



JOINT STATEMENT ON ELECTRONIC COMMERCE

COMMUNICATION FROM CANADA

Concept Paper – Building Confidence and Trust in Digital Trade

The following communication, dated 8 May 2019, is being circulated at the request of the delegation of Canada.

1 CONTEXT

1.1. In the context of a potential WTO agreement on digital trade, it will be critical to achieve an outcome that not only facilitates expanded economic opportunities in the digital trading environment, but also to achieve an outcome whereby consumers have the necessary level of confidence and trust to operate and participate in the global digital economy. Achieving such a result requires an outcome that addresses core objectives relating to digital trade facilitation and specific barriers to digital trade, while also ensuring the protection of consumers and personal information online, thereby improving confidence and trust in the digital economy.

2 HOW TRADE AGREEMENTS CAN ADDRESS THIS ISSUE

2.1. In recent trade agreements, some WTO Members have sought to address this important area of consumer and privacy protection through the inclusion of disciplines in the following four key areas:

- Online Consumer Protection – disciplines that require parties to adopt and/or maintain consumer protection laws which address online misleading and deceptive commercial activities.
- Personal Information Protection – disciplines that require parties to adopt and/or maintain a legal framework that provides for the protection of personal information for users of digital trade.
- Unsolicited commercial electronic messages – disciplines that require parties to adopt and/or maintain measures to protect consumers from unsolicited commercial electronic messages (i.e. spam) and require the consent of consumers to receive commercial electronic messages, or require senders of commercial electronic messages to provide consumers with the ability to stop receiving such messages.
- Cooperation – disciplines that encourage parties to cooperate on a broad range of issues related to digital trade, including exchanging information on laws, regulations, policies, enforcement and compliance regarding personal information protection, online consumer protection and unsolicited commercial electronic messages.

2.2. While these are commitments that some Members seek to include in the digital trade chapters of their trade agreements, these measures are not necessarily specific to the online environment. For example, in the Canadian context, the *Competition Act* does not differentiate between deceptive

marketing practices in the physical versus digital economy. Rather, the section of the Act that addresses deceptive marketing practices refers to "representations" – a technologically-neutral term. Therefore, this law applies regardless of the medium through which deceptive marketing practices are employed (electronically-based or otherwise). Similarly, Canada's privacy law that applies to commercial organizations, the *Personal Information Protection and Electronic Documents Act* (PIPEDA), requires that personal information be protected, regardless of whether it is in physical or electronic form. Thus, while provisions in trade agreements may require parties to adopt or maintain measures to address these specific issues, they do not necessarily require parties to create or amend laws or regulations as parties may already have in place measures which address these areas.

3 SUGGESTIONS FROM CANADA IN THE CONTEXT OF THE WTO JSI ON E-COMMERCE

3.1. Canada proposes that negotiations on e-commerce / digital trade at the WTO seek to address and reflect these areas that relate to consumer and privacy protection, which help to build confidence and trust. This is important to ensure that the benefits and opportunities of a future WTO agreement on digital trade are not only enjoyed by businesses, but also by consumers. It is also important to ensure that the trade-related benefits of a potential WTO agreement on digital trade are not undermined by misleading or deceptive commercial activities. Building and maintaining confidence and trust in the online economic environment requires that a potential WTO agreement on digital trade include relevant provisions which require parties to have in place domestic frameworks related to areas such as online consumer protection, personal information protection and unsolicited commercial electronic messages.

3.2. If a member lacks a legal framework that addresses the protection of personal information, consumers may be less inclined to engage in digital economic activity with companies who are based in these jurisdictions for fear that their information will not be adequately protected. By contrast, when members adopt and maintain legal frameworks that provide for the protection of online consumers from misleading or deceptive commercial activities, protection of personal information online, and protection of consumers from unsolicited commercial electronic messages, consumers will have more confidence in making purchases from companies who operate in these markets and are thus more likely to engage in digital transactions and economic activity. Therefore, a potential WTO agreement on digital trade should include such provisions towards the broader objective of achieving broad and inclusive growth of digital trade globally.

3.3. For examples of the commitments that Canada has taken in these areas in recent trade agreements, Members may review the Electronic Commerce chapter of the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) or the Digital Trade chapter of the Canada-United States-Mexico Agreement (CUSMA).

4 LINK TO CPTPP E-COMMERCE CHAPTER:

<https://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/tpp-tpf/text-texte/14.aspx?lang=eng>

5 LINK TO CUSMA DIGITAL TRADE CHAPTER:

<https://www.international.gc.ca/trade-commerce/assets/pdfs/agreements-accords/cusma-aceum/cusma-19.pdf>
