph 15.4 (a), affirm that such commitment also applies to electronic payments service suppliers; and
    - (ii) Parties who have not undertaken the commitment referred to in paragraph 15.4 (a), shall, to the extent practicable, endeavour to adopt or maintain measures that implement the commitment referred to in paragraph 15.4(a) as it applies to electronic payments service suppliers.
  - (c) for greater certainty, nothing in this paragraph shall be construed to require a Party to allow foreign service suppliers to engage in the services on which it has not undertaken specific commitments under the GATS.
- 15.5 Further to Article 24 (Transparency), each Party shall to the extent applicable 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 are promptly published or otherwise made available.
- 15.6 Nothing in this Article restricts the right of a Party to adopt or maintain measures regulating the need to obtain licences or permits or the approval of access applications.

**SECTION C: OPENNESS AND ELECTRONIC COMMERCE**

Article 16: Customs duties on electronic transmissions

- 16.1 For the purposes of this Article, "electronic transmission" means a transmission made using any electromagnetic means and includes the content of the transmission.
- 16.2 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.
- 16.3 No Party shall impose customs duties on electronic transmissions between a person of one Party and a person of another Party.
- 16.4 For greater certainty, paragraph 16.3 shall not preclude a Party from imposing internal taxes, fees or other charges on electronic transmissions in a manner consistent with the WTO Agreement.



### Article 17: Open government data

- 17.1. 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.
- 17.2. 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").<sup>6</sup>
- 17.3. 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 17.4 to 17.7.
- 17.4. 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.
- 17.5. 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.
- 17.6. A Party shall further endeavour to make this data generally available at no or reasonable cost to the user.
- 17.7. To the extent that a Party chooses to make government data digitally available for public access and use, it shall endeavour to avoid imposing conditions<sup>7</sup> 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.
- 17.8. 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.

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<sup>6</sup> For greater certainty, this Article is without prejudice to a Party's laws pertaining to intellectual property and personal data protection.

<sup>7</sup> For greater certainty, nothing in this paragraph prevents a Party from requiring a user of such data to link to original sources.

Article 18: Access to and use of the Internet for electronic commerce

- 18.1. 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.
- 18.2. 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 advantage<sup>8</sup>;
  - (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.
- 18.3. For greater certainty, nothing in paragraph 18.2 shall be construed to require a Party to adopt, amend or maintain a particular measure to implement the principles set out in that paragraph.

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<sup>8</sup> For the purposes of paragraph 18.2(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 D: TRUST AND ELECTRONIC COMMERCE**

## Article 19: Online consumer protection

- 19.1. Misleading, fraudulent and deceptive commercial activities include:
- (a) making material misrepresentations<sup>9</sup>, 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.
- 19.2. 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 engaged<sup>10</sup> in electronic commerce.
- 19.3. 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.
- 19.4. 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.
- 19.5. 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.
- 19.6. Parties shall promote access to, and awareness of, consumer redress or recourse mechanisms, including for consumers transacting cross-border.

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<sup>9</sup> 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.

<sup>10</sup> For the purposes of this article, the term 'engaged' includes the pre-transaction phase of electronic commerce.

**Article 20: Unsolicited commercial electronic messages**

- 20.1. 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 person <sup>11</sup> 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.
- 20.2 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.
- 20.3 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.
- 20.4 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 20.2.
- 20.5 Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

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<sup>11</sup> For greater certainty, the "electronic address of a person" does not cover IP addresses.

Article 21: Personal data protection

- 21.1. For the purposes of this Article, "personal data" means any information relating to an identified or identifiable natural person.
- 21.2 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.
- 21.3 Each Party shall adopt or maintain a legal framework that provides for the protection of the personal data of the users of electronic commerce.<sup>12</sup>
- 21.4 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.
- 21.5 Each Party shall endeavour to ensure that its legal framework under paragraph 21.3 provides non-discriminatory protection of personal data for natural persons.
- 21.6 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.
- 21.7 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.
- 21.8 The mechanisms referred to in paragraph 21.7 may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks.
- 21.9 Parties shall endeavour to exchange information on mechanisms referred to in paragraph 21.7 that are applied in their jurisdictions.

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<sup>12</sup> For greater certainty, a Party may comply with the obligation in paragraph 21.3 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.

### Article 22: ICT products that use cryptography

22.1 For the purposes of this Article:

- (a) "cryptographic algorithm" means a defined procedure or formula of transforming data using cryptography;
- (b) "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;
- (c) "Information and Communication Technology product (ICT product)" means any hardware or software whose intended function is information processing or communication by electronic means, including storage, transmission and display, or electronic processing applied to determine or record physical phenomena, or to control physical processes.<sup>13</sup>
- (d) "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.

22.2. With respect to an ICT product for commercial applications that uses cryptography, no Party shall require a juridical person of another Party, as a condition of the manufacture, sale, distribution, import or use of the ICT product, to<sup>14</sup>:

- (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 Party or a person in the territory of that Party, including when partnering or entering into a joint venture or other co-operation arrangements with a local juridical person;
- (b) use or integrate a particular cryptographic algorithm.<sup>15</sup>

22.3 Paragraph 22.2 shall not apply to:

- (a) a decision or requirement by a competent authority<sup>16</sup> to access<sup>17</sup> any information to which subparagraph 22.2 (a) applies, for an investigation, inspection, examination, or judicial proceeding, to secure compliance with the Party's laws or regulations that are not inconsistent with WTO agreements;
- (b) a decision or requirement by a competition authority or other competent body of a Party pursuant to a Party's law, to prevent or remedy a restriction or a distortion of competition;

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<sup>13</sup> For greater certainty, for the purposes of this Article, an ICT product does not include any instrument for supplying a financial service or any financial asset, including money.

<sup>14</sup> For greater certainty, this article does not apply to the voluntary transfer of, or granting of access to, proprietary information relating to cryptography 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.

<sup>15</sup> For greater certainty, this does not prevent a Party from requiring a manufacturer or supplier of an ICT product that uses cryptography to demonstrate that a cryptographic algorithm meets security requirements that are internationally recognized or developed in an open and transparent manner.

<sup>16</sup> For the purposes of this Article, competent authority means a relevant government body or authority of a Party, or a non-governmental body in the exercise of powers delegated by a government body or authority of the Party.

<sup>17</sup> Parties understand that this access shall not be construed to negatively affect the status of any proprietary information relating to cryptography as a trade secret.

- (c) a measure adopted or maintained by a Party relating to the regulation, supervision or investigation of financial instruments, service suppliers or markets;
  - (d) a decision or requirement that a Party adopts or maintains relating to access to networks, including user devices, that are owned or controlled by that Party and are for use in the exercise of government functions, including central banks;
  - (e) the manufacture, sale, distribution, import, or use of an ICT product by or for a Party.
- 22.4 Where proprietary information relating to cryptography of an ICT product for commercial applications that uses cryptography has been revealed to a competent authority of a Party for the purposes referred to in paragraph 22.3, that Party shall adopt or maintain measures to prevent the unauthorised disclosure of that proprietary information.
- 22.5 Nothing in this Article shall be construed to preclude a Party's law enforcement or national security authorities from requiring access to encrypted and unencrypted communications, pursuant to that Party's legal procedures.<sup>18</sup>

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<sup>18</sup> For greater certainty, such access does not include any proprietary information relating to cryptography itself.

Article 23: Cybersecurity

- 23.1 The Parties recognise that threats to cybersecurity undermine confidence in electronic commerce.
- 23.2 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.
- 23.3 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.



**SECTION E: TRANSPARENCY, COOPERATION AND DEVELOPMENT**

Article 24: Transparency

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 the operation of this Agreement.

### Article 25: Cooperation

- 25.1. 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 all peoples, particularly disadvantaged and under-represented groups and micro, small and medium-sized enterprises;
  - (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.
- 25.2 Areas of collaboration could include, inter alia:
- (a) personal data 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) competition in digital markets;
  - (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.
- 25.3 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.

### Article 26: Development

#### **General Principles**

- 26.1 Articles 9 to 27 shall be implemented by developing and least-developed country Parties in accordance with this Article.

- 26.2 The Parties recognise:
- a) the importance of strengthening international efforts to bridge the digital divide and enable an inclusive digital economy; and
  - b) the contribution of electronic commerce rules to overcoming digital trade-related challenges and promoting the inclusive growth of electronic commerce.
- 26.3 The Parties acknowledge their role in supporting developing and least-developed country Parties to effectively participate and tap into growth opportunities in electronic commerce and the digital economy, including supporting better access to digital ecosystems and infrastructure and supporting their micro, small, and medium-sized enterprises and its people. In this context, the Parties recognize the importance of effectively implementing this Agreement including through technical assistance and capacity building to developing and least-developed countries.
- 26.4 Parties recognize the importance of technical assistance and capacity building to developing and least developed countries in implementing the electronic commerce disciplines.

### **Implementation Periods for Developing and Least-developed Country Parties**

- 26.5 The Parties recognize that developing and least-developed country Parties may, on entry into force of this Agreement for that Party, require an extended period to implement certain obligations under this Agreement which require public policy, institutional or legislative changes for implementation, or require the acquisition of technical capacity through capacity building before implementation.
- 26.6 Each developing and least-developed country Party may, at entry into force of this Agreement for that Party, self-designate any provision of this Agreement for which they require an implementation period of no more than five years by submitting a list of such provisions to the Committee on Trade Related Aspects of Electronic Commerce (Committee) established pursuant to Article 29.
- 26.7 Each developing and least-developed country Party may extend for up to two additional years the implementation period for any provisions designated pursuant to paragraph 26.6. Such Parties shall notify the Committee of any extension no later than 120 days before the expiry of the initial implementation period, detailing the reasons for the extension and the relevant actions required to complete the implementation thereof.

### **Needs Assessment**

- 26.8 Developed country Parties, and developing country Parties declaring themselves in a position to do so, are encouraged to provide developing and least-developed country Parties with support to conduct or update their needs assessment to identify gaps in capacity to implement this Agreement, either bilaterally or through relevant international organizations.
- 26.9 The results of any needs assessment conducted or updated in accordance with paragraph 26.8 should inform the self-designation of provisions by a developing or least-developed country Party under paragraphs 26.6 and 26.7.

### **Capacity Building Support**

- 26.10 The Parties recognise the importance of targeted technical assistance and capacity building for developing and least-developed country Parties in relation to matters covered by this Agreement. To this end, each developing country and least-developed country Party may self-designate any provision of this Agreement in respect of which they would most benefit from targeted technical assistance and capacity building. Developed country Parties, and developing country Parties declaring themselves in a position to do so, agree to facilitate the provision of assistance and support for capacity building in respect of such provisions, either

bilaterally or through appropriate international organizations, on mutually agreed terms and taking into account the specific priorities of developing and least-developed country Parties.

- 26.11 Parties 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 into account 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 subregional challenges and promote regional and sub-regional integration;
  - c) consider the activities of the private sector, to the extent possible, when developing capacity building programs or activities; and
  - d) promote coordination between and among Parties and other relevant institutions, including regional economic communities, to ensure maximum effectiveness and results from this assistance. To this end:
    - i. coordination 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. relevant global and regional trade-related programmes should be considered as a part of this coordination process, including those specifically focused on least-developed country Parties; and
    - iii. Parties should promote internal coordination between their trade and development officials, both in capitals and in Geneva, in the implementation of this Agreement and technical assistance.

#### **Non-Application of Dispute Settlement**

26.12 For a period of seven years after entry into force of this Agreement, Article 28 (Dispute Settlement) shall not apply to the settlement of disputes against least-developed country Parties concerning any provision of this Agreement.

26.13 Notwithstanding the grace period referred to in paragraph 26.12, before a Party requests consultations under Article 28 (Dispute Settlement) concerning a measure of a least-developed country Party, and at all stages of any dispute settlement procedures thereafter, it shall give particular consideration to the special situation of least-developed country Parties. In this regard, the Parties shall exercise due restraint in raising matters under Article 28 (Dispute Settlement) involving least developed country Parties.

#### **Transparency**

26.14 The Parties recognise the importance of transparency in the provision of assistance and support for capacity building to facilitate the effective implementation of the Agreement. To this end, each developed country Party, and developing country Parties declaring themselves in a position to do so, shall submit to the Committee, on entry into force of this Agreement and regularly thereafter, relevant information<sup>19</sup> on its existing and new capacity building programmes.

#### **Committee**

26.15 The Committee shall make available online the information provided pursuant to paragraph 26.14, together with information about the relevant activities of international organizations.

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<sup>19</sup> For greater certainty, "relevant information" includes: (a) a description of the assistance or support provided; (b) information on how to apply for or access such assistance or support, including a Party's contact point(s); and (c) a list of the beneficiaries of the assistance and support.

- 26.16 Developing country and least-developed country Parties intending to avail themselves of relevant 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.
- 26.17 For the purposes of this Section, the Committee shall hold at least one dedicated session per year, while any obligations are subject to implementation periods or capacity building support for a Party, to:
- a) monitor the implementation of obligations subject to implementation periods designated pursuant to paragraphs 26.6 and 26.7 or capacity building support;
  - b) discuss issues regarding the implementation of provisions or sub-provisions of this Agreement;
  - c) review progress regarding assistance and support for capacity building and technical assistance to support the implementation of the Agreement, including where any developing or least-developed country Parties are not receiving adequate assistance and support for capacity building; and
  - d) facilitate the sharing of Party experiences, challenges, successes and information.

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## SECTION F: TELECOMMUNICATIONS

### Article 27: Telecommunications

- 27.1 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*.
- 27.2 In accordance with the scope of the WTO Reference Paper, each Party shall apply the obligations referred to in paragraph 27.1 to basic telecommunications services.

#### **Telecommunications regulatory authority**

- 27.3 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.
- 27.4 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.
- 27.5 Each Party shall make public the functions undertaken by the telecommunications regulatory authority in an easily accessible and clear form.

#### **Assignment of frequency bands**

- 27.6 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.
- 27.7 Each Party shall endeavour to carry out such assignment using market-based approaches, such as bidding procedures, where appropriate.

#### **Essential facilities**

- 27.8 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.
- 27.9 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.
- 27.10 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 27.9.
- 27.11 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.

27.12 A supplier of public telecommunications services involved in the dispute shall not be prevented from bringing an action before judicial authorities of a Party.

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## SECTION G: INSTITUTIONAL ARRANGEMENTS AND FINAL PROVISIONS

### Article 28: Dispute settlement

- 28.1. For any dispute concerning the interpretation or application of this Agreement, Parties shall only have recourse to the Dispute Settlement Understanding.
- 28.2. 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, shall apply to consultations and the settlement of disputes arising under this Agreement.

### Article 29: Committee on Trade-Related Aspects of Electronic Commerce

- 29.1. 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.
- 29.2. The Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Parties, and shall afford the Parties the opportunity to consult on any matters relating to the operation and implementation of this Agreement.
- 29.3. The Committee may establish or refer matters to such subsidiary bodies as it considers appropriate. All subsidiary bodies shall report to the Committee.
- 29.4. The Committee shall monitor the operation and implementation of this Agreement and shall report thereon annually to the General Council.
- 29.5. 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.
- 29.6. Any Member of the WTO that is not a Party to this Agreement shall be entitled to participate in the Committee as an observer by submitting a written notice to the Committee. Any WTO observer may submit a written request to the Committee to participate in the Committee as an observer, and may be accorded observer status by the Committee.

### Article 30: 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 30<sup>th</sup> day following the date of deposit of the [X]<sup>th</sup> instrument of acceptance.<sup>20</sup>

### Article 31: 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 30<sup>th</sup> day following the date of deposit of its instrument of accession.

### Article 32: Implementation

The Parties shall implement this Agreement from the date of its entry into force, subject to the implementation periods set out in Articles 26.6 and 26.7.

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<sup>20</sup> 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.



### Article 33: Reservations

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

### Article 34: Amendments

- 34.1 The Parties may amend this Agreement. A decision by the Committee to adopt an amendment and to submit it for acceptance by the Parties shall be taken by consensus.
- 34.2 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.

### Article 35: Withdrawal

- 35.1 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 article 39 (Deposit), request an immediate meeting of the Committee.
- 35.2 Where 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.

### Article 36: 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.

### Article 37: Review

- 37.1 No later than two years after the date of entry into force of this Agreement, and periodically thereafter, the Parties shall undertake a review of this Agreement with a view to updating and enhancing its operation and ensuring that its disciplines remain relevant to the trade issues confronting the Parties.
- 37.2 The review referred to in paragraph 37.1 shall not preclude negotiations on the outstanding issues outlined in document INF/ECOM/62/Rev.5.

### Article 38: Secretariat

This Agreement shall be serviced by the WTO Secretariat.

### Article 39: 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 article 34 (Amendments) and each notification of acceptance thereof, and of each withdrawal pursuant to article 35 (Withdrawal).

Article 40: 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.]

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