

## DIGITAL ECONOMY PARTNERSHIP AGREEMENT

The Parties to this Agreement, resolving to:

**ACKNOWLEDGE** the importance of the digital economy and that ongoing economic success depends on their combined ability to harness technological advances to improve existing businesses, create new products and markets and enhance daily life;

**RECOGNISE** the global value of the Internet and its open architecture as an enabler of the digital economy and catalyst for global innovation;

**RECOGNISE** the role of standards, in particular open standards, in facilitating interoperability between digital systems and enhancing value-added products and services;

**RECALL** the Sustainable Development Goals in the United Nations 2030 Agenda for Sustainable Development, particularly Goal 8 and Goal 9;

**ACKNOWLEDGE** the importance of the digital economy in promoting inclusive economic growth;

**RECOGNISE** the need to harness the benefits of advanced technologies for all;

**ACKNOWLEDGE** the need to identify the growing range of barriers that relate to trade in the digital economy and the need to update global rules in response;

**ACKNOWLEDGE** that the digital economy is evolving and therefore this Agreement and its rules and cooperation must also continue to evolve;

**CONSIDER** that effective domestic coordination of digital economy policies can further contribute to achieve sustainable economic growth;

**RECOGNISE** their interdependence on matters relating to the digital economy and, as leading online economies, their shared interest in protecting critical infrastructure and ensuring a safe and reliable Internet that supports innovation and economic and social development;

**AFFIRM** a commitment to partnership cooperation on matters relating to the digital economy;

**RECOGNISE** their inherent right to regulate and resolve to preserve the flexibility of the Parties to set legislative and regulatory priorities, safeguard public welfare, and protect legitimate public policy objectives; and

**REAFFIRM** the importance of promoting corporate social responsibility, cultural identity and diversity, environmental protection and conservation, gender equality,

indigenous rights, labour rights, inclusive trade, sustainable development and traditional knowledge, as well as the importance of preserving their right to regulate in the public interest,

**HAVE AGREED** as follows:

## MODULE 1

### INITIAL PROVISIONS AND GENERAL DEFINITIONS

#### Article 1.1: Scope

1. This Agreement shall apply to measures adopted or maintained by a Party that affect trade in the digital economy.
2. This Agreement shall not apply:
  - (a) to a service supplied in the exercise of governmental authority;
  - (b) except for Article 2.7 (Electronic Payments), to financial services;
  - (c) except for Article 8.3 (Government Procurement), to government procurement; or
  - (d) except for Article 9.5 (Open Government Data), to information held or processed by or on behalf of a Party, or measures related to that information, including measures related to its collection.

#### Article 1.2: Relation to Other Agreements

1. Recognising the Parties' intention for this Agreement to coexist with their existing international agreements, each Party affirms:
  - (a) in relation to existing international agreements to which all Parties are party, including the WTO Agreement, its existing rights and obligations with respect to the other Parties; and
  - (b) in relation to existing international agreements to which that Party and at least one other Party are party, its existing rights and obligations with respect to that other Party or Parties, as the case may be.
2. If a Party considers that a provision of this Agreement is inconsistent with a provision of another agreement to which it and at least one other Party are party, on request, the relevant Parties to the other agreement shall consult with a view to reaching a mutually satisfactory solution. This paragraph is without prejudice to a Party's rights and obligations under Module 14 (Dispute Settlement).<sup>1</sup>

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<sup>1</sup> For the purposes of the application of this Agreement, the Parties agree that the fact that an agreement provides more favourable treatment of goods, services, investments or persons than that provided for under this Agreement does not mean that there is an inconsistency within the meaning of paragraph 2.

### **Article 1.3: General Definitions**

For the purposes of this Agreement, unless otherwise provided in this Agreement:

**Agreement** means the Digital Economy Partnership Agreement;

**APEC** means Asia-Pacific Economic Cooperation;

**customs duty** includes any duty or charge of any kind imposed on or in connection with the importation of a good, and any surtax or surcharge imposed 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;
- (b) fee or other charge in connection with the importation commensurate with the cost of services rendered; or
- (c) antidumping or countervailing duty;

**days** means calendar days;

**enterprise** means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation;

**existing** means in effect on the date of entry into force of this Agreement;

**financial services** is as defined in subparagraph 5(a) of the Annex on Financial Services in GATS;

**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;

**goods** means any merchandise, product, article or material;

**Joint Committee** means the joint committee established under Module 12 (Joint Committee and Contact Points);

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

**Party** means any State or separate customs territory for which this Agreement is in force;

**person** means a natural person or an enterprise;

**person of a Party** means a national or an enterprise of a Party;

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

**SME** means a small and medium-sized enterprise, including a micro-sized enterprise;

**WTO** means the World Trade Organization; and

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

## MODULE 2

### BUSINESS AND TRADE FACILITATION

#### Article 2.1: Definitions

For the purposes of this Module:

**electronic invoicing** or **e-invoicing** means the automated creation, exchange and processing of request for payments between suppliers and buyers using a structured digital format;

**electronic payments** means the payer's transfer of a monetary claim on a person that is acceptable to the payee and made through electronic means;

**electronic record** means a record generated, communicated, received or stored by electronic means in an information system or for transmission from one information system to another;

**open standard** means a standard that is made available to the general public, developed or approved and maintained via a collaborative and consensus driven process, in order to facilitate interoperability and data exchange among different products or services and is intended for widespread adoption;

**single window** means a facility that allows persons involved in a trade transaction to electronically lodge data and documents with a single entry point to fulfil all import, export and transit regulatory requirements;

**trade administration documents** means forms issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the import or export of goods; and

**UNCITRAL** means the United Nations Commission on International Trade Law.

#### Article 2.2: Paperless Trading

1. Each Party shall make publicly available, including through a process prescribed by that Party, electronic versions of all existing publicly available trade administration documents.<sup>2</sup>

2. Each Party shall provide electronic versions of trade administration documents referred to in paragraph 1 in English or any of the other official languages of the WTO, and shall endeavour to provide such electronic versions in a machine-readable format.

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<sup>2</sup> For greater certainty, electronic versions of trade administration documents include trade administration documents provided in a machine-readable format.

3. Each Party shall accept electronic versions of trade administration documents as the legal equivalent of paper documents, except where:

- (a) there is a domestic or international legal requirement to the contrary; or
- (b) doing so would reduce the effectiveness of trade administration.

4. Noting the obligations in the *WTO Trade Facilitation Agreement*, each Party shall establish or maintain a single window that enables persons to submit documentation or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies.

5. The Parties shall endeavour to establish or maintain a seamless, trusted, high-availability<sup>3</sup> and secure interconnection of their respective single windows to facilitate the exchange of data relating to trade administration documents, which may include:

- (a) sanitary and phytosanitary certificates;
- (b) import and export data; or
- (c) any other documents, as jointly determined by the Parties, and in doing so, the Parties shall provide public access to a list of such documents and make this list of documents available online.

6. The Parties recognise the importance of facilitating, where relevant in each jurisdiction, the exchange of electronic records used in commercial trading activities between the Parties' businesses.

7. The Parties shall endeavour to develop systems to support the exchange of:

- (a) data relating to trade administration documents referred to in paragraph 5 between the competent authorities of each Party;<sup>4</sup> and
- (b) electronic records used in commercial trading activities between the Parties' businesses, where relevant in each jurisdiction.

8. The Parties recognise that the data exchange systems referred to in paragraph 7 should be compatible and interoperable with each other. To this end, the Parties recognise the role of internationally recognised and, if available, open standards in the development and governance of the data exchange systems.

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<sup>3</sup> For greater certainty, "high availability" refers to the ability of a single window to continuously operate. It does not prescribe a specific standard of availability.

<sup>4</sup> The Parties recognise that the data exchange systems referred to in this paragraph may refer to interconnection of the single windows referred to in paragraph 5.

9. The Parties shall cooperate and collaborate on new initiatives which promote and advance the use and adoption of the data exchange systems referred to in paragraph 7, including but not limited to, through:

- (a) sharing of information, experiences and best practices in the area of development and governance of the data exchange systems; and
- (b) collaboration on pilot projects in the development and governance of data exchange systems.

10. The Parties shall cooperate bilaterally and in international fora to enhance acceptance of electronic versions of trade administration documents and electronic records used in commercial trading activities between businesses.

11. In developing other initiatives which provide for the use of paperless trading, each Party shall endeavour to take into account the methods agreed by relevant international organisations.

### **Article 2.3: Domestic Electronic Transactions Framework**

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of:

- (a) the UNCITRAL Model Law on Electronic Commerce (1996); or
- (b) the *United Nations Convention on the Use of Electronic Communications in International Contracts*, done at New York, November 23, 2005.

2. Each Party shall endeavour to adopt the UNCITRAL Model Law on Electronic Transferable Records (2017).

3. Each Party shall endeavour to:

- (a) avoid imposing 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 2.4: Logistics**

1. The Parties recognise the importance of efficient cross border logistics which help lower the cost and improve the speed and reliability of supply chains.

2. The Parties shall endeavour to share best practices and general information regarding the logistics sector, including but not limited to the following:



- (a) last mile deliveries, including on-demand and dynamic routing solutions;
- (b) the use of electric, remote controlled and autonomous vehicles;
- (c) facilitating the availability of cross-border options for the delivery of goods, such as federated lockers; and
- (d) new delivery and business models for logistics.

### **Article 2.5: Electronic Invoicing**

1. The Parties recognise the importance of e-invoicing which increases the efficiency, accuracy and reliability of commercial transactions. The Parties also recognise the benefits of ensuring that the systems used for e-invoicing within their respective jurisdictions are interoperable with the systems used for e-invoicing in the other Parties' jurisdictions.

2. Each Party shall ensure that the implementation of measures related to e-invoicing in its jurisdiction is designed to support cross-border interoperability. For that purpose, each Party shall base its measures related to e-invoicing on international standards, guidelines or recommendations, where they exist.

3. The Parties recognise the economic importance of promoting the global adoption of interoperable e-invoicing systems. To this end, the Parties shall share best practices and collaborate on promoting the adoption of interoperable systems for e-invoicing.

4. The Parties agree to cooperate and collaborate on initiatives which promote, encourage, support or facilitate the adoption of e-invoicing by businesses. To this end, the Parties shall endeavour to:

- (a) promote the existence of underlying infrastructure to support e-invoicing; and
- (b) generate awareness of and build capacity for e-invoicing.

### **Article 2.6: Express Shipments**

1. The Parties recognise that electronic commerce plays an important role in increasing trade. To this end, to facilitate trade of express shipments in electronic commerce, the Parties shall ensure that their respective customs procedures are applied in a manner that is predictable, consistent and transparent.

2. Each Party shall adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall:

- (a) provide for information necessary to release an express shipment to be submitted and processed before the shipment arrives;

- (b) allow a single submission of information covering all goods contained in an express shipment, such as a manifest, through electronic means if possible;<sup>5</sup>
- (c) to the extent possible, provide for the release of certain goods with a minimum of documentation;
- (d) under normal circumstances, provide for express shipments to be released within six hours after submission of the necessary customs documents, provided the shipment has arrived; and
- (e) apply to shipments of any weight or value recognising that a Party may require formal entry procedures as a condition for release, including declaration and supporting documentation and payment of customs duties, based on the good's weight or value.

3. If a Party does not provide the treatment in paragraphs 2(a) through 2(e) to all shipments, that Party shall provide a separate<sup>6</sup> and expedited customs procedure that provides that treatment for express shipments.

4. Each Party shall provide for a *de minimis* shipment value or dutiable amount for which customs duties will not be collected, aside from restricted or controlled goods, such as goods subject to import licensing or similar requirements.<sup>7</sup> Each Party shall review the amount periodically taking into account factors that it may consider relevant, such as rates of inflation, effect on trade facilitation, impact on risk management, administrative cost of collecting duties compared to the amount of duties, cost of cross-border trade transactions, impact on SMEs or other factors related to the collection of customs duties.

## **Article 2.7: Electronic Payments<sup>8</sup>**

1. Noting the rapid growth of electronic payments, in particular, those provided by new payment service providers, Parties agree to support the development of efficient, safe and secure cross border electronic payments by fostering the adoption and use of internationally accepted standards, promoting interoperability and the interlinking of payment infrastructures, and encouraging useful innovation and competition in the payments ecosystem.

2. To this end, and in accordance with their respective laws and regulations, the Parties recognise the following principles:

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<sup>5</sup> For greater certainty, additional documents may be required as a condition for release.

<sup>6</sup> For greater certainty, "separate" does not mean a specific facility or lane.

<sup>7</sup> Notwithstanding this Article, a Party may assess customs duties, or may require formal entry documents, for restricted or controlled goods such as goods subject to import licensing or similar requirements.

<sup>8</sup> For greater certainty, nothing in this Article shall be construed to impose an obligation on a Party to modify its domestic rules on payments, including, *inter alia*, the need to obtain licences or permits or the approval of access applications.

- (a) The Parties shall endeavour to make their respective regulations on electronic payments, including those pertaining to regulatory approval, licensing requirements, procedures and technical standards, publicly available in a timely manner.
- (b) The Parties shall endeavour to take into account, for relevant payment systems, internationally accepted payment standards to enable greater interoperability between payment systems.
- (c) The Parties shall endeavour to promote the use of Application Programming Interface (API) and to encourage financial institutions and payment service providers to make available APIs of their financial products, services and transactions to third party players where possible to facilitate greater interoperability and innovation in the electronic-payments ecosystem.
- (d) The Parties shall endeavour to enable cross-border authentication and electronic know-your-customer of individuals and businesses using digital identities.
- (e) The Parties recognise the importance of upholding safety, efficiency, trust and security in electronic payment systems through regulation. The implementation of regulation should, where appropriate, be proportionate to and commensurate with the risks posed by the provision of electronic payment systems.
- (f) The Parties agree that policies should promote innovation and competition in a level playing field and recognise the importance of enabling the introduction of new financial and electronic payment products and services by incumbents and new entrants in a timely manner such as through adopting regulatory and industry sandboxes.

## MODULE 3

### TREATMENT OF DIGITAL PRODUCTS AND RELATED ISSUES

#### Article 3.1: Definitions

For the purposes of this Module:

**digital product** means a computer programme, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically;<sup>9, 10</sup> and

**electronic transmission** or **transmitted electronically** means a transmission made using any electromagnetic means, including by photonic means.

#### Article 3.2: Customs Duties

1. No Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of one Party and a person of another Party.
2. For greater certainty, paragraph 1 shall not preclude a Party from imposing 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.

#### Article 3.3: Non-Discriminatory Treatment of Digital Products

The Parties affirm their level of commitments relating to non-discriminatory treatment of digital products, in particular, but not exclusively:

- “1. No Party shall accord less favourable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of another Party, or to digital products of which the author, performer, producer, developer or owner is a person of another Party, than it accords to other like digital products.”<sup>1</sup>*

*F/n 1: For greater certainty, to the extent that a digital product of a non-Party is a “like digital product”, it will qualify as an “other like digital product” for the purposes of this paragraph.*

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<sup>9</sup> For greater certainty, digital product does not include a digitised representation of a financial instrument, including money.

<sup>10</sup> The definition of digital product should not be understood to reflect a Party’s view on whether trade in digital products through electronic transmission should be categorised as trade in services or trade in goods.

2. *Paragraph 1 shall not apply to the extent of any inconsistency with a Party's rights and obligations concerning intellectual property contained in another international agreement a Party is party to.*
3. *The Parties understand that this Article does not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.*
4. *This Article shall not apply to broadcasting.”*

### **Article 3.4: Information and Communication Technology Products that Use Cryptography**

The Parties affirm their level of commitments relating to Information and Communication Technology products that use cryptography, in particular, but not exclusively:

- “1. *This section shall apply to information and communication technology (ICT) products that use cryptography.<sup>1</sup>*

*F/n 1: For greater certainty, for the purposes of this section, a “product” is a good and does not include a financial instrument.*

2. *For the purposes of this section:*

***cryptography** means the principles, means or methods for the transformation of data in order to hide its information content, prevent its undetected modification or prevent its unauthorised use; and is limited to the transformation of information using one or more secret parameters, for example, crypto variables, or associated key management;*

***encryption** means the conversion of data (plaintext) into a form that cannot be easily understood without subsequent re-conversion (ciphertext) through the use of a cryptographic algorithm;*

***cryptographic algorithm** or **cipher** means a mathematical procedure or formula for combining a key with plaintext to create a ciphertext; and*

***key** means a parameter used in conjunction with a cryptographic algorithm that determines its operation in such a way that an entity with knowledge of the key can reproduce or reverse the operation, while an entity without knowledge of the key cannot.*

3. *With respect to a product that uses cryptography and is designed for commercial applications, no Party shall impose or maintain a technical regulation or conformity assessment procedure that requires a manufacturer*

*or supplier of the product, as a condition of the manufacture, sale, distribution, import or use of the product, to:*

*(a) transfer or provide access to a particular technology, production process or other information, for example, a private key or other secret parameter, algorithm specification or other design detail, that is proprietary to the manufacturer or supplier and relates to the cryptography in the product, to the Party or a person in the Party's territory;*

*(b) partner with a person in its territory; or*

*(c) use or integrate a particular cryptographic algorithm or cipher,*

*other than where the manufacture, sale, distribution, import or use of the product is by or for the government of the Party.*

*4. Paragraph 3 shall not apply to:*

*(a) Requirements that a Party adopts or maintains relating to access to networks that are owned or controlled by the government of that Party, including those of central banks; or*

*(b) measures taken by a Party pursuant to supervisory, investigatory or examination authority relating to financial institutions or markets.*

*5. For greater certainty, this Section shall not be construed to prevent a Party's law enforcement authorities from requiring service suppliers using encryption they control to provide, pursuant to that Party's legal procedures, unencrypted communications."*

## MODULE 4

### DATA ISSUES

#### Article 4.1: Definitions

For the purposes of this Module:

**computing facilities** means computer servers and storage devices for processing or storing information for commercial use.

#### Article 4.2: Personal Information Protection

1. The Parties recognise the economic and social benefits of protecting the personal information of participants in the digital economy and the importance of such protection in enhancing confidence in the digital economy and development of 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 electronic commerce and digital trade. In the development of its legal framework for the protection of personal information, each Party shall take into account principles and guidelines of relevant international bodies.<sup>11</sup>

3. The Parties recognise that the principles underpinning a robust legal framework for the protection of personal information should include:

- (a) collection limitation;
- (b) data quality;
- (c) purpose specification;
- (d) use limitation;
- (e) security safeguards;
- (f) transparency;
- (g) individual participation; and
- (h) accountability.

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<sup>11</sup> For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as a comprehensive privacy, personal information or personal data protection laws, sector-specific laws covering data protection or privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to data protection or privacy.

4. Each Party shall adopt non-discriminatory practices in protecting users of electronic commerce from personal information protection violations occurring within its jurisdiction.
5. Each Party shall publish information on the personal information protections it provides to users of electronic commerce, including how:
  - (a) individuals can pursue remedies; and
  - (b) businesses can comply with any legal requirements.
6. Recognising that the Parties may take different legal approaches to protecting personal information, each Party shall pursue the development of mechanisms to promote compatibility and interoperability between their different regimes for protecting personal information. These mechanisms may include:
  - (a) the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement;
  - (b) broader international frameworks;
  - (c) where practicable, appropriate recognition of comparable protection afforded by their respective legal frameworks' national trustmark or certification frameworks; or
  - (d) other avenues of transfer of personal information between the Parties.
7. The Parties shall exchange information on how the mechanisms in paragraph 6 are applied in their respective jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility and interoperability between them.
8. The Parties shall encourage adoption of data protection trustmarks by businesses that would help verify conformance to personal data protection standards and best practices.
9. The Parties shall exchange information on and share experiences on the use of data protection trustmarks.
10. The Parties shall endeavour to mutually recognise the other Parties' data protection trustmarks as a valid mechanism to facilitate cross-border information transfers while protecting personal information.

#### **Article 4.3: Cross-Border Transfer of Information by Electronic Means**

The Parties affirm their level of commitments relating to cross-border transfer of information by electronic means, in particular, but not exclusively:

- “1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.*



2. *Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person.*
3. *Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided 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 transfers of information greater than are required to achieve the objective.”*

#### **Article 4.4: Location of Computing Facilities**

The Parties affirm their level of commitments relating to location of computing facilities, in particular, but not exclusively:

- “1. *The Parties recognise 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.*
2. *No Party shall require a covered person to use or locate computing facilities in that Party’s territory as a condition for conducting business in that territory.*
3. *Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided 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 use or location of computing facilities greater than are required to achieve the objective.”*

## **MODULE 5**

### **WIDER TRUST ENVIRONMENT**

#### **Article 5.1: Cybersecurity Cooperation**

1. The Parties have a shared vision to promote secure digital trade to achieve global prosperity and recognise that cybersecurity underpins the digital economy.
2. The Parties further recognise the importance of:
  - (a) building the capabilities of their national entities responsible for computer security incident response;
  - (b) using existing collaboration mechanisms to cooperate to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties; and
  - (c) workforce development in the area of cybersecurity, including through possible initiatives relating to mutual recognition of qualifications, diversity and equality.

#### **Article 5.2: Online Safety and Security**

1. The Parties recognise that a safe and secure online environment supports the digital economy.
2. The Parties recognise the importance of taking a multi-stakeholder approach to addressing online safety and security issues.
3. The Parties shall endeavour to cooperate to advance collaborative solutions to global issues affecting online safety and security.

## MODULE 6

### BUSINESS AND CONSUMER TRUST

#### Article 6.1: Definitions

For the purposes of this Module:

**unsolicited commercial electronic message** means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient, through an Internet access service supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service.

#### Article 6.2: Unsolicited Commercial Electronic Messages

1. 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 ongoing reception of those messages;
- (b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages; or
- (c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraph 1.

3. The Parties shall cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

#### Article 6.3: Online Consumer Protection

1. The Parties recognise the importance of transparent and effective measures to protect consumers from fraudulent, misleading or deceptive conduct when they engage in electronic commerce.

2. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare.

3. Each Party shall adopt or maintain laws or regulations to proscribe fraudulent, misleading or deceptive conduct that causes harm, or is likely to cause harm, to consumers engaged in online commercial activities. Such laws or regulations may include general contract or negligence law and may be civil or criminal in nature. “Fraudulent, misleading or deceptive conduct” includes:

- (a) making misrepresentations or false claims as to material qualities, price, suitability for purpose, quantity or origin of goods or services;
- (b) advertising goods or services for supply without intention to supply;
- (c) failing to deliver products or provide services to consumers after the consumers have been charged; or
- (d) charging or debiting consumers’ financial, telephone or other accounts without authorisation.

4. Each Party shall adopt or maintain laws or regulations that:

- (a) require, at the time of delivery, goods and services provided to be of acceptable and satisfactory quality, consistent with the supplier’s claims regarding the quality of the goods and services; and
- (b) provide consumers with appropriate redress when they are not.

5. Each Party shall make publicly available and easily accessible its consumer protection laws and regulations.

6. The Parties recognise the importance of improving awareness of, and access to, policies and procedures related to consumer protection, including consumer redress mechanisms, including for consumers from one Party transacting with suppliers from another Party.

7. The Parties shall promote, as appropriate and subject to the respective laws and regulations of each Party, cooperation on matters of mutual interest related to misleading and deceptive conduct, including in the enforcement of their consumer protection laws, with respect to online commercial activities.

8. The Parties endeavour to explore the benefits of mechanisms, including alternative dispute resolution, to facilitate the resolution of claims relating to electronic commerce transactions.

#### **Article 6.4: Principles on Access to and Use of the Internet**

Subject to applicable policies, laws and regulations, the Parties recognise the benefits of their consumers having the ability to:

- (a) access and use services and applications of a consumer's choice available on the Internet, subject to reasonable network management;<sup>12</sup>
- (b) connect the 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 provider.

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<sup>12</sup> The Parties recognise that an Internet access service supplier that offers its subscribers certain content on an exclusive basis would not be acting contrary to this principle.

## **MODULE 7**

### **DIGITAL IDENTITIES**

#### **Article 7.1: Digital Identities**

1. Recognising that the cooperation of the Parties on digital identities, individual or corporate, will increase regional and global connectivity, and recognising that each Party may have different implementations of, and legal approaches to, digital identities, each Party shall endeavour to promote the interoperability between their respective regimes for digital identities. This may include:

- (a) the establishment or maintenance of appropriate frameworks to foster technical interoperability or common standards between each Party's implementation of digital identities;
- (b) comparable protection of digital identities afforded by each Party's respective legal frameworks, or the recognition of their legal and regulatory effects, whether accorded autonomously or by mutual agreement;
- (c) the establishment or maintenance of broader international frameworks; and
- (d) the exchange of knowledge and expertise on best practices relating to digital identity policies and regulations, technical implementation and security standards, and user adoption.

2. For greater certainty, nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 1 to achieve a legitimate public policy objective.

## **MODULE 8**

### **EMERGING TRENDS AND TECHNOLOGIES**

#### **Article 8.1: Financial Technology Cooperation**

The Parties shall promote cooperation between the financial technology (FinTech) industry in the Parties. The Parties recognise that effective cooperation regarding FinTech will require involvement of businesses. To this end, the Parties shall:

- (a) promote cooperation between firms in the FinTech sector;
- (b) promote development of FinTech solutions for business or financial sectors; and
- (c) encourage collaboration of entrepreneurship or start-up talent between the Parties in FinTech, consistent with the laws and regulations of the respective Parties.

#### **Article 8.2: Artificial Intelligence**

1. The Parties recognise that the use and adoption of Artificial Intelligence (AI) technologies have grown increasingly widespread in the digital economy.

2. The Parties recognise the economic and social importance of developing ethical and governance frameworks for the trusted, safe and responsible use of AI technologies. In view of the cross-border nature of the digital economy, the Parties further acknowledge the benefits of developing mutual understanding and ultimately ensuring that such frameworks are internationally aligned, in order to facilitate, as far as possible, the adoption and use of AI technologies across the Parties' respective jurisdictions.

3. To this end, the Parties shall endeavour to promote the adoption of ethical and governance frameworks that support the trusted, safe and responsible use of AI technologies (AI Governance Frameworks).

4. In adopting AI Governance Frameworks, the Parties shall endeavour to take into consideration internationally recognised principles or guidelines, including explainability, transparency, fairness and human-centred values.

#### **Article 8.3: Government Procurement**

1. The Parties recognise that the digital economy will have an impact on government procurement and affirm the importance of open, fair and transparent government procurement markets.

2. To this end, the Parties shall undertake cooperation activities in relation to understanding how greater digitisation of procurement processes, and of goods and services impacts on existing and future international government procurement commitments.

#### **Article 8.4: Cooperation on Competition Policy**

1. Recognising that the Parties can benefit by sharing their experiences in enforcing competition law and in developing and implementing competition policies to address the challenges that arise from the digital economy, the Parties shall consider undertaking mutually agreed technical cooperation activities, including:

- (a) exchanging information and experiences on development of competition policies in the digital markets;
- (b) sharing best practices on promotion of competition in digital markets; and
- (c) providing advice or training, including through the exchange of officials, to assist a Party to build necessary capacities to strengthen competition policy development and competition law enforcement in the digital markets.

2. The Parties shall cooperate, as appropriate, on issues of competition law enforcement in digital markets, including through notification, consultation and the exchange of information.

3. The Parties shall cooperate in a manner compatible with their respective laws, regulations and important interests, and within their reasonably available resources.



## MODULE 9

### INNOVATION AND THE DIGITAL ECONOMY

#### Article 9.1: Definitions

For the purposes of this Module:

**open data** means digital data that is made available with the technical and legal characteristics necessary for it to be freely used, reused, and redistributed. This definition relates only to information held or processed by or on behalf of a Party.

#### Article 9.2: Objectives

The Parties affirm the importance of technological innovation, creativity, and the transfer and dissemination of technology, being for the mutual advantage of producers and users of knowledge, as a means to achieve social and economic welfare.

#### Article 9.3: Public Domain

1. The Parties recognise the importance of a rich and accessible public domain.
2. The Parties also acknowledge the importance of informational materials, such as publicly accessible databases of registered intellectual property rights that assist in the identification of subject matter that has fallen into the public domain.

#### Article 9.4: Data Innovation

1. The Parties recognise that cross-border data flows and data sharing enable data-driven innovation. The Parties further recognise that innovation may be enhanced within the context of regulatory data sandboxes where data, including personal information,<sup>13</sup> is shared amongst businesses in accordance with the Parties' respective laws and regulations.
2. The Parties also recognise that data sharing mechanisms, such as trusted data sharing frameworks and open licensing agreements, facilitate data sharing and promote its use in the digital environment to:
  - (a) promote innovation and creativity;
  - (b) facilitate the diffusion of information, knowledge, technology, culture and the arts;  
and

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<sup>13</sup> For greater certainty, this is without prejudice to Article 4.2 (Personal Information Protection).

(c) foster competition and open and efficient markets.

3. The Parties shall endeavour to collaborate on data-sharing projects and mechanisms, and proof of concepts for new uses of data, including data sandboxes, to promote data-driven innovation.

#### **Article 9.5: Open Government Data**

1. The Parties recognise that facilitating public access to and use of government information may foster economic and social development, competitiveness and innovation.

2. To the extent that a Party makes government information, including data, available to the public, it shall endeavour to ensure that the information is made available as open data.

3. The Parties shall endeavour to cooperate to identify ways in which Parties can expand access to and use of open data, with a view to enhancing and generating business opportunities.

4. Cooperation under this Article may include activities such as:

(a) jointly identifying sectors where open data sets, particularly those with global value, can be used to facilitate technology transfer, talent formation and innovation, among other things;

(b) encouraging the development of new products and services based on open data sets; and

(c) fostering the use and develop open data licensing models in the form of standardised public licences available online, which will allow open data to be freely accessed, used, modified and shared by anyone for any purpose permitted by the Parties' respective laws and regulations, and which rely on open data formats.

## **MODULE 10**

### **SMALL AND MEDIUM ENTERPRISES COOPERATION**

#### **Article 10.1: General Principles**

1. The Parties recognise the fundamental role of SMEs in maintaining dynamism and enhancing competitiveness in the digital economy.
2. The Parties recognise the integral role of the private sector in the SMEs cooperation to be implemented under this Module.
3. The Parties shall foster close cooperation on the digital economy between SMEs of the Parties and cooperate in promoting jobs and growth for SMEs.

#### **Article 10.2: Cooperation to Enhance Trade and Investment Opportunities for SMEs in the Digital Economy**

With a view to more robust cooperation between the Parties to enhance trade and investment opportunities for SMEs in the digital economy, the Parties shall:

- (a) continue cooperation with the other Parties to exchange information and best practices in leveraging on digital tools and technology to improve SMEs access to capital and credit, SMEs participation in government procurement opportunities and other areas that could help SMEs adapt to the digital economy; and
- (b) encourage participation by the Parties' SMEs in platforms that could help SMEs link with international suppliers, buyers and other potential business partners.

#### **Article 10.3: Information Sharing**

1. Each Party shall establish or maintain its own free, publicly accessible website containing information regarding this Agreement, including:
  - (a) the text of this Agreement;
  - (b) a summary of this Agreement; and
  - (c) information designed for SMEs that contains:
    - (i) a description of the provisions in this Agreement that the Party considers to be relevant to SMEs; and
    - (ii) any additional information that would be useful for SMEs interested in benefitting from the opportunities provided by this Agreement.

2. Each Party shall include on its website, established or maintained in accordance with paragraph 1, links or information accessible through automated electronic transfer to:

- (a) the equivalent websites of the other Parties; and
- (b) the websites of its own government agencies and other appropriate entities that provide information that the Party considers useful to any person interested in the implementation of this Agreement.

3. The information described in paragraph 2(b) may include information related to the following areas:

- (a) customs regulations, procedures or enquiry points;
- (b) regulations concerning data flows and data privacy;
- (c) innovation and data regulatory sandboxes;
- (d) regulations or procedures concerning intellectual property rights;
- (e) technical regulations, standards, or conformity assessment procedures related to digital trade;
- (f) sanitary or phytosanitary measures relating to importation or exportation;
- (g) trade promotion programmes;
- (h) government procurement opportunities; and
- (i) financing programmes for SMEs.

4. Each Party shall regularly review the information and links on the website referred to in paragraph 2 and paragraph 3 to ensure that the information and links are up-to-date and accurate.

5. To the extent possible, each Party shall make the information published in accordance with this Article available in English.

#### **Article 10.4: Digital SME Dialogue**

1. The Parties shall convene a Digital SME Dialogue (the Dialogue). The Dialogue may include private sector, non-government organisations, academic experts and other stakeholders from each Party. The Parties may collaborate with other interested persons in convening the Dialogue.

2. The Dialogue shall promote the benefits of this Agreement for the Parties' SMEs. The Dialogue shall also promote relevant collaboration efforts and initiatives between the Parties arising from this Agreement.

3. To encourage inclusive participation by the Parties' stakeholders and increase outreach impact, the Parties may consider organising the Dialogue on the sidelines, or as part of existing platforms and meetings that the Parties are participants or members of, including APEC or WTO meetings.

4. The Parties may consider using relevant technical or scientific input, or other information arising from the Dialogue towards implementation efforts and further modernisation of this Agreement for the benefit of the Parties' SMEs.

## MODULE 11

### DIGITAL INCLUSION

#### Article 11.1: Digital Inclusion

1. The Parties acknowledge the importance of digital inclusion to ensure that all people and businesses have what they need to participate in, contribute to, and benefit from the digital economy.

2. The Parties recognise the importance of expanding and facilitating digital economy opportunities by removing barriers. This may include enhancing cultural and people-to-people links, including between Indigenous Peoples, and improving access for women, rural populations and low socio-economic groups.

3. To this end, the Parties shall cooperate on matters relating to digital inclusion, including participation of women, rural populations, low socio-economic groups and Indigenous Peoples in the digital economy. Cooperation may include:

- (a) sharing of experiences and best practices, including exchange of experts, with respect to digital inclusion;
- (b) promoting inclusive and sustainable economic growth, to help ensure that the benefits of the digital economy are more widely shared;
- (c) addressing barriers in accessing digital economy opportunities;
- (d) developing programmes to promote participation of all groups in the digital economy;
- (e) sharing methods and procedures for the collection of disaggregated data, the use of indicators, and the analysis of statistics related to participation in the digital economy; and
- (f) other areas as jointly agreed by the Parties.

4. Cooperation activities relating to digital inclusion may be carried out through the coordination, as appropriate, of the Parties' respective agencies, enterprises, labour unions, civil society, academic institutions and non-governmental organisations, among others.

## MODULE 12

### JOINT COMMITTEE AND CONTACT POINTS

#### Article 12.1: Establishment of the Joint Committee

The Parties hereby establish a Joint Committee consisting of government representatives of each Party. Each Party shall be responsible for the composition of its delegation.

#### Article 12.2: Functions of the Joint Committee

The Joint Committee shall:

- (a) consider any matter relating to the implementation or operation of this Agreement, including the establishment of subsidiary bodies and the terms of accession;
- (b) consider any proposal to amend or modify this Agreement;
- (c) consider ways to further enhance digital economy partnership between the Parties;
- (d) develop arrangements for implementing this Agreement;<sup>14</sup>
- (e) establish the Rules of Procedure referred to in Module 14 (Dispute Settlement), and, where appropriate, amend those rules; and
- (f) take any other action as the Parties may agree.

#### Article 12.3: Decision-Making

The Joint Committee shall take decisions on matters within their functions by consensus, except as otherwise provided in this Agreement, or as otherwise decided by the Parties.<sup>15</sup> Except as otherwise provided in this Agreement, the Joint Committee or any subsidiary body shall be deemed to have taken a decision by consensus if no Party present at any meeting when a decision is taken objects to the proposed decision.

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<sup>14</sup> In the case of Chile, whenever such arrangements are adopted to comply with this Agreement, they shall be considered, whenever applicable, as agreements for the implementation of a treaty in accordance with Chilean law.

<sup>15</sup> For greater certainty, any such decision on alternative decision-making by the Parties shall itself be taken by consensus.

#### **Article 12.4: Rules of Procedure of the Joint Committee**

1. The Joint Committee shall meet within one year of the date of entry into force of this Agreement and thereafter as the Parties may decide, including as necessary to fulfil its functions under Article 12.2 (Functions of the Joint Committee). Meetings of the Joint Committee shall be chaired successively by each Party.
2. The Party chairing a session of the Joint Committee shall provide any necessary administrative support for such session, and shall notify the other Parties of any decision of the Joint Committee.
3. Except as otherwise provided in this Agreement, the Joint Committee and any subsidiary body established under this Agreement shall carry out its work through whatever means are appropriate, which may include electronic mail or videoconferencing.
4. The Joint Committee and any subsidiary body established under this Agreement may establish rules of procedure for the conduct of its work.

#### **Article 12.5: Cooperation and Implementation of this Agreement**

1. The Parties shall cooperate in order to facilitate the implementation of this Agreement and to maximise the benefits arising from it. Cooperation activities shall take into consideration each Party's needs, and may include:
  - (a) information exchanges, dialogues or meetings between policy officials in regulatory agencies, agencies responsible for regulatory management or regulators of the Parties;
  - (b) formal cooperation, such as mutual recognition, equivalence or harmonisation; and
  - (c) other activities that the Parties may agree to.
2. The Parties may set out the detailed arrangements of cooperation activities in separate memoranda.
3. At each meeting of the Joint Committee, each Party shall report on its plans for, and progress towards, implementing this Agreement.
4. For greater certainty, in respect of all cooperation under this Agreement, the Parties commit themselves to providing, within the limits of their own capacities and through their own channels, the appropriate resources, including financial resources.



## **Article 12.6: Contact Points**

1. Each Party shall designate an overall contact point to facilitate communications between the Parties on any matter covered by this Agreement, as well as other contact points as required by this Agreement.
2. Except as otherwise provided in this Agreement, each Party shall notify the other Parties in writing of its designated contact points no later than 60 days after the date of entry into force of this Agreement for that Party. A Party shall notify its designated contact points to another Party for which this Agreement enters into force at a later date, no later than 30 days after the date of entry into force of this Agreement for that other Party.
3. Each Party shall notify the other Parties of any changes to its designated contact points.

**MODULE 13**  
**TRANSPARENCY**

**Article 13.1: Definitions**

For the purposes of this Module:

**administrative ruling of general application** means an administrative ruling or interpretation that applies to all persons and fact situations and that is relevant to the implementation of this Agreement but does not include:

- (a) a determination or ruling made in administrative or quasi-judicial proceedings that applies to a particular person, good, or service of another Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice.

**Article 13.2: Publication**

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published or otherwise made available<sup>16</sup> in such a manner as to enable interested persons and Parties to become acquainted with them.

2. When possible, each Party shall:

- (a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and
- (b) provide, where appropriate, interested persons and the other Parties with a reasonable opportunity to comment on such proposed measures.

**Article 13.3: Administrative Proceedings**

With a view to administering in a consistent, impartial, and reasonable manner all measures affecting matters covered by this Agreement, each Party shall ensure in its administrative proceedings applying measures referred to in Article 13.2.1 to particular persons, goods, or services of the other Parties in specific cases that:

- (a) wherever possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice, in accordance with its domestic procedures, when a proceeding is initiated, including a description of the nature of

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<sup>16</sup> Including through the internet or in print form.

the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in question;

- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and
- (c) its procedures are in accordance with its laws and regulations.

#### **Article 13.4: Review and Appeal**

1. Each Party shall, where warranted, establish or maintain judicial, quasi-judicial, or administrative tribunals, or procedures for the purpose of the prompt review and correction of final administrative actions regarding matters covered by this Agreement, other than those taken for prudential reasons. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the Parties to the proceedings are provided with the right to:

- (a) a reasonable opportunity to support or defend their respective positions; and
- (b) a decision based on the evidence and submissions of record or, where required by its laws and regulations, the record compiled by the relevant authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its laws and regulations, that the decisions referred to in paragraph 2(b) shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

#### **Article 13.5: Notification and Provision of Information**

1. Where a Party considers that any proposed or actual measure might materially affect the operation of this Agreement or otherwise substantially affect another Party's interests under this Agreement, it shall notify that other Party, to the extent possible, of the proposed or actual measure.

2. On request of another Party, a Party shall provide information and respond to questions pertaining to any actual or proposed measure, whether or not that other Party has been previously notified of that measure.

3. Any notification, request, or information under this Article shall be conveyed to the other Parties through their contact points.

4. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

## MODULE 14

### DISPUTE SETTLEMENT

#### Article 14.1: Definitions

For the purposes of this Module and its Annexes,

**complaining Party** means a Party that requests the appointment of an arbitral tribunal under Article 14C.2.1 (Appointment of Arbitral Tribunals);

**consulting Party** means a Party that requests consultations under Article 14C.1.1 (Consultations) or the Party to which the request for consultations is made;

**disputing Party** means a complaining Party or a responding Party;

**responding Party** means a Party that has been complained against under Article 14C.2 (Appointment of Arbitral Tribunals);

**Rules of Procedure** means the rules of procedure for the settlement of disputes through arbitration established in accordance with Article 12.2 (Functions of the Joint Committee); and

**third Party** means a Party, other than a disputing Party, that delivers a written notice in accordance with Article 14C.7 (Third Party Participation).

#### Article 14.2: Objective

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

2. The objective of this Module is to provide an effective, efficient and transparent process for consultations and settlement of disputes among the Parties concerning their rights and obligations under this Agreement.

#### Article 14.3: Scope

Except as provided in Annex 14-A, this Module and its Annexes shall apply:

- (a) with respect to the avoidance or settlement of disputes between the Parties regarding the interpretation or application of this Agreement; or

- (b) when a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of this Agreement, or that another Party has otherwise failed to carry out an obligation under this Agreement.

#### **Article 14.4: Good Offices and Conciliation**

1. Parties may at any time agree to voluntarily undertake any alternative methods of dispute resolution, such as good offices or conciliation.
2. Proceedings that involve good offices or conciliation shall be confidential and without prejudice to the rights of the Parties in any other proceedings.
3. Parties participating in proceedings under this Article may suspend or terminate those proceedings at any time.
4. If the disputing Parties agree, good offices or conciliation may continue while the dispute proceeds for resolution before an arbitral tribunal established under Article 14C.2 (Appointment of Arbitral Tribunals).

#### **Article 14.5: Mediation**

The procedures for the settlement of disputes through mediation are contained in Annex 14-B.

#### **Article 14.6: Arbitration**

1. The procedures for the settlement of disputes through arbitration are contained in Annex 14-C.
2. The Rules of Procedure shall be established by the Joint Committee in accordance with Article 12.2 (Functions of the Joint Committee).

#### **Article 14.7: Choice of Forum**

1. If a dispute regarding any matter arises under this Agreement and under another international trade agreement to which the disputing Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.
2. Once a complaining Party has requested the establishment of, or referred a matter to, a panel or other tribunal under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

## **ANNEX 14-A – SCOPE OF MODULE 14 (DISPUTE SETTLEMENT)**

### **Article 14A.1: Scope of Module 14 (Dispute Settlement)**

Module 14 (Dispute Settlement), including Annex 14-B (Mediation Mechanism) and Annex 14-C (Arbitration Mechanism), shall not apply to:

- (a) Article 3.3 (Non-Discriminatory Treatment of Digital Products);
- (b) Article 3.4 (Information and Communication Technology Products that Use Cryptography);
- (c) Article 4.3 (Cross-Border Transfer of Information by Electronic Means); and
- (d) Article 4.4 (Location of Computing Facilities).

## ANNEX 14-B – MEDIATION MECHANISM

### Article 14B.1: Request for Information

1. At any time before the initiation of a mediation procedure, any Party may request any other Party in writing to provide information with respect to any matter described in Article 14.3 (Scope).
2. The Party to which such request is made shall, within 20 days of the date of its receipt of the request, provide a written response containing its comments on the requested information.
3. When the Party to which such request is made considers that it will not be able to respond within 20 days of the date of its receipt of the request, it shall promptly notify the requesting Party, stating the reasons for the delay and providing an estimate of the shortest period within which it will be able to provide its response.
4. Each Party is encouraged to avail itself of this provision before the initiation of a mediation procedure.

### Article 14B.2: Initiation of the Mediation Procedure

1. A Party may at any time request to enter into a mediation procedure with any other Party with respect to any matter described in Article 14.3 (Scope).
2. The Party making the request for mediation shall do so in writing and shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint. The requesting Party shall circulate the request concurrently to the other Parties through the overall contact points designated under Article 12.6 (Contact Points).
3. The Party to which a request for mediation is made shall give sympathetic consideration to the request and, unless the Parties to the mediation agree otherwise, reply in writing to the request no later than 14 days after the date of its receipt of the request.<sup>17</sup> That Party shall circulate its reply concurrently to the other Parties through the overall contact points and enter into mediation in good faith.
4. Upon receipt of a request for mediation, the Party to which the request is made may decline to participate in the mediation.
5. A mediation procedure shall not be initiated to review a proposed measure.

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<sup>17</sup> For greater certainty, if the Party to which a request for mediation is made does not reply within the time period specified in this paragraph, it shall be deemed to have received the request seven days after the date on which the Party making the request for mediation transmitted that request.



### **Article 14B.3: Selection of the Mediator**

1. The Parties to the mediation shall endeavour to agree on a mediator within 10 days of the initiation of the mediation procedure.
2. In the event that the Parties to the mediation are unable to agree on the mediator within the time period laid down in paragraph 1, either Party may request that the appointment be made by the Director-General of the WTO within a further 15 days.
3. If the Director-General of the WTO notifies the Parties to the mediation that he or she is unavailable, or does not appoint a mediator within 15 days after the date of the request referred to in paragraph 2, either Party may request the Secretary-General of the Permanent Court of Arbitration to make the appointment promptly.
4. Unless the Parties to the mediation agree otherwise, a mediator shall not be a national of, or be employed by, either Party.
5. A mediator shall comply with the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes* (as contained in document WT/DSB/RC/1 and any subsequent amendments), *mutatis mutandis*.

### **Article 14B.4: Rules of the Mediation Procedure**

1. Within 10 days of the appointment of the mediator, the Party which invoked the mediation procedure shall deliver to the mediator and the other Party a detailed written description of its concerns, in particular the operation of the measure at issue and the legal basis for the complaint.
2. Within 20 days of the delivery of this description, the other Party may provide written comments. Either Party may include any information that it deems relevant in its description or comments.
3. The mediator shall assist the Parties to the mediation in an impartial and transparent manner in bringing clarity to the measure or any other matter described in Article 14.3 (Scope) and in reaching a mutually agreed solution. In particular, the mediator may organise meetings between the Parties to the mediation, consult them jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the Parties to the mediation. The mediator shall consult with the Parties to the mediation before seeking the assistance of, or consulting with, relevant experts and stakeholders.
4. The mediator may offer advice and propose a solution for the consideration of the Parties to the mediation. The Parties to the mediation may accept or reject the proposed solution, or agree on a different solution. The mediator shall not advise or comment on the consistency of the measure at issue with this Agreement.

5. The mediation procedure shall take place in the capital of the Party to which the request for mediation referred to in Article 14B.2 was addressed, or by mutual agreement in any other location or by any other means.
6. The Parties to the mediation shall endeavour to reach a mutually agreed solution within 60 days of the appointment of the mediator. Pending a final agreement, the Parties to the mediation may consider possible interim solutions, particularly if the measure relates to perishable goods, or seasonal goods or services that rapidly lose their trade value.
7. Upon request of either Party to the mediation, the mediator shall issue to the Parties a draft written factual report, providing:
  - (a) a brief summary of the measure at issue in the mediation procedure;
  - (b) the procedures followed; and
  - (c) any mutually agreed solution reached as the outcome of the mediation procedure, including possible interim solutions.
8. The mediator shall allow the Parties to the mediation 15 days to comment on the draft factual report. After considering the comments received, the mediator shall, within 15 days, deliver a final written factual report to the Parties to the mediation. The factual report shall not include any interpretation of this Agreement.
9. The mediation procedure may be suspended at any time by notice in writing of either Party to the mediation.
10. The mediation procedure shall be terminated:
  - (a) by the adoption of a mutually agreed solution by the Parties to the mediation, on the date of the adoption thereof;
  - (b) by mutual agreement of the Parties to the mediation at any stage of the procedure, on the date of that agreement;
  - (c) by a written declaration of the mediator, after consultation with the Parties to the mediation, that further efforts at mediation would be to no avail, on the date of that declaration;
  - (d) by a written declaration of a Party to the mediation after exploring mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that declaration; or
  - (e) by notice in writing by either Party to the mediation, on the date of that notice.

#### **Article 14B.5: Implementation of a Mutually Agreed Solution**

1. Where the Parties to the mediation have agreed to a solution, each Party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.
2. The implementing Party shall inform the other Party to the mediation in writing of any steps or measures taken to implement the mutually agreed solution.

#### **Article 14B.6: Time Limits**

Any time limit referred to in this Annex may be modified by mutual agreement between the Parties to the mediation.

#### **Article 14B.7: Confidentiality**

Unless the Parties to the mediation agree otherwise, all steps of the mediation procedure, including any advice or proposed solution, are confidential. Any Party to the mediation may disclose to the public the fact that mediation is taking place.

#### **Article 14B.8: Costs**

1. Each Party to the mediation shall bear its own expenses derived from the participation in the mediation procedure.
2. The Parties to the mediation shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the mediator. The remuneration of the mediator shall be in accordance with that foreseen for a chairperson of an arbitral tribunal in accordance with the Rules of Procedure.

## ANNEX 14-C – ARBITRATION MECHANISM

### Article 14C.1: Consultations

1. Any Party may request consultations with any other Party with respect to any matter described in Article 14.3 (Scope). The Party making the request for consultations shall do so in writing, and shall set out the reasons for the request, including identification of the actual or proposed measure<sup>18</sup> or other matter at issue and an indication of the legal basis for the complaint. The requesting Party shall circulate the request concurrently to the other Parties through the overall contact points designated under Article 12.6 (Contact Points).
2. The Party to which a request for consultations is made shall, unless the consulting Parties agree otherwise, reply in writing to the request no later than seven days after the date of its receipt of the request.<sup>19</sup> That Party shall circulate its reply concurrently to the other Parties through the overall contact points and enter into consultations in good faith.
3. A Party other than a consulting Party that considers that it has a substantial interest in the matter may participate in the consultations by notifying the other Parties in writing no later than seven days after the date of circulation of the request for consultations. The Party shall include in its notice an explanation of its substantial interest in the matter.
4. Unless the consulting Parties agree otherwise, they shall enter into consultations no later than:
  - (a) 15 days after the date of receipt of the request for matters concerning perishable goods; or
  - (b) 30 days after the date of receipt of the request for all other matters.
5. Consultations may be held in person or by any technological means available to the consulting Parties. If the consultations are held in person, they shall be held in the capital of the Party to which the request for consultations was made, unless the consulting Parties agree otherwise.
6. The consulting Parties shall make every attempt to reach a mutually satisfactory resolution of the matter through consultations under this Article. To this end:
  - (a) each consulting Party shall provide sufficient information to enable a full examination of how the actual or proposed measure might affect the operation or application of this Agreement; and

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<sup>18</sup> The Parties shall, in the case of a proposed measure, make every effort to make the request for consultation under this provision within 60 days of the date of publication of the proposed measure, without prejudice to the right to make such request at any time.

<sup>19</sup> For greater certainty, if the Party to which a request for consultations is made does not reply within the time period specified in this paragraph, it shall be deemed to have received the request seven days after the date on which the Party making the request for consultations transmitted that request.

- (b) a Party that participates in the consultations shall treat any information exchanged in the course of the consultations that is designated as confidential on the same basis as the Party providing the information.

7. In consultations under this Article, a consulting Party may request that another consulting Party make available personnel of its government agencies or other regulatory bodies who have expertise in the matter at issue.

8. Consultations shall be confidential and without prejudice to the rights of any Party in any other proceedings.

#### **Article 14C.2: Appointment of Arbitral Tribunals**

1. A Party that requested consultations under Article 14C.1 may request, by means of a written notice addressed to the responding Party, the appointment of an arbitral tribunal if the consulting Parties fail to resolve the matter within:

- (a) a period of 60 days after the date of receipt of the request for consultations under Article 14C.1;
- (b) a period of 30 days after the date of receipt of the request for consultations under Article 14C.1 in a matter regarding perishable goods; or
- (c) any other period as the consulting Parties may agree.

2. The complaining Party shall circulate the request concurrently to all Parties through the overall contact points designated under Article 12.6 (Contact Points).

3. The complaining Party shall include in the request to appoint an arbitral tribunal an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

4. Unless otherwise agreed by the disputing Parties, the arbitral tribunal shall be established and perform its functions in a manner consistent with this Annex.

5. Unless the disputing Parties agree otherwise, the arbitral tribunal shall be composed in a manner consistent with this Annex and the Rules of Procedure.

6. If an arbitral tribunal has been established regarding a matter and another Party requests the establishment of an arbitral tribunal regarding the same matter, a single arbitral tribunal should be established to examine those complaints whenever feasible.

7. An arbitral tribunal shall not be established to review a proposed measure.

### **Article 14C.3: Terms of Reference**

Unless the disputing Parties agree otherwise, no later than 20 days after the date of delivery of the request for the establishment of an arbitral tribunal, the terms of reference shall be to:

- (a) examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral tribunal under Article 14C.2; and
- (b) make findings and determinations, and any jointly requested recommendations, together with its reasons therefor, as provided for in Article 14C.10.

### **Article 14C.4: Composition of Arbitral Tribunals**

1. An arbitral tribunal shall be composed of three members.
2. Unless the disputing Parties agree otherwise, they shall apply the following procedures to compose an arbitral tribunal:
  - (a) Within a period of 20 days after the date of delivery of the request for the establishment of an arbitral tribunal under Article 14C.2, the complaining Party or Parties, on the one hand, and the responding Party, on the other, shall each appoint an arbitrator and notify each other of those appointments.
  - (b) If the complaining Party or Parties fail to appoint an arbitrator within the period specified in subparagraph (a), the dispute settlement proceedings shall lapse at the end of that period.
  - (c) For appointment of the third arbitrator, who shall serve as chair, the disputing Parties shall endeavour to agree on the appointment of a chair.
  - (d) If the responding Party fails to appoint an arbitrator or if the chair of the arbitral tribunal has not been appointed within 30 days of the date of delivery of the request referred to in subparagraph (a), at the request of any Party to the dispute the necessary designations shall be made by the Director-General of the WTO within 30 days of the request being made to the Director-General.
  - (e) If the Director-General of the WTO notifies the disputing Parties that he or she is unavailable, or does not appoint the remaining arbitrators within 30 days after the date of the request referred to in subparagraph (d), either Party may request the Secretary-General of the Permanent Court of Arbitration to make the remaining appointment promptly.
3. Unless the disputing Parties agree otherwise, the chair shall not be a national of, or be employed by, any of the disputing Parties or a third Party.

4. Each disputing Party shall endeavour to select arbitrators who have expertise or experience relevant to the subject matter of the dispute.

5. If an arbitrator selected under paragraph 2 is unavailable, the complaining Party, the responding Party, or the disputing Parties, as the case may be, shall, no later than 20 days after learning that the arbitrator is unavailable, select another arbitrator in accordance with the same method of selection that was used to select the arbitrator who is unavailable, unless the disputing Parties agree otherwise. The replacement arbitrator shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended pending the appointment of the replacement arbitrator, and all time frames set out in this Annex and in the Rules of Procedure shall be extended by the amount of time that the work was suspended.

6. If a disputing Party considers that an arbitrator is in violation of the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes* referred to in Article 14C.5.1(d), the disputing Parties shall consult and, if they agree, the arbitrator shall be removed and a new arbitrator shall be selected in accordance with this Article.

#### **Article 14C.5: Qualifications of Arbitrators**

1. All arbitrators shall:

- (a) have expertise or experience in law, international trade, digital economy, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;
- (b) be chosen strictly on the basis of objectivity, reliability and sound judgment;
- (c) be independent of, and not affiliated with or take instructions from, any Party; and
- (d) comply with the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes* (as contained in document *WT/DSB/RC/1* and any subsequent amendments), *mutatis mutandis*.

2. An individual shall not serve as an arbitrator for a dispute in which that person has participated under Article 14.4 (Good Offices and Conciliation).

#### **Article 14C.6: Function of Arbitral Tribunals**

1. An arbitral tribunal's function is to make an objective assessment of the matter before it, which includes an examination of the facts and the applicability of and conformity with this Agreement, and to make the findings, determinations and recommendations as are called for in its terms of reference and necessary for the resolution of the dispute.

2. Unless the disputing Parties agree otherwise, the arbitral tribunal shall perform its functions and conduct its proceedings in a manner consistent with this Annex and the Rules of Procedure.

3. The arbitral tribunal shall consider this Agreement in accordance with the rules of interpretation under international law as reflected in Article 31 and Article 32 of the *Vienna Convention on the Law of Treaties (1969)*. With respect to any provision of the WTO Agreement that has been incorporated into this Agreement, the arbitral tribunal shall also consider relevant interpretations in reports of panels and the WTO Appellate Body adopted by the WTO Dispute Settlement Body. The findings, determinations and recommendations of the arbitral tribunal shall not add to or diminish the rights and obligations of the Parties under this Agreement.

4. An arbitral tribunal shall take its decisions by consensus, except that, if the arbitral tribunal is unable to reach consensus, it may take its decisions by majority vote.

#### **Article 14C.7: Third Party Participation**

A Party that is not a disputing Party and that considers it has an interest in the matter before the arbitral tribunal shall, on delivery of a written notice to the disputing Parties, be entitled to attend all hearings, make written submissions, present views orally to the arbitral tribunal, and receive written submissions of the disputing Parties. The Party shall provide written notice no later than 10 days after the date of circulation of the request for the appointment of the arbitral tribunal under Article 14C.2.

#### **Article 14C.8: Role of Experts**

At the request of a disputing Party, or on its own initiative, an arbitral tribunal may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties agree and subject to any terms and conditions agreed by the disputing Parties. The disputing Parties shall have an opportunity to comment on any information or advice obtained under this Article.

#### **Article 14C.9: Suspension or Termination of Proceedings**

1. The arbitral tribunal may suspend its work at any time at the request of the complaining Party or, if there is more than one complaining Party, at the joint request of the complaining Parties, for a period not to exceed 12 consecutive months. The arbitral tribunal shall suspend its work at any time if the disputing Parties request it to do so. In the event of a suspension, the time frames set out in this Annex and in the Rules of Procedure shall be extended by the amount of time that the work was suspended. If the work of the arbitral tribunal is suspended for more than 12 consecutive months, the arbitral tribunal proceedings shall lapse unless the disputing Parties agree otherwise.



2. The arbitral tribunal shall terminate its proceedings if the disputing Parties request it to do so.

#### **Article 14C.10: Initial Report**

1. The arbitral tribunal shall draft its report without the presence of any Party.

2. The arbitral tribunal shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties and any third Parties. At the joint request of the disputing Parties, the arbitral tribunal may make recommendations for the resolution of the dispute.

3. The arbitral tribunal shall present an initial report to the disputing Parties no later than 150 days after the date of the appointment of the last arbitrator. In cases of urgency, including those related to perishable goods, the arbitral tribunal shall endeavour to present an initial report to the disputing Parties no later than 120 days after the date of the appointment of the last arbitrator.

4. The initial report shall contain:

(a) findings of fact;

(b) the determination of the arbitral tribunal as to whether:

(i) the measure at issue is inconsistent with obligations in this Agreement; or

(ii) a Party has otherwise failed to carry out its obligations in this Agreement;

(c) any other determination requested in the terms of reference;

(d) recommendations, if the disputing Parties have jointly requested them, for the resolution of the dispute; and

(e) the reasons for the findings and determinations.

5. In exceptional cases, if the arbitral tribunal considers that it cannot release its initial report within the time period specified in paragraph 3, it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of when it will issue its report. A delay shall not exceed an additional period of 30 days unless the disputing Parties agree otherwise.

6. Arbitrators may present separate opinions on matters not unanimously agreed.

7. A disputing Party may submit written comments to the arbitral tribunal on its initial report no later than 15 days after the presentation of the initial report or within another period as the disputing Parties may agree.

8. After considering any written comments by the disputing Parties on the initial report, the arbitral tribunal may modify its report and make any further examination it considers appropriate.

#### **Article 14C.11: Final Report**

1. The arbitral tribunal shall present a final report to the disputing Parties, including any separate opinions on matters not unanimously agreed, no later than 30 days after presentation of the initial report, unless the disputing Parties agree otherwise. After taking steps to protect confidential information, and no later than 15 days after the presentation of the final report, the disputing Parties shall release the final report to the public.

2. No arbitral tribunal shall, either in its initial report or its final report, disclose which arbitrators are associated with majority or minority opinions.

#### **Article 14C.12: Implementation of Final Report**

1. The Parties recognise the importance of prompt compliance with determinations made by arbitral tribunals under Article 14C.11 in achieving the aim of the dispute settlement procedures in this Annex, which is to secure a positive solution to disputes.

2. If in its final report the arbitral tribunal determines that:

(a) the measure at issue is inconsistent with a Party's obligations in this Agreement;  
or

(b) a Party has otherwise failed to carry out its obligations in this Agreement,

the responding Party shall, whenever possible, eliminate the non-conformity.

3. Unless the disputing Parties agree otherwise, the responding Party shall have a reasonable period of time in which to eliminate the non-conformity if it is not practicable to do so immediately.

4. The disputing Parties shall endeavour to agree on the reasonable period of time. If the disputing Parties fail to agree on the reasonable period of time within a period of 45 days after the presentation of the final report under Article 14C.11, any disputing Party may, no later than 60 days after the presentation of the final report under Article 14C.11, refer the matter to the chair to determine the reasonable period of time through arbitration.

5. The chair shall take into consideration as a guideline that the reasonable period of time should not exceed 15 months from the presentation of the final report under Article 14C.11. However, that time may be shorter or longer, depending upon the particular circumstances.

6. The chair shall determine the reasonable period of time no later than 90 days after the date of referral to the chair under paragraph 4.

7. The disputing Parties may agree to vary the procedures set out in paragraphs 4 through 6 for the determination of the reasonable period of time.

#### **Article 14C.13: Non-Implementation – Compensation and Suspension of Benefits**

1. The responding Party shall, if requested by the complaining Party or Parties, enter into negotiations with the complaining Party or Parties no later than 15 days after receipt of that request, with a view to developing mutually acceptable compensation, if:

- (a) the responding Party has notified the complaining Party or Parties that it does not intend to eliminate the non-conformity; or
- (b) following the expiry of the reasonable period of time established in accordance with Article 14C.12, there is disagreement between the disputing Parties as to whether the responding Party has eliminated the non-conformity.

2. A complaining Party may suspend benefits in accordance with paragraph 3 if that complaining Party and the responding Party have:

- (a) been unable to agree on compensation within a period of 30 days after the period for developing compensation has begun; or
- (b) agreed on compensation but the relevant complaining Party considers that the responding Party has failed to observe the terms of the agreement.

3. A complaining Party may, at any time after the conditions set out in paragraph 2 are met in relation to that complaining Party, provide written notice to the responding Party that it intends to suspend benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend.<sup>20</sup> The complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice under this paragraph or the date that the arbitral tribunal issues its determination under paragraph 5, as the case may be.

4. In considering what benefits to suspend under paragraph 3, the complaining Party shall apply the following principles and procedures:

- (a) it should first seek to suspend benefits in the same subject matter as that in which the arbitral tribunal has determined non-conformity to exist;
- (b) if it considers that it is not practicable or effective to suspend benefits in the same subject matter, and that the circumstances are serious enough, it may suspend

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<sup>20</sup> For greater certainty, the phrase “the level of benefits that the Party proposes to suspend” refers to the level of concessions under this Agreement, the suspension of which a complaining Party considers will have an effect equivalent to that of the non-conformity, determined to exist by the arbitral tribunal in its final report issued under Article 14C.11.

benefits in a different subject matter. In the written notice referred to in paragraph 3, the complaining Party shall indicate the reasons on which its decision to suspend benefits in a different subject matter is based; and

- (c) in applying the principles set out in subparagraph (a) and subparagraph (b), it shall take into account:
  - (i) the trade in the subject matter in which the arbitral tribunal has found the non-conformity, and the importance of that trade to the complaining Party; and
  - (ii) the broader economic consequences of the suspension of benefits.

5. If the responding Party considers that:

- (a) the level of benefits proposed to be suspended is manifestly excessive or the complaining Party has failed to follow the principles and procedures set out in paragraph 4; or
- (b) it has eliminated the non-conformity that the arbitral tribunal has determined to exist,

it may, within 30 days of the date of delivery of the written notice provided by the complaining Party under paragraph 3, request that the arbitral tribunal be reconvened to consider the matter. The responding Party shall deliver its request in writing to the complaining Party. The arbitral tribunal shall reconvene as soon as possible after the date of delivery of the request and shall present its determination to the disputing Parties no later than 90 days after it reconvenes to review a request under subparagraph (a) or subparagraph (b), or 120 days after it reconvenes for a request under both subparagraph (a) and subparagraph (b). If the arbitral tribunal determines that the level of benefits the complaining Party proposes to suspend is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

6. Unless the arbitral tribunal has determined that the responding Party has eliminated the non-conformity, the complaining Party may suspend benefits up to the level the tribunal has determined under paragraph 5 or, if the tribunal has not determined the level, the level the complaining Party has proposed to suspend under paragraph 3. If the arbitral tribunal determines that the complaining Party has not followed the principles and procedures set out in paragraph 4, the tribunal shall set out in its determination the extent to which the complaining Party may suspend benefits in which subject matter in order to ensure full compliance with the principles and procedures set out in paragraph 4. The complaining Party may suspend benefits only in a manner consistent with the arbitral tribunal's determination.

7. Compensation and suspension of benefits shall be temporary measures. None of these measures are preferred to full implementation through elimination of the non-conformity. Compensation and suspension of benefits shall only be applied until the responding Party has eliminated the non-conformity, or until a mutually satisfactory solution is reached.

#### **Article 14C.14: Compliance Review**

1. Without prejudice to the procedures in Article 14C.13, if a responding Party considers that it has eliminated the non-conformity found by the arbitral tribunal, it may refer the matter to the arbitral tribunal by providing a written notice to the complaining Party or Parties. The arbitral tribunal shall issue its report on the matter no later than 90 days after the responding Party provides written notice.
2. If the arbitral tribunal determines that the responding Party has eliminated the non-conformity the complaining Party or Parties shall promptly reinstate any benefits suspended under Article 14C.13.

## MODULE 15

### EXCEPTIONS

#### Article 15.1: General Exceptions

1. For the purposes of this Agreement, Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.
3. For the purposes of this Agreement, Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal or plant life or health.
4. For the purposes of this Agreement, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national treasures or specific sites of historical or archaeological value, or to support creative arts<sup>21</sup> of national value.

#### Article 15.2: Security Exceptions

Nothing in this Agreement shall be construed to:

- (a) require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or
- (b) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

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<sup>21</sup> “Creative arts” include: the performing arts – including theatre, dance and music – visual arts and craft, literature, film and video, language arts, creative online content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts; and the study and technical development of these art forms and activities.

### **Article 15.3: Treaty of Waitangi**

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods, trade in services and investment, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement, including in fulfilment of its obligations under the Treaty of Waitangi.

2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Module 14 (Dispute Settlement) shall otherwise apply to this Article. An arbitral tribunal established under Module 14 (Dispute Settlement) may be requested to determine only whether any measure referred to in paragraph 1 is inconsistent with a Party's rights under this Agreement.

### **Article 15.4: Prudential Exception and Monetary and Exchange Rate Policy Exception<sup>22</sup>**

1. Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from adopting or maintaining measures for prudential reasons,<sup>23</sup> including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or financial service supplier, or to ensure the integrity and stability of the financial system. If these measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under those provisions.

2. Nothing in this Agreement shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies.

3. Notwithstanding Article 2.7 (Electronic Payments), a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-

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<sup>22</sup> For greater certainty, regarding transfers that are linked or related to disciplines covered by this Agreement, Chile reserves the right of the Central Bank of Chile (Banco Central de Chile) to maintain or adopt measures in conformity with Law 18.840, Constitutional Organic Law of the Central Bank of Chile (Ley 18.840, Ley Orgánica Constitucional del Banco Central de Chile), and Decreto con Fuerza de Ley N° 3 de 1997, Ley General de Bancos (General Banking Act) and Ley 18.045, Ley de Mercado de Valores (Securities Market Law), in order to ensure currency stability and the normal operation of domestic and foreign payments. Such measures include, *inter alia*, the establishment of restrictions or limitations on current payments and transfers (capital movements) to or from Chile, as well as transactions related to them, such as requiring that deposits, investments or credits from or to a foreign country, be subject to a reserve requirement (encaje).

<sup>23</sup> The Parties understand that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers as well as the safety, and financial and operational integrity of payment and clearing systems.

border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures necessary to secure compliance with laws or regulations that are not inconsistent with this Agreement, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties or between Parties and non-Parties where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services as covered by this Agreement.

### **Article 15.5: Taxation Exception**

1. For the purposes of this Article:

**designated authorities** means:

- (a) for Chile, the Undersecretary of the Ministry of Finance;
- (b) for New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner; and
- (c) for Singapore, the Chief Tax Policy Officer, Ministry of Finance,

or any successor of these designated authorities as notified to the other Parties;

**tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

**taxes** and **taxation measures** include excise duties, but do not include:

- (a) a “customs duty” as defined in Article 1.3 (General Definitions); or
- (b) the measures listed in subparagraph (b) and subparagraph (c) of that definition.

2. Nothing in this Agreement shall apply to taxes or taxation measures.

3. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, that convention shall prevail to the extent of the inconsistency.

4. In the case of a tax convention between two or more Parties, if an issue arises as to whether any inconsistency exists between this Agreement and the tax convention, the issue shall be referred to the designated authorities of the Parties in question. The designated



authorities of those Parties shall have six months from the date of referral of the issue to make a determination as to the existence and extent of any inconsistency. If those designated authorities agree, the period may be extended up to 12 months from the date of referral of the issue. No procedures concerning the measure giving rise to the issue may be initiated under Module 14 (Dispute Settlement) until the expiry of the six-month period, or any other period as may have been agreed by the designated authorities. An arbitral tribunal established to consider a dispute related to a taxation measure shall accept as binding a determination of the designated authorities of the Parties made under this paragraph.

### **Article 15.6: Measures to Safeguard Balance of Payments**

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may:

- (a) in the case of trade in goods, in accordance with GATT 1994 and the *WTO Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994*, adopt restrictive import measures;
- (b) in the case of services, in accordance with GATS, adopt or maintain restrictions on trade in services on which it has undertaken commitments, including on payments or transfers for transactions related to such commitments; and
- (c) in the case of investments, adopt or maintain restrictions with regard to the transfer of funds related to investment, including those on capital account and the financial account.

2. Restrictions adopted or maintained under paragraph 1(b) or paragraph 1(c) shall:

- (a) be consistent with the *Articles of Agreement of the International Monetary Fund*;
- (b) avoid unnecessary damage to the commercial, economic and financial interests of the other Parties;
- (c) not exceed those necessary to deal with the circumstances described in paragraph 1;
- (d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves; and
- (e) be applied on a national treatment basis and such that the other Parties are treated no less favourably than any non-Party.

3. In determining the incidence of such restrictions, a Party may give priority to economic sectors which are more essential to its economic development. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

4. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be notified to the other Parties within 30 days from the date such measures are taken.

5. The Party adopting or maintaining any restrictions under paragraph 1 shall commence consultations with the other Parties within 90 days from the date of notification in order to review the measures adopted or maintained by it.

## **MODULE 16**

### **FINAL PROVISIONS**

#### **Article 16.1: Depositary**

1. New Zealand is hereby designated as the Depositary of this Agreement.
2. The Depositary shall transmit certified copies of this Agreement and any amendments to this Agreement to all signatories to this Agreement and acceding Parties.
3. The Depositary shall notify all signatories to this Agreement and acceding Parties of:
  - (a) each ratification, acceptance, approval or accession to this Agreement in accordance with Article 16.2 and Article 16.4;
  - (b) the respective dates on which the Agreement enters into force in accordance with Article 16.2 and Article 16.4; and
  - (c) any notification of withdrawal received in accordance with Article 16.5.

#### **Article 16.2: Entry into Force**

1. This Agreement shall enter into force 90 days after the date on which at least two signatories to this Agreement have notified the Depositary in writing of the completion of their applicable legal procedures.
2. For any signatory to this Agreement for which this Agreement has not entered into force under paragraph 1, this Agreement shall enter into force 90 days after the date on which that signatory to this Agreement has notified the Depositary in writing of the completion of its applicable legal procedures.

#### **Article 16.3: Amendments**

1. The Parties may agree, in writing, to amend this Agreement.
2. When so agreed by all Parties, and approved in accordance with the applicable legal procedures of each Party, an amendment shall enter into force 60 days after the date on which the last Party has notified the Depositary in writing of the approval of the amendment in accordance with its applicable legal procedures, or on such other date as the Parties may agree.
3. An amendment shall constitute an integral part of this Agreement.

#### **Article 16.4: Accession**

1. This Agreement is open to accession on terms to be agreed among the Parties, and approved in accordance with the applicable legal procedures of each Party.
2. If the Joint Committee, in accordance with Article 12.2(a) (Functions of the Joint Committee), adopts a decision approving the terms for an accession and inviting an accession candidate to become a Party, the Joint Committee shall specify a period, which may be subject to extension by agreement of the Parties, during which the accession candidate may deposit an instrument of accession with the Depository indicating that it accepts the terms for the accession.
3. An accession candidate shall become a Party to this Agreement, subject to the terms for the accession approved in the Joint Committee's decision, either:
  - (a) 60 days after the date on which the accession candidate deposits an instrument of accession with the Depository indicating that it accepts the terms for the accession; or
  - (b) on the date on which all the Parties have notified the Depository that they have completed their respective applicable legal procedures for the approval of the terms for the accession,

whichever is later.

#### **Article 16.5: Withdrawal**

Any Party may withdraw from this Agreement. Such withdrawal shall take effect six months after the date on which written notice of withdrawal is received by the Depository. If a Party withdraws, this Agreement shall remain in force for the remaining Parties.

#### **Article 16.6: Disclosure of Information**

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information, the disclosure of which would be contrary to its law or would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

#### **Article 16.7: Confidentiality**

Unless otherwise provided in this Agreement, where a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the other Party shall, subject to its laws and regulations, maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific permission of the Party

providing the information, except where the disclosure of information is for the purposes of complying with the legal requirements of a Party, or for the purpose of judicial proceedings. Prior to disclosing information for the purposes of complying with the legal requirements of a Party, or for the purposes of judicial proceedings, the disclosing Party shall consult with the Party who provided the information.

**Article 16.8: Annexes and Footnotes**

The Annexes and footnotes to this Agreement shall constitute an integral part of this Agreement.

**Article 16.9: Electronic Signature**

This Agreement may be signed electronically by the Parties. For greater certainty, the Parties understand that the electronic signing of this Agreement shall carry the same weight and legal effect as affixing hand-signed wet-ink signatures on treaties under international law.

**IN WITNESS WHEREOF**, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE this 11<sup>th</sup> day of June 2020 (GMT) in the English language.

For the Republic of Chile



6/11/2020

**Hon Teodoro Ribera Neumann**  
**Minister of Foreign Affairs**

For New Zealand



6/11/2020

**Hon David Parker**  
**Minister for Trade and Export Growth**

For the Republic of Singapore



6/11/2020

**Hon Chan Chun Sing**  
**Minister for Trade and Industry**

## **Annex I - UNDERSTANDING ON THIS AGREEMENT**

For greater certainty, the Parties record their understanding that the following Articles do not create any rights or obligations between or among the Parties under this Agreement:

- (a) Article 3.3: Non-Discriminatory Treatment of Digital Products;
- (b) Article 3.4: Information and Communication Technology Products that Use Cryptography;
- (c) Article 4.3: Cross-Border Transfer of Information by Electronic Means; and
- (d) Article 4.4: Location of Computing Facilities.