



JOINT STATEMENT ON ELECTRONIC COMMERCE

COMMUNICATION FROM SINGAPORE

The following communication, dated 30 April 2019, is being circulated at the request of the delegation of Singapore.

TEXT PROPOSAL

1 EXPLANATORY NOTES

1.1. Singapore submits for consideration the first set of textual proposals for the WTO Joint Statement Initiative on E-commerce (JSI) negotiations. The texts are organised according to thematic clusters of issues identified in the exploratory discussions: (i) Enabling E-commerce; (ii) Openness and E-commerce; and (iii) Trust and E-commerce.

1.2. We have excluded Definitions, Scope and General Provisions relating to the proposed disciplines below as these would be dependent on the legal architecture and will be determined in the course of the negotiations.

1.3. The textual proposals below are without prejudice to Singapore's future negotiating positions in the JSI and our right to amend and/or make further textual proposals.

2 ENABLING E-COMMERCE

2.1. This cluster of issues relates to provisions that enable and facilitate end-to-end cross-border electronic commerce. It encourages the digitization of customs procedures and trade documentation at the border through the adoption of legal frameworks and practices to promote cross border exchange. It also proposes making permanent the moratorium on customs duties on electronic transmissions.

ISSUES/ARTICLES	TEXT PROPOSAL
Paperless Trading	<p>1. Members shall make publicly available, which may include through a process prescribed by that Member, electronic versions of all existing publicly available versions of trade administration documents.</p> <p>2. Members shall accept the electronic versions of trade administration documents as the legal equivalent of paper documents except where:</p> <ul style="list-style-type: none">(a) there is a domestic or international legal requirement to the contrary; or(b) doing so would reduce the effectiveness of the trade administration process. <p>The Parties shall cooperate bilaterally and in international forums to enhance acceptance of electronic versions of trade administration documents.</p>

ISSUES/ARTICLES	TEXT PROPOSAL
	<p>3. In developing initiatives which provide for the use of paperless trading, Members shall endeavour to take into account the methods agreed by international organisations.</p>
<p>Moratorium on Customs Duties on Electronic Transmissions</p>	<p>1. Members shall not impose customs duties on electronic transmissions, including content transmitted electronically, between a person of a Member and a person of another Member.</p> <p>2. For greater certainty, paragraph 1 shall not preclude Members from imposing internal taxes, fees or other charges on content transmitted electronically, provided that such taxes, fees or charges are imposed in a manner consistent with WTO Agreements.</p>
<p>Domestic Electronic Transactions Framework</p>	<p>1. Members shall maintain a legal framework governing electronic transactions consistent with the principles of the <i>UNCITRAL Model Law on Electronic Commerce 1996</i> or the <i>United Nations Convention on the Use of Electronic Communications in International Contracts</i>, done at New York, 23 November 2005.</p> <p>2. Members shall endeavour to:</p> <p style="margin-left: 40px;">(a) avoid any unnecessary regulatory burden on electronic transactions; and</p> <p style="margin-left: 40px;">(b) facilitate input by interested persons in the development of its legal framework for electronic transactions.</p>
<p>Electronic Authentication and Electronic Signatures</p>	<p>1. Except in circumstances otherwise provided for under its laws and regulations, Members shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.</p> <p>2. Members shall not adopt or maintain measures for electronic authentication that would:</p> <p style="margin-left: 40px;">(a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or</p> <p style="margin-left: 40px;">(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 authentication.</p> <p>3. Notwithstanding paragraph 2, a Member may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its laws and regulations.</p> <p>4. Members shall encourage the use of interoperable electronic authentication.</p>
<p>Electronic Invoicing</p>	<p>1. Members recognise the importance of an e-invoicing system which would help improve the speed and reliability of electronic commerce transactions.</p> <p>2. Members shall work towards mutually recognising the e-invoicing system of other Members and encourage interoperability between the Members' e-invoicing systems.</p>

ISSUES/ARTICLES	TEXT PROPOSAL
Electronic Transferrable Records	<p>1. Members recognise the importance of accepting the legal validity of electronic transferable records which are functionally equivalent to transferrable documents and instruments.</p> <p>2. To this end, Members shall work towards the mutual recognition of electronic transferable records consistent with the principles of the UNCITRAL Model Law on Electronic Transferable Records (2017).</p>

3 OPENNESS AND E-COMMERCE

3.1. This cluster of issues relates to provisions that promote openness and respond to the growing digitalisation of trade. Information and data flows increasingly underpin all transactions and without which trade will not be possible or will be severely encumbered. It is therefore important for the E-commerce agreement to address information and data flows, to create an open and supporting environment for trade in the digital economy.

ISSUE/ARTICLES	TEXT PROPOSAL
Cross Border Transfer of Information by Electronic Means	<p>1. Members recognise that each Member may have its own regulatory requirements concerning the transfer of information by electronic means.</p> <p>2. Members shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business.</p> <p>3. Nothing in this Article shall prevent a Member from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.</p>
Location of Computing Facilities	<p>1. Members recognise that each Member may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.</p> <p>2. Members shall not require the use or location of computing facilities in its territory as a condition for conducting business in that territory.</p> <p>3. Nothing in this Article shall prevent a Member from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.</p>

4 TRUST AND E-COMMERCE

4.1. This cluster of issues relates to provisions that build trust in the digital space to promote the adoption of e-commerce and facilitate digital trade. Trust is a critical factor in a virtual, digital economy and provides the necessary safeguards to free and open information and data flows. The following provisions ensure that business and consumers' interests and rights are protected when trading in the digital economy.

ISSUE/ARTICLES	TEXT PROPOSAL
Principles on Access to and Use of the Internet for E-commerce	<p style="text-align: center;">Business Trust</p> <p>1. Subject to applicable policies, laws and regulations, Members recognise the benefits of consumers in their territories having the ability to:</p> <ul style="list-style-type: none"> (a) access and use services and applications of a consumer's choice available on the Internet, subject to reasonable network management; (b) connect the end-user devices of a consumer's choice to the Internet, provided that such devices do not harm the network; and (c) access information on the network management practices of a consumer's Internet access service supplier.
Source Code	<p>1. Members shall not require the transfer of, or access to, source code of software owned by a person of another Member, as a condition for the import, distribution, sale or use of such software, or of products containing such software, in its territory.</p> <p>2. For the purposes of this Article, software subject to paragraph 1 is limited to mass-market software or products containing such software and does not include software used for critical infrastructure.</p> <p>3. Nothing in this Article shall preclude:</p> <ul style="list-style-type: none"> (a) the inclusion or implementation of terms and conditions related to the provision of source code in commercially negotiated contracts; or (b) a Member from requiring the modification of source code of software necessary for that software to comply with laws or regulations which are not inconsistent with this Agreement. <p>4. This Article shall not be construed to affect requirements that relate to patent applications or granted patents, including any orders made by a judicial authority in relation to patent disputes, subject to safeguards against unauthorised disclosure under the law or practice of a Member.</p>
Unsolicited Commercial Electronic Messages (Spam)	<p style="text-align: center;">Consumer Trust</p> <p>1. Members shall adopt or maintain measures regarding unsolicited commercial electronic messages that:</p> <ul style="list-style-type: none"> (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages; (b) require the consent, as specified according to the laws and regulations of each Member, of recipients to receive commercial electronic messages; or (c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

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	<p>2. Members shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraph.</p> <p>3. Members shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.</p>
Personal Information Protection	<p>1. Members recognise the economic and social benefits of protecting the personal information of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.</p> <p>2. To this end, Members shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce. To the extent possible, the legal framework shall take into account principles and guidelines of relevant international bodies.</p> <p>3. Members shall:</p> <ul style="list-style-type: none"> (a) afford protection, through the legal framework referred to in paragraph 2, to the personal information of users of the other Member on a non-discriminatory basis; and (b) adopt non-discriminatory practices in protecting users of electronic commerce from personal information protection violations occurring within its jurisdiction. <p>4. Members shall publish information on the personal information protections it provides to users of electronic commerce, including how:</p> <ul style="list-style-type: none"> (a) individuals can pursue remedies; and (b) business can comply with any legal requirements. <p>5. Recognising that each Member may take different legal approaches to protecting personal information, Members shall pursue the development of mechanisms to promote compatibility between these different regimes. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, broader international frameworks, or where practicable, appropriate recognition of comparable protection afforded by their respective legal frameworks, national trustmark or certification frameworks, or other avenues of transfer of personal information between the Parties.</p> <p>6. To this end, Members shall endeavour to exchange information on any such mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.</p>
Online Consumer Protection	<p>1. Members recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent and deceptive commercial activities, when they engage in electronic commerce.</p> <p>2. For the purposes of this Article, fraudulent and deceptive commercial activities refer to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, for example, a practice of:</p> <ul style="list-style-type: none"> (a) making a misrepresentation of material fact, including an implied factual misrepresentation, that causes significant detriment to the economic interests of a misled consumer; (b) failing to deliver products or provide services to a consumer after the consumer is charged; or

ISSUE/ARTICLES	TEXT PROPOSAL
	<p>(c) charging or debiting a consumer's financial, telephone or other accounts without authorisation.</p> <p>3. Members shall adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.</p> <p>4. Each Member shall, where possible, provide protection for consumers using electronic commerce that is at least equivalent to that provided for consumers of other forms of commerce under its relevant laws, regulations and policies.¹</p> <p>5. Members recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare. To this end, Members affirm that the cooperation sought includes cooperation with respect to online commercial activities.</p>

¹ For greater certainty, this requirement does not require formally identical treatment, and may be met by providing formally different treatment to online and other consumers, which nonetheless provides an effectively equivalent level of overall protection.