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JOINT STATEMENT ON ELECTRONIC COMMERCE

COMMUNICATION FROM CANADA

The following communication, dated 7 June 2019, is being circulated at the request of the delegation of Canada.

TEXT PROPOSAL

Explanatory notes:

- Canada submits this text proposal as a basis for discussion and reserves the right to revise or propose additional elements and/or provisions to this proposal.
- This proposal incorporates Canada's previous text proposal, submitted 8 May 2019.
- This text proposal is made without prejudice to changes in Canada's position, including on scope, modalities, and legal architecture.

PREAMBLE

The Parties to this Agreement (hereinafter referred to as "the Parties"):

Building on their respective rights and obligations under the *Marrakesh Agreement Establishing the World Trade Organization*;

Reaffirming the importance of global digital trade and the opportunities it creates for inclusive trade and investment and specifically the importance of promoting an open, transparent, non-discriminatory and predictable digital trading environment;

Seeking to enhance the benefits and opportunities stemming from digital trade for businesses and consumers;

Fostering improved economic opportunities and access to information and communications technologies for micro, small and medium-sized enterprises, as well as disadvantaged and under-represented groups, such as women, Indigenous persons, youth, and persons with disabilities;

Hereby agree as follows:

ARTICLE 1
Definitions

For the purposes of this Agreement:

algorithm means a defined sequence of steps, taken to solve a problem or obtain a result;

computing facility means a computer server or storage device for processing or storing information for commercial use;

digital product means a computer program, text, video, image, sound recording, or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically;

digital trade (or **electronic commerce**) means the production, distribution, marketing, sale or delivery of goods and services by electronic means;

electronic authentication means the process or act of verifying the identity of a Party to an electronic communication or transaction and ensuring the integrity of an electronic communication;

electronic signature means data in electronic form that is in, affixed to, or logically associated with, an electronic document or message, and that may be used to identify the signatory in relation to the electronic document or message and indicate the signatory's approval of the information contained in the electronic document and message;

enterprise means an entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, or other association;

GATS means the *General Agreement on Trade in Services*, set out in Annex 1B to the WTO Agreement;

GATT 1994 means the *General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement;

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;

measure includes any law, regulation, procedure, requirement, or practice;

personal information means any information, including data, about an identified or identifiable natural person;

TRIPS Agreement means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, set out in Annex 1C to the WTO Agreement;¹

unsolicited commercial electronic message means an electronic message that is sent for commercial or marketing purposes to an electronic address of a person without the consent of the recipient or against the explicit rejection of the recipient;

WTO means the World Trade Organization; and

WTO Agreement means the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on 15 April 1994.

¹ For greater certainty, TRIPS Agreement includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

ARTICLE 2

Scope

1. The Parties recognize that electronic commerce supports inclusive economic growth and trade opportunities in many sectors and confirm the applicability of relevant WTO rules to electronic commerce.
2. This Agreement applies to measures adopted or maintained by a Party that affect trade by electronic means.
3. This Agreement does not apply to:
 - a. government procurement;
 - b. information held or processed by or on behalf of a Party, or measures related to that information, including measures related to its collection; or
 - c. financial services as defined in the GATS Annex on Financial Services.

ARTICLE 3

General Provisions

1. The Parties affirm their rights and obligations under the GATS, GATT 1994 and TRIPS Agreement.
2. Nothing in this Agreement affects the rights and obligations of the Parties under the agreements listed in Annexes 1A to 1C and Annex 4 to the WTO Agreement.

ARTICLE 4

Domestic Electronic Transactions Framework

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce 1996.
2. Each Party shall endeavour to:
 - a. avoid any unnecessary regulatory burden on electronic transactions; and
 - b. facilitate input by interested persons in the development of its legal framework for electronic transactions.

ARTICLE 5

Prohibition of Customs Duties on Digital Products Transmitted Electronically

1. No Party shall impose customs duties, fees or other charges on a digital product transmitted electronically.
2. For greater certainty, paragraph 1 does not prevent a Party from imposing internal taxes, fees or other charges on a digital product transmitted electronically, provided that those taxes, fees or charges are imposed in a manner consistent with the WTO Agreement.

ARTICLE 6

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

The Parties recognize that it is beneficial for consumers in their territories to be able to:

- a. access and use services and applications of a consumer's choice available on the Internet, subject to reasonable 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 information on the network management practices of a consumer's Internet access service supplier.

ARTICLE 7

Electronic Authentication and Electronic Signatures

1. Except in circumstances provided for under its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.
2. No Party shall adopt or maintain measures for electronic authentication and electronic signatures that would:
 - a. prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods or electronic signatures 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 authentication or electronic signatures.
3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the electronic signature or method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its law.
4. Each Party shall encourage the use of interoperable electronic authentication.

ARTICLE 8

Participation in the WTO Information Technology Agreement and its Expansion

1. The Parties recognize the broad social and economic benefits stemming from open and liberalized trade in information technology products, including enhanced and more affordable access to information technology products for businesses and consumers, as well as the benefits stemming from the ability for businesses and consumers to participate in the digital economy.
2. The Parties further recognize the strong synergies that exist between enhanced and more affordable access to products of information technology and the facilitation of participation in electronic commerce and the digital economy.
3. Within three years of the date of entry into force of this Agreement, each Party shall be a party to the WTO *Ministerial Declaration on Trade in Information Technology Products*, 13 December 1996 and the WTO *Ministerial Declaration on the Expansion of Trade in Information Technology Products*, 18 December 2015 and have completed all procedures for the modification and rectification of its Schedule of Concessions, in accordance with the Decision of 26 March 1980 on Procedures for Modification and Rectification of Schedules of Tariff Concessions.

ARTICLE 9

Online Consumer Protection

1. The Parties recognize the importance of adopting and maintaining transparent and effective measures to protect consumers from misleading or deceptive commercial activities when they engage in digital trade.
2. Each Party shall adopt or maintain consumer protection laws to proscribe misleading or deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.
3. The Parties recognize the importance of, and public interest in, cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border digital trade in order to enhance consumer welfare.

ARTICLE 10
Personal Information Protection

1. The Parties recognize the economic and social benefits of protecting personal information of users of digital trade and the contribution that this makes to enhancing consumer confidence in digital trade.
2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of digital trade, taking into account the principles and guidelines of relevant international bodies.
3. Each Party shall endeavour to adopt or maintain non-discriminatory practices in protecting users of digital trade from personal information protection violations within its jurisdiction.
4. Each Party shall publish information on the personal information protections it provides to users of digital trade, including how:
 - a. a natural person can pursue a remedy; and
 - b. an enterprise can comply with legal requirements.
5. Recognizing that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. The Parties shall endeavour to exchange information on the mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.

ARTICLE 11
Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures providing for the limitation of unsolicited commercial electronic messages.
2. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:
 - a. require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent the ongoing reception of those messages; and
 - b. require the consent, as specified in the laws and regulations of each Member, of recipients to receive commercial electronic messages.
3. Each Party shall provide recourse in its law against suppliers of unsolicited commercial electronic messages that do not comply with a measure adopted or maintained pursuant to paragraph 2.
4. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

ARTICLE 12
Cross-Border Transfer of Information by Electronic Means

1. No Party shall restrict the cross-border transfer of information by electronic means, including personal information, where such activity is for the conduct of an enterprise.
2. Nothing in this Article prevents a Party from adopting or maintaining a measure inconsistent with paragraph 1 to achieve a legitimate public policy objective, provide that the measure:
 - a. is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

- b. does not impose restrictions on the transfers of information greater than necessary to achieve the objective.

ARTICLE 13

Location of Computing Facilities

1. No Party shall require an enterprise to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.
2. Nothing in this Article prevents a Party from adopting or maintaining measures inconsistent with paragraph 1 necessary to achieve a legitimate public policy objective, provided that measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

ARTICLE 14

Source Code

1. No Party shall require the transfer of, or access to, source code of software owned by a person of another Party, or to an algorithm expressed in that source code, as a condition for the import, distribution, sale or use of that software, or of products containing that software, in its territory.
2. Nothing in this Article precludes a regulatory body or judicial authority of a Party from requiring a person of another Party to preserve and make available the source code of software, or an algorithm expressed in that source code, to the regulatory body for a specific investigation, inspection, examination enforcement action or judicial proceeding,² subject to safeguards against unauthorized disclosure.

ARTICLE 15

Transparency

Each Party shall publish or otherwise make publicly available its laws, regulations, and policies pertaining to digital trade.

ARTICLE 16

Exceptions

For the purposes of this Agreement, Article XX and Article XXI of the GATT 1994 and its interpretive notes set out in Annex 1A to the WTO Agreement and Article XIV and Article XIV *bis* of the GATS set out in Annex 1B to the WTO Agreement apply, *mutatis mutandis*.

ARTICLE 17

Dispute Settlement

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, apply to consultations and the settlement of disputes arising under this Agreement.

² Such disclosure shall not be construed to negatively affect the software source code's status as a trade secret, if such status is claimed by the trade secret owner.