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## JOINT STATEMENT ON ELECTRONIC COMMERCE\*

### COMMUNICATION FROM NEW ZEALAND

The following communication, dated 11 April 2018, is being circulated at the request of the delegation of New Zealand.

#### 1 INTRODUCTION

1.1. New Zealand is pleased to participate in the exploratory work toward future WTO negotiations on trade-related aspects of electronic commerce under the WTO Joint Statement on Electronic Commerce at Buenos Aires (WT/MIN(17)/60). This submission is without prejudice to New Zealand's participation in the exploratory work and future negotiations, and any future submissions to either process.

1.2. Connectivity is a crucial driver of New Zealand's economic growth and development. As a small, open economy highly dependent on trade, information and communications technology has helped us connect economically and socially to the world. Electronic commerce has been an important tool for increasing the participation of MSMEs, women and rural communities in trade and global value chains, thereby helping spread the benefits of trade more evenly throughout our communities. Connectivity and electronic commerce have also positively impacted New Zealand consumers by diversifying the range of products available, and by helping lower prices by increasing competition.

1.3. Electronic commerce is already an important and long-standing element of the WTO's work. There are general rules, commitments and frameworks established by the WTO that apply to both physical and digital trade, and there has been consideration of specific questions raised by electronic commerce since Ministers adopted the Declaration on Global Electronic Commerce in May 1998.

1.4. Since that time, the evolution of the internet and digital technology had a transformative impact on the global economy and the nature of international trade. WTO Members, both developed and developing, have been making efforts to address the public policy challenges that this transformation presents, while also seeking to fully realize its benefits and the opportunities it presents for inclusive trade and development. The WTO needs to engage constructively in this discussion too, or risk being seen to be falling behind global developments and commercial trade realities.

1.5. New Zealand therefore considers it is timely to look at clarifying existing rules and developing additional rules on the trade-related aspects of electronic commerce at the WTO. Rules can improve legal certainty and transparency of frameworks, coordinate regulatory approaches, help maintain open markets, increase consumer security, privacy and trust, and promote a facilitatory and more inclusive trade environment.

#### 2 PROCESS

2.1. A lot of general work has been done on electronic commerce at the WTO already, from both a theoretical and technical standpoint. We encourage Members to continue drawing on existing submissions and other resources under the 1998 Electronic Commerce Work Programme, but we

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should not duplicate the general discussion that occurs there. What is needed under this exploratory process is a more precise set of submissions that describe specific policy issues that can be addressed through potential new trade rules.

2.2. Submissions should describe a trade related electronic commerce policy problem or opportunity, and a proposed solution.

2.3. If multiple submissions are received on related topics, we encourage Members to consider the topics as a group so that different approaches can be compared and connections identified. While participants should be encouraged to make submissions in advance of meetings to allow for others to fully consider the ideas therein and prepare to engage, there should be no formal cut-off on submissions and Members must be free to make submissions throughout the process.

2.4. We continue to support discussions being held in an open, inclusive and transparent manner, and invite Members who share our goal of future WTO negotiations on the trade-related aspects of electronic commerce to join us. As we progress, we will bring discussions back into the broader multilateral setting.

### **3 POSSIBLE TOPICS FOR DISCUSSION**

3.1. In developing new rules for electronic commerce at the WTO, New Zealand seeks a balanced approach between addressing the interests of business and consumers in taking full advantage of the opportunities available in the digital age, as well as incorporating safeguards to protect the interests of users of electronic commerce in areas such as privacy, security and confidentiality.

3.2. Drawing on our own FTA experiences with both developed and developing Member partners, and without prejudice to further topics we may suggest in future, New Zealand suggests the following initial and non-exhaustive list of topics for consideration under the Joint Statement process:

#### **3.1 Trade facilitation provisions**

- Domestic electronic transactions framework: Such provisions aim to establish a basic framework for electronic contracting that coheres with international best practice in the form of the relevant well established UNCITRAL or UN documents. The nature of cross-border electronic transactions means that a degree of commonality is desirable to ensure there are no major differences in regulatory approach that might impede electronic commerce across and between different jurisdictions.
- Paperless trading: Such provisions seek to ensure that trade administration documents (e.g. for customs clearance) are available electronically, and accepted electronically. This allows online trade to be fully conducted online, and enhances the ability of geographically distant service suppliers and manufacturers to participate in online trade.
- Electronic authentication and recognition of e-signatures: The use of electronic authentication mechanisms is a key piece of underlying architecture to enable online transactions. Parties to contracts need to be able to meet the legal requirements to make a binding contract, and in some cases domestic legislation (for example requiring a physical signature in all instances) could stand in the way of this. New Zealand notes that e-signatures were identified as one of the top three issues facing developing countries and LDCs in accessing the internet as part of the 2017 OECD/WTO Aid-for-Trade Monitoring and Evaluation Exercise.<sup>1</sup>

#### **3.2 Customs duties moratorium**

- Permanent extension of the moratorium on the imposition of customs duties on electronic transmissions: Such provisions would make permanent the temporary moratorium on customs duties on electronic transmissions agreed by the WTO in 1998, and continually renewed since then. Making the moratorium permanent provides certainty and predictability

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<sup>1</sup> See "Digital Connectivity and E-commerce: Joint OECD-WTO Aid-for-Trade Monitoring and Evaluation Exercise for the Global Review 2017" (WT/COMTD/AFT/W/72), paras. 41 - 42.

for businesses and consumers, and is consistent with the WTO's mandate for trade liberalisation. In order to pre-empt any concerns, New Zealand suggests making clear that this would not interfere with Members' right to impose internal taxes, fees or other charges.

### 3.3 Consumer focused provisions

- Online consumer protection: Such provisions seek to ensure that Members have minimum legal frameworks in place to prevent the use of misleading or deceptive practices that cause harm to consumers engaged in online commercial activities, and provide for rights of redress against suppliers and manufacturers if goods or services are not of acceptable quality. Part of the future success of electronic commerce hinges on increasing consumer trust and ensuring consumer rights are adequately protected.
- The protection of personal information of users of electronic commerce: Such provisions require Members to establish or maintain a legal framework to protect personal information of electronic commerce users. This ensures that consumers and businesses can have greater confidence transferring personal information to other jurisdictions as they can be assured that it will receive a comparable (or at least sufficient) level of protection once it is there. Promoting greater commonality in approach around robust privacy standards is trade-enabling as it reduces regulatory complexity for traders.
- Measures to address SPAM: Such provisions seek to ensure Parties will have measures in place to deal with unsolicited commercial electronic messages (SPAM). These messages can undermine consumer trust and confidence which is a necessary pre-requisite for electronic commerce. Rules that protect consumers from unsolicited electronic communications will contribute to consumer and business confidence in a wider use of electronic commerce.

## 4 CONCLUSION

4.1. New Zealand thanks the co-convenors of this process for the opportunity to make submissions, and encourages all participants to engage actively. New Zealand looks forward to receiving submissions from other Members, and stands ready to engage constructively on all topics put forward for consideration as part of this preparatory process.

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