

Trade in Services Agreement (TiSA)
Annex on Electronic Commerce

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Article 1: General Provisions

1. **[AU/CA/CL/TW/CO/CR/EU/HK/IS/IL/JP/KR/LI/MX/NZ/NO/PA/PE/CH/TR/US propose:** This Annex shall apply to measures **[CH oppose; IL considering:** adopted or maintained] by **[CH propose: Parties] [CH oppose: a Party]** affecting trade in services **[AU/CA/CO/EU/HK/MU/PE/US propose; CL/CR/IL/MX/NO considering:** using or enabled] by electronic means.]
2. **[CH propose; AU/CA/CL/TW/CO/EU/IL/JP/MX/NZ/PE oppose; MU/PK considering:** Without prejudice to the policy objectives and legislation of the Parties in areas such as the protection of intellectual property, the protection of privacy and of the confidentiality of personal and commercial data, the protection of consumers and the protection and promotion of the diversity of cultural expressions (including through public funding and assistance) and fiscal measures.]
3. **[KR/CH propose; AU/CA/CL/EU/MX/NZ/NO/PE oppose:** This Annex does not apply to financial services.]
- 3 alt. **[US propose:** The possible applicability of Article 2 (Movement of Information) and Article 9 (Local Infrastructure) of this Annex to financial services is under consideration.]
4. **[HK/JP/KR propose; CL/CH considering:** For greater certainty, the obligations contained in the Article 2 (Cross-Border Information Flows), Article 6 (Transfer or Access to Source Code) and Article 9 (Local Infrastructure and Local Presence) are subject to the relevant provisions and exceptions of this Agreement.]
5. **[HK/JP/KR propose; CL/MX/CH considering:** The obligations under Articles (Cross-Border Information Flows, Transfer or Access to Source Code, and Local Infrastructure and Local Presence) shall not apply to:
 - (a) the measures adopted or maintained by a Party, which are set out in the List of Exemptions in accordance with Paragraph 2 of Article (Most-Favored-Nation Treatment); and
 - (b) the terms, limitations, conditions and equalizations, which are set out in Party's Schedule.]
6. **[HK/JP/KR/US propose; IL/MX/CH considering:** This Annex shall not apply to:
 - (a) government procurement; or
 - (b) **[US considering:** subsidies or grants provided by a party including government-supported loans, guarantees, and insurance.]]

Article 2: [CA/PE/US propose: Movement of Information] [JP/MX/CH propose: Cross-Border Information Flows]

[HK: There should be a balance between free movement of information across border and protection of personal data. Advancing the former cause should be without prejudice to safeguarding the latter right. In HK, we have in place a relevant legal framework, Personal Data (Privacy) Ordinance, which requires that certain conditions (e.g. written consent) be met before a transfer of personal data to a place outside Hong Kong can be made. It is against this background that we propose the bracketed text as set out in paragraph 1 below.]

X. **[CA/CL/CO/MX/NZ/PE propose:** The Parties recognize that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.]

X alt. **[CH propose:** Each party applies its own regulatory regime concerning the transfer of data and personal data by electronic means.]

1. **[HK propose:** Without prejudice to the domestic legal framework adopted or maintained under Article 4 or for the protection of the privacy of individuals in relation to personal data,] **[CA/TW/CO/JP/MX/US propose; PE considering:** No Party may prevent a service supplier of another Party from transferring, accessing processing or storing information, including personal information, within or outside the Party's territory, where such activity is carried out in connection with the conduct of the service supplier's business.]

2. **[CH propose:** Parties should have measures to protect consumers engaging in electronic commerce from fraudulent and deceptive commercial practices.]

3. **[CH propose:** Parties should enhance their enforcement capacity to ensure that the applicable laws and regulations concerning the protection of data and privacy are complied with.]

4. **[CA/CL/CO/JP/MX propose; PE/PK considering:** Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 1 to achieve a legitimate public policy objective, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or disguised a restriction on trade.]

[US propose: The possible applicability of this Article to financial services is under consideration.]

[CA propose; US considering: This article does not apply to:

- (a) government procurement and
- (b) information: held or processed by, or on behalf of, a Party or measures related to that information.]

Article 3: Online Consumer Protection

1. [AU/CA/CL/TW/CO/EU/HK/IS/IL/JP/KR/LI/MX/NZ/NO/PA/PE/CH/TR/US **propose;** **CR considering:** The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial [US **propose:** practices] [US **oppose:** activities] [CO/JP/MX **propose:**, as well as measures conducive to the development of consumer confidence,] when they engage in electronic commerce.]
2. [AU/CA/CL/TW/CO/EU/HK/IS/IL/JP/KR/LI/MX/NZ/NO/PA/PE/CH/TR/US **propose:** To this end, each Party shall adopt or maintain consumer protection laws to prescribe fraudulent and deceptive commercial [US **propose:** practices] [US **oppose:** activities] that cause harm or potential harm to consumers engaged in [CO/CH **propose:** electronic commerce] [AU/CL/JP/KR/NZ/PE/US **propose:** online commercial activities.]
3. [AU/CL/TW/CO/HK/IL/JP/KR/MX/NZ/NO/PA/PE/TR/US **propose;** CA/EU **considering:** The Parties] [AU/CL/JP/MX/NZ/PE/US **propose:** recognize the importance of] [CL/CO/IL/MX/PA/PE **propose:** shall endeavor to promote the] cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to [JP/TR **considering:** cross-border] electronic commerce in order to enhance consumer welfare [MX **propose:** confidence].]

Article 4: Personal Information Protection

1. [AU/CA/CL/TW/CO/IL/JP/KR/MX/NZ/NO/PA/PE/CH **propose:** The Parties recognize the [CH **propose:** rights of consumers] [CH **oppose:** economic and social benefits] of [CH **propose:** the protection of] [CH **oppose:** protecting] the personal information [CH **oppose:** of users of electronic commerce] and the contribution that this makes to enhancing consumer confidence in electronic commerce.]
2. [AU/CA/CL/TW/CO/IL/KR/MX/NZ/NO/PA/PE/CH **propose:** [CH **oppose:** To this end,] each Party shall adopt or maintain a domestic legal framework that provides for the protection of the personal information of the users of electronic commerce. In the development of these personal information protection frameworks, each Party should take into account principles and guidelines of relevant international bodies.]

[CA **propose:** Each Party shall ensure that its domestic legal framework for the protection of personal information of users of electronic commerce is applied on a non-discriminatory basis.]

3. [AU/CA/CL/TW/CO/IL/JP/KR/MX/NZ/NO/PA/PE/CH **propose:** Each Party [CH **propose:**

shall] **[CH oppose: should]** publish **[CH propose: comprehensive]** information on the personal information protections it provides to users of electronic commerce, including:

- (a) how individuals can pursue remedies; and
- (b) how business can comply with any legal requirements.]

Article 5: Unsolicited Commercial Electronic Messages

1. **[AU/CA/CL/CO/CR/EU/HK/IS/IL/JP/KR/LI/MX/NZ/NO/PA/PE/CH/TR/US propose:** Each Party shall **[TW/CH propose: endeavor to]** 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 **[US propose: prevent ongoing reception of]** **[US oppose: stop]** such messages; or **[EU/NO/CH propose; AU/PE/US oppose: and]**
 - (b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages; **[EU/NO/CH oppose: or**
 - (c) otherwise provide for the minimization of unsolicited commercial electronic messages.]]
2. **[AU/CA/CL/CO/CR/EU/HK/IL/JP/KR/MX/NZ/NO/PE/TR/US propose:** Each Party shall **[TW propose: endeavor to]** provide recourse against suppliers of unsolicited commercial electronic messages who do not comply with its measures implemented pursuant to paragraph 1.]
3. **[AU/CA/CL/TW/CO/CR/EU/HK/IS/IL/JP/KR/LI/MX/NZ/NO/PE/TR/US propose; PA considering:** The Parties shall endeavor to cooperate in cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.]

Article 6: Transfer or Access to Source Code

1. **[JP/CH propose; CA considering:** No Party may require the transfer of, or access to, source code of software owned by a person of another Party, as a condition of providing services related to such software in its territory.]
2. **[JP/CH propose:** Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 1 to achieve a legitimate public policy objective, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or disguised a restriction on trade.]

Article 7: Open Networks, Network Access and Use [CH propose: Open Internet]

1. **[AU/CA/CL/CO/HK/IL/JP/NZ/NO/PE/CH/US propose; KR considering:** Each Party recognizes **[AU/HK/NZ propose:** the benefits of] [that] consumers in its territory, subject to applicable laws, and regulations, **[HK/NZ propose:** being] [should be] able to:
 - (a) access and use services and applications of their choice available on the Internet, subject to reasonable network management;
 - (b) connect their choice of **[NZ propose:** end user] devices to the Internet, provided that such devices do not harm the network; and
 - (c) have access to information on network management practices of their Internet access service suppliers.]
2. **[CH propose; KR oppose:** Parties, preferably through relevant regulators, should promote the ability of consumers legitimately to access, share and distribute information as well as running applications and using services of their choice. Parties should not restrict the ability to supply services over the Internet including on a cross-border and technologically neutral basis, and should promote the interoperability of services and technologies, where appropriate.]
3. **[CO/JP propose; KR oppose:** Each Party shall endeavor not to restrict the ability of service suppliers to supply services over the Internet on a cross-border and technologically neutral basis, **[CO propose:** and shall endeavor to promote the interoperability of services and technologies, where appropriate.]]

Article 8: Location of Computing Facilities [KR propose:¹]

- X. **[CA/CL/PE propose:** The Parties recognize that each Party may have its own regulatory requirements regarding the use of computing facilities including requirements that seek to ensure the security and confidentiality of communications.]
1. **[CA/CO/JP/PE/PK/US propose; CH oppose; MX considering:** No Party may require a service supplier, as a condition for supplying a service **[CO oppose:** or investing in its territory], to use or locate computing facilities in the Party's territory.]

[CO propose: However, nothing in paragraph 1 should prevent a Party from conditioning the receipt or continue receipt of an advantage on compliance with the requirement to use, establish, or expand computing facilities in its territory, including those needed for the processing or storage of data.]

1 **[KR propose:** Article 9 does not apply with respect to suppliers of public telecommunication networks or services.]

2. **[CH propose; KR oppose:** Parties should not require suppliers of electronic commerce to use or establish any local infrastructure as a condition for the supply of services.]
3. **[CA/CL/CO/JP/MX/PK propose:** Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 1 to achieve a legitimate public policy objective, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or disguised a restriction on trade.]

[US propose: The possible applicability of this Article to financial services is under consideration.]

[CA propose: This article does not apply to:

- (a) government procurement and
- (b) information held or processed by, or on behalf of, a Party or measures related to that information.]

Article 9: Electronic Authentication and Electronic Signatures

1. **[AU/CA/TW/CO/EU/IS/JP/KR/MX/NO/PA/PE/CH/TR/US propose:** Except where otherwise provided for in 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. **[AU/CA/TW/CO/EU/IS/JP/KR/MX/NO/PE/TR/US propose:** No Party may adopt or maintain measures for electronic authentication that would:
 - (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or
 - (b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to authentication.]
3. **[AU/CA/TW/CO/EU/IS/JP/KR/MX/NO/PE/TR/US propose:** Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meet certain performance standards or be certified by an authority accredited in accordance with the Party's law.]

Article 10: Customs Duties on Electronic Transmissions

1. **[AU/CA/CL/TW/CO/CR/EU/HK/IS/JP/MU/MX/NZ/NO/PA/PE/PK/TR/US propose:** No

Party may impose customs duties, [EU propose; JP/MX considering; AU/CA/TW/HK/MU/NZ/PK/US oppose: fees or charges] on [US propose: or in connection with electronically transmitted content.] [electronic transmissions.]

- 1 alt. [CH propose: The Parties confirm their current practice under the terms of the decision of WTO Ministerial Conference of not imposing customs duties on electronic transmissions.]
2. [AU/CA/CL/TW/CO/CR/EU/IS/HK/JP/MU/MX/NZ/NO/PA/PE/PK/TR/US propose: For greater certainty nothing in paragraph 1 prevents a Party from imposing internal taxes, fees or other internal charges on [AU/TW/CL/CO/CR/EU/MX/NZ/NO/PA/PE/TR propose: electronic transmissions] [US propose: electronically transmitted content], [CR considering: provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement].]

Article 11: International Cooperation

1. [CO/JP/NO propose: Each Party shall endeavor to cooperate with the other Parties to increase the level of digital literacy globally and reduce the “digital divide”.]
- 1 alt. [CH propose: Parties affirm their intention to work together and cooperate in international fora to increase the level of digital literacy and to reduce the global digital divide.]
2. [CO/CH propose: Parties will [CO propose: to the extent possible] exchange information in the area of electronic commerce. That may include information on, *inter alia*:
 - (a) technological developments and research in the area of electronic commerce;
 - (b) commercial and technical aspects of the supply of electronic commerce through all modes of supply;
 - (c) available possibilities for the exchange of electronic commerce technology; and
 - (d) applicable laws and regulations, legislative processes and recent legislative developments; applicable technical standards.]
3. [CO/NO/CH propose: Parties will exchange views on developments related to electronic commerce at the international level.]
4. [CH propose: Parties affirm their intention to:
 - (a) promote these provisions in order to contribute to the expansion and spread of electronic commerce; and

- (b) cooperate with third countries with a view to enhancing national regulatory capacity and to contribute to the spread of electronic commerce which is a powerful tool for promoting economic development.]

Article 12: Review

[CH propose: Parties intend to review these provisions from time to time, with a view to discussing their implementation and use and to further refining and expanding them, as appropriate.]

Article 13

[US propose: Nothing in Section III (Electronic Commerce) shall be construed to prevent any Party from taking any action which it considers necessary for the protection of its own essential security interests.]

[JP would like to clarify the meaning of “essential security interests” in paragraph 1 of this article.]

Article 14: Definitions

For purposes of this Annex:

[AU/CA/CO/US propose: authentication means the process or act of establishing the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication;]

[CA/US propose: computing facilities means computer servers and storage devices for the processing or storage of information for commercial use;]

[CA/US propose: customs duties includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

- (a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994, in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;
- (b) antidumping or countervailing duty that is applied pursuant to a Party's law; or
- (c) fee or other charge in connection with importation commensurate with the cost of

services rendered;]

[CO propose: electronic commerce means any cross-borders business or commercial transaction conducted by electronic means; including, among others, contracts for distribution services, construction works, consulting services, engineering services and business services;]

[EU/TR propose: electronic signature means data in electronic form which are attached to or logically associated with other electronic data and fulfills the following requirements:

- (a) it is used by a person to agree on the electronic data to which it relates;
- (b) it is linked to the electronic data to which it relates in such a way that any subsequent alteration in the data is detectable;]

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

[US propose: electronically transmitted content means any content that is digitally encoded and produced for commercial sale or distribution, including a computer program. For greater certainty, electronically transmitted content does not include digitized representations of financial instruments, including money. This definition is without prejudice to whether electronically transmitted content is a good;]

[AU/CA/CO/NZ propose: personal information means any information, including data, about an identified or identifiable natural person;] [Proponents will consult on this definition of personal information.]

[AU/CA/US propose: unsolicited commercial electronic message means an electronic message which is sent for commercial and marketing purposes to an electronic address without the consent of the recipient or against the explicit rejection of the recipient, using an Internet access service supplier and, to the extent provided for under the domestic laws and regulations of each Party, other telecommunications service.]