



Comments of the Coalition of Services Industries (CSI) on the WTO Joint Statement Initiative (JSI) on Trade-Related Aspects of Electronic Commerce

June 17, 2019

CSI commends the 50 WTO members covering 77 countries for participating in discussions on text proposals submitted pursuant to the JSI on Trade-Related Aspects of Electronic Commerce. CSI supports these discussions and urges JSI participants to commence formal negotiations to achieve a high-standard WTO e-commerce framework. The following views are submitted in response to JSI participant interest in receiving private sector input.

Services – especially digitally enabled services, software and technology – are a democratizing force promoting greater inclusion and promoting the growth of small and medium size enterprises (MSMEs) around the globe. Services and digital trade are connecting businesses with customers around the world, including through digital platforms and internet services, communications and transportation networks, cloud computing and storage, artificial intelligence machine learning and social media. Digitally enabled services and their underlying infrastructure enable use of applications on mobile devices that make internet platforms and services broadly available to even the remotest areas around the globe. They facilitate online education, provision of health services, management of global supply chains, logistics, electronic payment services and collaborative research and development. We have become reliant on digital infrastructure and services in our daily lives as we send text and email messages, make airline reservations, shop online, stream movies and play video games online.

Services and digital technologies are boosting the productivity and competitiveness of the manufacturing and agricultural sectors, particularly through smart manufacturing which combines advanced technology, software, and services. Manufacturing of autos and airplanes has been transformed by robotics, advanced software and digitally enabled services. Digital technology, software and services is enabling driverless vehicles. Agricultural equipment manufacturers incorporate smart technology, software and services into their products that allow farmers to make their farming methods more efficient.

Cloud computing and storage, as well as machine learning and artificial intelligence, are increasingly becoming significant to all sectors, including manufacturing and agriculture, bringing cost efficiencies and raising productivity. Information technology spending on cloud services in 2016 was more than \$100 billion and is expected to double by 2020.

Data is the lifeblood of digital services and the entire digital ecosystem. Currently, roughly half of all global trade in services depends on access to cross-border data flows. The global nature of many service industries makes global data management, processing, transfer and storage imperative. High standard global rules securing the free flow of data across borders and prohibiting data localization are essential in ensuring that services, particularly digitally enabled services, promote global economic growth, innovation, and inclusion. To achieve these goals, we believe that a WTO e-commerce agreement should incorporate the principles, disciplines and services e-commerce related market access commitments described in the attached Annex.

Annex

Principles

1. Support the ability of digital service suppliers to innovate and develop new technologies and services by prohibiting discrimination and providing market access.
2. Promote regulatory environments that encourage the growth and partnership of traditional financial services firms and emerging fintech companies for technological innovation.
3. Support the provision of digitally-enabled cross border services in global value chains.
4. Encourage development of Privacy frameworks that take into consideration principles and guidelines of relevant international bodies such as the APEC Privacy Framework and the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.
5. Promote the growth of cross-border e-commerce and facilitate trade for small business by streamlining and simplifying customs processes beyond the Trade Facilitation Agreement (TFA) baseline and establishing and/or increasing *de minimis* and informal clearance thresholds in commercially meaningful amounts.
6. Promote recognition of global technology standards and interoperability of regulatory regimes that impact digital services.
7. Ensure digital trade rules are transparent and enforceable.

Disciplines

E-Commerce

1. Allow free cross-border flow of data for all services sectors.
2. Prohibit mandatory local data storage, processing or other data localization requirements for all services sectors.
3. Require adoption of privacy frameworks for protection of personal data that are non-discriminatory and only employ measures that are necessary and proportionate to the risks presented.
4. Provide non-discriminatory treatment for digital products.
5. Prohibit governments from imposing customs duties or other charges on electronic transmissions and on the value of content being transmitted.
6. Provide for recognition of e-contracts and acceptance and authentication of e-signatures.
7. Provide for:
 - a) electronically transmitted, paperless customs forms (including supporting documentations such as licenses or certifications) that allow for pre-arrival processing and immediate release, a reduced number of declaration elements for low value shipments and simplified clearance based on a single, consolidated document (e.g. manifest),
 - b) clearance models that leverage technology to reduce administrative burdens at the border,

- c) periodic account-based payments for all charges required as part of customs clearance, and
- d) trusted trader programs for e-commerce companies.
- 8. Establish and/or raise *de minimis* and informal clearance thresholds and provide for a mechanism to revisit these thresholds periodically to ensure that they remain commercially meaningful over time.
- 9. Prohibit restrictions on cybersecurity technologies, including requiring the transfer of private keys, for products that use cryptography in commercial applications.
- 10. Prohibit parties from requiring the transfer of, or access to, their technology, including software source code or algorithms owned by a foreign service provider as a condition of allowing such software into their territory except permitted security testing and research.
- 11. Allow foreign services providers to rely on global technology standards developed through voluntary and industry-led processes and prohibit parties from imposing conflicting national standards.
- 12. Require adoption of a risk-based approach to cybersecurity measures.
- 13. Prohibit parties from imposing any requirement that a service supplier purchase, use or accord a preference to a technology of the Party or of a person of the Party.
- 14. Require non-discriminatory treatment between incumbents and new entrants in granting regulatory approval to enter sandboxes, pilot new initiatives, roll-out of new products or services, or utilize new distribution channels.
- 15. Endeavor to support the development of SME trade in services and digital trade and SME-enabling business models, such as direct selling services, including through measures that facilitate SME access to resources or protect individuals from fraudulent practices.

Telecommunications

- 1. Include updated provisions on communications services to ensure market access and a pro-competition, pro-investment environment.
- 2. Prohibit barriers such as limitations on technology choice or disproportionately burdensome regulatory requirements.

Services Market Access Commitments related to E-Commerce

- 1. Ensure that robust market access commitments cover both existing services and new services that may emerge in the future. Innovative new services should be protected against future discrimination, as trade agreements should not become obsolete as markets evolve and technology advances.
- 2. National treatment and market access commitments in all modes of supply for e-commerce related services including, computer and related services, telecommunications, advertising, distribution, logistics, electronic payment services and other financial services, repair and maintenance of e-commerce related products, software and services.
- 3. If a digitally enabled service, such as cloud services, is allowed to be provided within the territory of a party, that Party should allow all services suppliers to utilize that service.