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JOINT STATEMENT ON ELECTRONIC COMMERCE

COMMUNICATION FROM CANADA

*Concept Paper – Preventing the Use of Personal Information from being used for the Discrimination or Persecution of Natural Persons**

The following communication, dated 4 September 2019, is being circulated at the request of the delegation of Canada.

1 CONTEXT

1.1. Further to Canada's communication (dated 8 May 2019), *Building Confidence and Trust in Digital Trade*, any outcome from this initiative should both facilitate improved economic opportunities in the digital trading environment, and seek to improve the confidence and trust of users in the digital economy. Canada, for example, as part of its trade commitments in the area of e-commerce/digital trade in the past, has included provisions related to online consumer protection, unsolicited commercial electronic messages, and personal information protection.

1.2. Similar to other Members' proposals, Canada's proposed personal information protection article would require Parties to adopt or maintain a legal framework that protects the personal information of users of digital trade. There are also requirements for Parties to endeavour to adopt non-discriminatory approaches to the protection of personal information when that information is stored within their jurisdiction; whether the information belongs to their own citizens or those outside of their territory. In addition, the proposed commitments also set out transparency requirements for Parties to publish information on measures relating to personal information protection that exist in their jurisdiction.

2 ENHANCING THE PROTECTION OF PERSONAL INFORMATION

2.1. Given the evolving nature of the digital economy, Canada continues to adapt and modernize its approach to digital trade policy, including with respect to improving trust and confidence in digital trade, and as such, is interested in strengthening provisions related to the protection of personal information under the WTO Joint Statement Initiative on E-commerce.

2.2. With a view to helping to protect users in the digital economy from their personal information potentially being used by governments for the purposes of discrimination and/or persecution, Canada proposes for consideration the following text, which should be read as an addition to Canada's existing proposal on personal information protection:

* This concept paper is presented without prejudice to changes in Canada's negotiating position.

No Party/Member shall use the personal information of users of digital trade to persecute or discriminate against a natural person on the basis of race, colour, sex, sexual orientation, gender, language, religion, political or other opinion, national or social origin, property, birth or other status, or disability.¹

¹ *Notwithstanding Article 16 (Exceptions) [of Canada's text proposal] the Parties agree that there are no grounds for exception to this commitment to justify a Party discriminating or persecuting against a natural person.*

2.3. Such a commitment would not only provide improved confidence to users of digital trade that their personal information would not be used by government authorities to discriminate against them, but would also provide commercial benefits. Companies operating in participating Members' jurisdictions may be more confident in knowing that they would not be required to disclose users' personal information for malicious purposes to a government, thus avoiding a situation whereby they might otherwise be criticized or potentially boycotted by their users over the forced disclosure of those users' personal information to these governments.

2.4. This provision would not prevent government authorities from requiring companies to disclose personal information of companies' users for lawful purposes. However, it would ensure that when disclosed, that information could not be used for malicious purposes, such as the discrimination or persecution of someone based on race, religion, gender, disability, age, or sexual orientation, for example.

2.5. Canada looks forward to the opportunity to discuss this further with Members in upcoming meetings of the WTO JSI on E-Commerce and welcomes the views of Members on this proposed concept.
