



WORK PROGRAMME ON ELECTRONIC COMMERCE

NON-PAPER FOR THE DISCUSSIONS ON ELECTRONIC COMMERCE / DIGITAL TRADE FROM JAPAN

The following non-paper, dated 21 July 2016, is being circulated at the request of the delegation of Japan.

1 INTRODUCTION

1.1. Members of the WTO have discussed e-commerce since the formulation of the Work Programme on Electronic Commerce some 20 years ago. However, what we saw then was a different picture to what we are seeing now. The digital economy has been changing almost all aspects of commercial activities, including trade and investment.

1.2. For the purpose of better addressing those new aspects of e-commerce in the WTO, Japan, together with its co-sponsors submitted the proposal, "REINVOGORATING DISCUSSIONS ON ELECTRONIC COMMERCE" (JOB/GC/96/Rev.1). The proposal aims to identify what the WTO should do, and, for this purpose, it encourages Members to examine their own interests and views on e-commerce and/or digital trade by answering simple questions. Japan submits this non-paper as Japan's own response to the questions set out in the proposal.

2 BARRIERS TO ELECTRONIC COMMERCE (RESPONSE TO Q1 OF THE PROPOSAL)

2.1. The digital economy has contributed to global economic growth. Furthermore, the Fourth Industrial Revolution realised with the utilisation of the latest technology such as the Internet of Things and Big Data will permeate countless aspects of the world economy and people's lives, impacting sectors as varied as healthcare, traffic systems etc. Such impact will also provide various opportunities to the world and have the potential to promote further socio-economic prosperity, from developed to developing countries, from large to small-medium enterprises, and from firms to individuals.

2.2. However, a number of challenges still remain to be addressed in order to maximize the benefits from this trend. These challenges include the improvement of infrastructure and connectivity and developing legal frameworks related to electronic commerce and/or digital trade. Among others, it is indispensable to address emerging "digital protectionism". Efforts to address those challenges should help to ensure an open, secure, and reliable global e-commerce environment that will promote and facilitate cross-border digital trade.

3 WTO AND E-COMMERCE (RESPONSE TO Q2 OF THE PROPOSAL)

3.1. A number of international organizations have been involved in supporting various aspects of e-commerce. For example, the OECD is at the forefront of establishing international guidelines related to e-commerce including on consumer protection and internet taxation and is also leading research into trade and investment barriers based on the actual e-business environment. UNCTAD has made great efforts for the development aspect of electronic commerce and has recently formally launched the "eTrade for All" initiative. The ITC is making considerable contributions for the SMEs in developing countries to gain business opportunities in the global market through e-commerce. WIPO is the international leader on digital copyright and trademark issues. UPU focuses on enabling easy access to better delivery of goods through e-commerce. Other than the

international organizations, Regional Trade Agreements have played important roles in making rule frameworks on the trade aspects of electronic commerce.

3.2. Apart from the aforementioned international organizations, the WTO is uniquely positioned as a pre-eminent forum for trade negotiations and the establishment of international trade rules and the monitoring of their implementation. These core functions of the WTO are complemented by the Aid for Trade initiative as well as technical assistance and capacity building activities.

3.3. Bearing the abovementioned core functions of the WTO in mind, Members are encouraged to initiate the discussion with a view to establishing trade rules not only for traditional e-commerce issues but also for issues related to emerging aspects of e-commerce and/or digital trade so that the WTO can more effectively respond to the structural changes of world trade and the global economy and the changing needs of businesses.

4 POSSIBLE ELEMENTS AND IDEAS TO BE DISCUSSED (RESPONSE TO Q2 OF THE PROPOSAL)

4.1. For the purpose of providing insights for future discussion, Japan would like to present several elements and ideas that Japan attaches importance to for promoting e-commerce and/or digital trade, as set out below. These ideas include international trade rules for e-commerce and/or digital trade that have already been discussed in various fora, and take hints from the diverse fields of trade-related topics including intellectual property and investment.

4.2. This list is not exhaustive, and mainly purports to be used to identify appropriate issues for discussion in the WTO. By taking the opinions of interested Members and industries into account, Japan would like to deepen the discussion and engage thoroughly for the fall season.

A. DISCIPLINES RELATED TO E-BUSINESS PRACTICES

Electronic Signatures and Authentications

Global digital transaction may be promoted by not adopting measures that deny the legal validity of a signature solely on the basis that the signature is in electronic form and that prohibit other Members to a digital transaction from mutually determining the appropriate authentication methods for that transaction.

Online Consumer Protection

Online consumers should be protected from fraudulent and deceptive commercial practices. Transparent and effective measures should be adopted to protect online consumers and ensure a secure environment in online commercial activities.

Unsolicited Commercial Electronic Messages

Unsolicited commercial electronic messages sent in huge quantities may harm not only consumers but also the overall e-business environment. Appropriate measures should be adopted to regulate unsolicited commercial electronic messages. This issue should also be addressed through international cooperation.

Paperless Trading

Trade administration documents can be managed in electronic format. Such electronic documents may also be made available to the public. In addition, the electronic documents should be accepted by each Member and granted the same legal status as that of their paper versions.

B. DIGITALLY ENCODED INFORMATION / PRODUCTS

Cross-border Transfer of Information by Electronic Means

The free flow of digitally encoded information, which enables both consumers and suppliers to gain the maximum benefits of the digital environment, should be allowed across borders, when this activity is for the conduct of business.

Customs Duties

Customs duties should not be imposed on electronic transmissions including digitally encoded products to facilitate the movement of digital products across borders.

Non-Discriminatory treatment

Members should accord national treatment and most-favoured-nation treatment to digitally encoded products of another Member.

C. PROHIBITION OF THE MANDATORY REQUIREMENTS AS A CONDITION OF BUSINESS OPERATION**Data Localization including Using or Locating Computing Facilities**

Global business operations should not be restricted by mandatory requirements for using or locating computing facilities in particular areas.

Disclosure of Important Information such as Trade Secrets including Source Code

The disclosure of important information, such as trade secrets including source code, should not be a condition for the import, distribution, sale, or use of related products including digitally encoded products in Member's territory.

Use of Particular Technology including Encryption Technology

The use of particular technology including encryption technology should not become mandatory requirements in connection with business conduct in Member's territory.

D. CYBERSECURITY**Prohibition of the Theft of Trade Secrets**

Effective measures to protect trade secrets from cyberattacks should be implemented.

Cooperation for Cybersecurity

Members should cooperate together to develop shared understanding on cyberspace and strive to build the competent capabilities of their national entities responsible for computer security incident response. Cooperation among Members should further be improved by using the existing cooperative framework to identify and mitigate malicious intrusion or dissemination of malicious code that adversely affects the electronic networks of the Parties.

E. INTERNATIONAL RULES AND HARMONIZATION OF STANDARDS IN DIGITAL ENVIRONMENTS

In order to facilitate business based on digital environments, rules and harmonization of standards, especially for businesses that are deeply related to digitally encoded products / information, should be considered at a global level.

F. TRANSPARENCY

Measures related to e-commerce and/or digital trade adopted by each Member should be made publicly available, and other Members should be promptly notified thereof in order to provide them with chances to exchange views.

G. COOPERATION

We believe it is important for Members to recognize the global nature of e-commerce and/or digital trade, and Members are encouraged to exchange their experience and share best practices in this area, including the domestic legislation and national strategies of the Members. We further believe that this cooperation can lead to the development of mutually acceptable rules on these areas.

5 EXISTING INITIATIVES (RESPONSE TO Q3 OF THE PROPOSAL)

5.1. Information on the following existing initiatives in this area is provided below for Members' reference: the main disciplines in e-commerce chapters in the existing RTAs and the APEC initiatives on Digital Trade.

APEC Initiatives on Digital Trade

In 2006, the APEC economies agreed to examine the long-term prospect of a Free Trade Area of the Asia-Pacific (FTAAP). In 2010, APEC Leaders issued "Pathways to FTAAP", and instructed APEC to take concrete steps toward realization of the FTAAP. In 2015, APEC leaders instructed officials to implement the Work Plan for Facilitating Digital Trade for Inclusive Growth as a Potential Next Generation Trade and Investment Issue that should be addressed by FTAAP. Under the Work Plan, the independent research project on Digital Trade has been launched. Trade Policy Dialogue will be held in August this year.

E-commerce chapter main disciplines in RTAs

The shaded cells indicate mandatory provisions.

	Singapore-Australia FTA	US-Singapore FTA	US-Chile FTA	US-Australia FTA	Australia-Thailand FTA	Thailand-New Zealand CEPA	India-Singapore CECA	Korea-US FTA
	Signed February 2003 Entry into force July 2003	Signed May 2003 Entry into force January 2004	Signed June 2003 Entry into force January 2004	Signed May 2004 Entry into force January 2005	Signed July 2004 Entry into force January 2005	Signed April 2005 Entry into force July 2005	Signed June 2005 Entry into force August 2005	Signed June 2007 Entry into force March 2012
Electronic signatures and authentications	Electronic authentication and electronic signatures (Article 5)			Authentic action and digital certificates (Article 16.5)	Electronic authentication and digital certificates (Article 1104)			Electronic authentication and electronic certificates (Article 15.4)
Online Consumer Protection	Online Consumer protection (Article 6)			Online consumer protection (Article 16.6)	Online consumer protection (Article 1105)	Online consumer protection (Article 10.4)		Online consumer protection (Article 15.5)
Unsolicited Commercial Electronic Messages								
Paperless Trading	Paperless trading (Article 8)			Paperless trade administration (Article 16.7)	Paperless trading (Article 1107)	Paperless trading (Article 10.6)		Paperless trading (Article 15.6)
Cross-border information flow			Cooperation (Article 15.5 paragraph c)					Cross-border information flow (Article 15.8)
Customs Duties	Custom duties (Article 3) - Perpetual obligation not to impose customs duties on bilateral "electronic transmissions"	Digital products (Article 14.3 paragraph 1 & 2) - Perpetual obligation not to impose customs duties on bilateral "electronic transmissions" - Obligation to maintain custom procedures on digital products on carrier media	Customs duties on digital products (Article 15.3) - Perpetual obligation not to impose customs duties on bilateral "electronic transmissions"	Customs duties (Article 16.3) - Perpetual obligation not to impose customs duties on bilateral "electronic transmissions" or digital products on carrier media	Customs duties (Article 1102) - Perpetual obligation not to impose customs duties on bilateral "electronic transmissions"	Customs duties (Article 10.2) - Perpetual obligation not to impose customs duties on bilateral "electronic transmissions"	Digital products (Article 10.4 paragraphs 1 & 2) - Perpetual obligation not to impose customs duties on bilateral "electronic transmissions" - Obligation to maintain customs procedures on digital products on carrier media	Digital products (Article 15.3 paragraph 1) - Perpetual obligation not to impose customs duties on bilateral "electronic transmission" or digital products on carrier media

	Singapore-Australia FTA	US-Singapore FTA	US-Chile FTA	US-Australia FTA	Australia-Thailand FTA	Thailand-New Zealand CEPA	India-Singapore CECA	Korea-US FTA
Non-discriminatory treatment of digital products (NT = National Treatment) (MFN = Most-Favoured-Nation treatment)		Digital products (Article 14.3 paragraphs 3 & 4) - NT and MFN provisions including both carrier media and electronic transmissions	Non-discrimination for digital products (Article 15.4) - NT and MFN provisions regarding electronic transmissions only	Non-discriminatory treatment of digital products (Article 16.4) - NT and MFN provisions including both carrier media and electronic transmissions			Digital products (Article 10.4 paragraphs 3 & 4) - NT provisions including both carrier media and electronic transmissions	Digital products (Article 15.3 paragraphs 2 & 3) - NT and MFN provisions including both carrier media and electronic transmissions
Location of Computing Facilities								
Source Code								
Domestic Regulations	Domestic regulatory frameworks (Article 4)				Domestic Regulatory Frameworks (Article 1103)	Domestic Regulatory Frameworks (Article 10.3)		
Transparency	Transparency (Article 2)						Transparency (Article 10.6)	
Cooperation			Cooperation (Article 15.5)		Cooperation (Article 1108)	Cooperation (Article 10.7)		

	Japan - Switzerland EPA	ASEAN - Australia- New Zealand FTA	EU - Korea FTA	Malaysia - Australia FTA	Japan - Australia EPA	Japan - Mongolia EPA	China-Australia FTA	Trans-Pacific Partnership
	Signed February 2009 Entry into force September 2009	Signed February 2009 Entry into force January 2010	Signed October 2010 Entry into force July 2011	Signed May 2012 Entry into force January 2013	Signed July 2014 Entry into force January 2015	Signed February 2015 Entry into force June 2016	Signed June 2015 Entry into force December 2015	Signed February 2016
Electronic Signatures and Authentications	Electronic signatures and certification services (Article 78)	Electronic authentication and digital certificates (Article 5) Cooperation (Article 9.c)	Cooperation on regulatory issues (Article 7.49 Paragraph 1 (a))	Electronic authentication and digital certificates (Article 15.6)	Electronic signature (Article 13.6)	Electronic signature (Article 9.5)	Electronic authentication and digital certificates (Article 12.6)	Electronic Authentication and Electronic Signatures (Article 14.6)
Online Consumer Protection	Protection of online consumers (Article 80)	Online Consumer protection (Article 6) Cooperation on electronic commerce (Article 9 Paragraph (c))	Cooperation on regulatory issues (Article 7.49 Paragraph 1 (d))	Online Consumer protection (Article 15.7)	Consumer protection (Article 13.7)	Consumer protection (Article 9.6)	Online Consumer Protection (Article 12.7)	Online Consumer Protection (Article 14.7)
Unsolicited Commercial Electronic Messages	Cooperation (Article 82.2 paragraph (b))	Cooperation on electronic commerce (Article 9 paragraph (c))	Cooperation on regulatory issues (Article 7.49 paragraph 1 (c))	Unsolicited commercial electronic messages (Article 15.10)	Cooperation (Article 13.10 paragraph 2)	Unsolicited commercial email (Article 9.7)		Unsolicited Commercial Electronic Messages (Article 14.14)
Paperless Trading	Paperless trade administration (Article 79)	Paperless trading (Article 8) Cooperation on electronic commerce (Article 9 paragraph (a))	Cooperation on regulatory issues (Article 7.49 paragraph 1(e))	Paperless trading (Article 15.9)	Paperless trade administration (Article 13.9)	Paperless trade administration (Article 9.8)	Paperless Trading (Article 12.9)	Paperless Trading (Article 14.9)
Cross-border information flow						Cooperation (Article 9.12 paragraph 6)		Cross-Border Transfer of Information by Electronic Means (Article 14.11)
Customs Duties	Customs duties (Article 76) - Provision affirming the WTO moratorium on the imposition of customs duties		Objective and principles (Article 7.48 Paragraph 3) - Non-imposition of customs duties on deliveries by electronic means.	Customs duties (Article 15.4) - Perpetual obligation not to impose customs duties on bilateral "electronic transmissions"	Customs duties (Article 13.3) - Perpetual obligation not to impose customs duties on bilateral "electronic transmissions"	Customs duties (Article 9.3) - Perpetual obligation not to impose customs duties on bilateral "electronic transmissions"	Customs duties (Article 12.3) - Obligation not to impose customs duties on bilateral "electronic transmissions"	Customs duties (Article 14.3) - Perpetual obligation not to impose customs duties on "electronic transmissions"

	Japan - Switzerland EPA	ASEAN - Australia- New Zealand FTA	EU - Korea FTA	Malaysia - Australia FTA	Japan - Australia EPA	Japan - Mongolia EPA	China-Australia FTA	Trans-Pacific Partnership
Non-discriminatory treatment of digital products (NT = National Treatment) (MFN = Most-Favoured-Nation treatment)	Non-discriminatory treatment of digital products (Article 73) - NT and MFN provisions regarding electronic transmissions only				Non-discriminatory treatment of digital products (Article 13.4) - NT and MFN provisions regarding electronic transmissions only	Non-Discriminatory Treatment of Digital Products (Article 9.4) - NT and MFN provisions including digital products fixed on a carrier medium		Non-Discriminatory Treatment of Digital Products (Article 14.4) - NT and MFN provisions regarding electronic transmissions only
Location of Computing Facilities						Prohibition on Requirement concerning the Location of Computing Facilities (Article 9.10)		Location of Computing Facilities (Article 14.13)
Source Code						Source Code (Article 9.11)		Source Code (Article 14.17)
Domestic regulations	Domestic regulation (Article 77) - Partially invokes the principles of Article VI of GATS (domestic regulations)	Domestic regulatory frameworks (Article 4)		Domestic regulatory frameworks (Article 15.5)	Domestic regulation (Article 13.5)	Domestic regulation (Article 9.9)	Domestic regulatory frameworks (Article 12.5)	Domestic Electronic Transactions Framework (Article 14.5)
Transparency		Transparency (Article 3)				Sub-Committee on Electronic Commerce (Article 9.13)	Transparency (Article 12.4)	
Cooperation	Cooperation (Article 82)	Cooperation on electronic commerce (Article 9)	Cooperation on regulatory issues (Article 7.49)		Cooperation (Article 13.10)	Cooperation (Article 9.12)	Cooperation on electronic commerce (Article 9)	Cooperation (Article 14.15)