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Page: 1/6

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JOINT STATEMENT ON ELECTRONIC COMMERCE

COMMUNICATION FROM BRAZIL

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

Brazil presents in this communication text-based proposals on issues discussed under the Joint Statement process. Suggestions are not exhaustive and may be further revised, without prejudice to contributions or positions that Brazil may submit at a later stage.

SECTION I Definitions

Digital trade means the production, distribution, marketing, sale or delivery of goods and services by electronic means;

Trade administration documents refers to the forms that a Party issues or controls, which have to be completed by or for an importer or exporter in relation to the import or export of goods;

Electronic signature means data in electronic form attached to an electronic document that allows the signer to be identified, according to the internal regulations of each Party;

Personal data means any information about an identified or identifiable natural person;

Computer installations means computer servers and storage devices for the processing or storage of information for commercial use;

Unsolicited electronic commercial communications means an electronic message that is sent for commercial or advertising purposes without the consent of the recipients, or against the explicit will of the recipient, using an internet service or, in accordance with the legislation of the Party, by others Telecommunications services; and

Electronic transmission or electronically transmitted means a transmission made using any electromagnetic means, including transmissions by optical means.

SECTION II Principles

1. Considering the potential of digital trade as a social and economic development tool, Members recognize the importance of:

- (a) Clarity, transparency and predictability in their domestic regulatory frameworks in facilitating, to the maximum extent possible, the development of digital trade;
- (b) Interoperability, innovation and competition; and

- (c) Increased participation in digital trade by micro, small and medium sized enterprises.
- 2. Internet should remain free and open for all legitimate commercial and development purposes, including by allowing increased access to information, knowledge and new technologies.
- 3. Members recognize the importance of avoiding barriers that constitute a disguised restriction on digital trade.
- 4. Having regard to their national policy objectives, Members shall endeavor to avoid measures that:
 - (a) unduly hinder electronic commerce; or
 - (b) have the effect of treating commerce by electronic means in a more restrictive manner than commerce conducted by other means.

Principles on Access to and Use of the Internet for Digital Trade

- 1. Subject to applicable policies, laws and regulations, Members recognize the benefits of consumers in their territories having the ability to:
 - (a) access and use services and applications of a consumer's choice available on the Internet, subject to reasonable, proportional, non-discriminatory and transparent network management;
 - (b) connect end-user devices of a consumer's choice to the Internet, provided that such devices do not harm the network; and
 - (c) access transparent, clear and sufficiently descriptive information on the network management practices of a consumer's Internet access service supplier.
- 2. For the adequate provision of services and applications, reasonable network management aims at preserving the stability, safety and functionality of the Internet, by utilizing technical measures that are compatible with international standards developed for this purpose.
- 3. Access and use of services and applications of a consumer's choice available on the Internet, regardless of the country where the service or application is being provided, subject to reasonable, proportional, non-discriminatory and transparent network management.

SECTION III

Electronic Contracts

- 1. Members shall ensure that their legal systems allow for the formation of contracts by electronic means and that contracts shall not be denied legal effect, validity or enforceability for having been made by electronic means.

Electronic signature and digital certification

- 1. A Member shall not deny the legal effect and admissibility as evidence in legal proceedings of an electronic signature and electronic authentication service solely on the basis that the signature or service is in electronic form.
- 2. Members shall not adopt or maintain measures regulating electronic signature and electronic authentication services that would:
 - (a) Prohibit parties to an electronic transaction from mutually determining the appropriate electronic methods for their transaction; or

- (b) Prevent parties to an electronic transaction from having the opportunity to prove to judicial and administrative authorities that their electronic transaction complies with any legal requirements with respect to electronic signature and electronic authentication services.

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 law. Such requirements shall be objective, transparent and non-discriminatory and shall relate only to the specific characteristics of the category of transactions concerned.

4. Members shall encourage the use of interoperable electronic trust and electronic authentication services, and the mutual recognition of electronic trust and electronic authentication services issued by recognized trust services providers.

Unsolicited commercial communications

1. Members shall endeavor to protect end-users effectively against unsolicited direct marketing communications. To this end, in particular the following paragraphs shall apply.

2. Members shall endeavor to ensure that natural and juridical persons do not send direct marketing communications to consumers who have not given their consent.

3. Members shall endeavor to ensure that direct marketing communications are clearly identifiable as such, clearly disclose on whose behalf they are made, and contain the necessary information to enable end-users to request cessation free of charge and at any moment.

4. Members shall endeavor to ensure that social media platforms and other digital apps inform consumers of the use of their person information throughout their direct services and of their partners, allowing consumers to keep track or control the disguised or personalized marketing and offers.

SECTION IV Taxation

1. No Member shall impose customs duties on electronic transmissions between a person of one Member and a person of another Member.

2. For greater certainty, paragraph 1 shall not preclude a Party from imposing customs duties, internal taxes, fees or other charges on content transmitted electronically, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement/Reference Paper and on a non-discriminatory basis.

3. Subject to conditions established in their respective domestic law, Members are entitled to collect taxes from digital trade on revenue and profit generated in their territory, even if electronic platforms or suppliers do not have a commercial presence in their territory.

SECTION V Competition

1. Members shall ensure that online platforms do not restrict competition, either in the market where they are dominant or in separate markets, including upstream markets.

2. Members shall ensure that online platforms do not give arbitrary or unjustifiable discriminatory advantages to their own services, products or apps.

SECTION VI

Consumer protection

1. Members recognize the importance of adopting and maintaining transparent and effective measures to protect consumers, inter alia, from fraudulent and misleading commercial practices when they engage in digital trade transactions.
2. To this end, Members shall adopt or maintain measures that contribute to consumer protection, including measures that proscribe fraudulent and deceptive commercial practices. Such measures shall, inter alia, provide for:
 - (a) The right of consumers to have clear and comprehensive information regarding the service and its provider;
 - (b) The obligation of traders to act in good faith and abide by honest market practices, including in response to questions by consumers;
 - (c) The prohibition of charging consumers for services not requested or for a period in time not authorized by the consumer; and
 - (d) Access to redress for consumers to claim their rights, including as regards their right to remedies for services paid and not provided as agreed.
3. Members recognize the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to digital trade in order to protect consumers and enhance consumer trust.
4. Members shall encourage or promote accessible and effective mechanisms to address domestic and cross-border e-commerce conflicts and redress. These should include out of court mechanisms, such as internal complaints handling and alternative dispute resolution. Subject to applicable law, the use of such out-of-court mechanisms should not prevent consumers from pursuing other forms of dispute resolution and redress.

SECTION VII

Regulatory Environment

Paperless trading

Each Member shall endeavor to:

- (a) Make trade administrative documents available to the public in electronic form; and
- (b) Accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

Principle of no prior authorization

1. Members shall endeavor not to require prior authorization solely on the grounds that the service be provided by electronic means nor adopt or maintain any other requirement having equivalent effect.
2. Paragraph 1 is without prejudice to rules in the field of telecommunications and financial services.

Cooperation on regulatory issues

1. Members shall maintain cooperation and dialogue on the regulatory issues raised by digital trade on the basis of mutually agreed terms and conditions, which shall address, inter alia, the following issues:

- (a) The recognition and facilitation of interoperable cross-border electronic signature and authentication services;
- (b) Cross-border transfer of information by electronic means;
- (c) The liability of intermediary service providers with respect to the transmission or storage of information;
- (d) The treatment of direct marketing communications;
- (e) The protection of consumers in the ambit of digital trade;
- (f) Data privacy;
- (g) Cybersecurity;
- (h) Methodologies to measure digital trade flows, including cross-border;
- (i) The promotion of paperless trading;
- (j) The promotion of digital trade by micro, small and medium sized enterprises;
- (k) Electronic government; and
- (l) Any other issue relevant to the development of digital trade.

2. Such cooperation shall focus on exchange of information on the Members' respective legislation on these issues as well as on the implementation of such legislation.

SECTION VIII **Cross-Border Transfer of Information by Electronic Means**

1. Members recognize that each Member may have its own regulatory requirements concerning the transfer of information by electronic means.
2. Each Member shall allow the cross-border transfer of information by electronic means when this activity is for the conduct of the business activity of a covered person.
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 barrier to the transfer of information and to trade through electronic means.

SECTION IX **Cybersecurity**

1. Members shall endeavor to build their capabilities to prevent and respond to cybersecurity incidents by adopting, inter alia, risk-based approaches to mitigating threats that avoid trade-restrictive and trade-distortive outcomes.

SECTION X **Personal Data Protection**

1. Each Member shall adopt or maintain a legal framework that provides for the protection of personal data of individuals. In the development of its legal framework for the protection of personal data, each Member should take into account principles and guidelines of relevant international bodies.

2. Each Member shall endeavor to adopt non-discriminatory practices in protecting citizens, consumers and medical patients from personal information protection violations occurring within its jurisdiction.
3. Each Member should publish information on personal data protections it provides to citizens, consumers and medical patients, including how:
 - (a) Individuals can pursue remedies; and
 - (b) Business can comply with any legal requirements.
4. Recognizing that Members may take different legal approaches to personal data protection, each Member should encourage the development of mechanisms to promote compatibility between these different regimes.

SECTION XI

General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade and cross-border transfer of information by electronic means, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:
 - (a) necessary to protect public morals or to maintain public order;
 - (b) necessary to ensure the equitable or effective imposition or collection of direct taxes in respect of trade through electronic means;
 - (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
 - i. the prevention of deceptive and fraudulent practices;
 - ii. the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; and
 - iii. safety.
 2. Nothing in this Agreement shall be construed:
 - (a) to require any Member to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
 - (b) to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests:
 - i. relating to the cross-border transfer of information carried out directly or indirectly for military communication;
 - ii. taken in time of war or other emergency in international relations; or
 - iii. to prevent any Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
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