



## WORK PROGRAMME ON ELECTRONIC COMMERCE

### NON-PAPER FROM THE UNITED STATES

The following non-paper, dated 1 July 2016, is being circulated at the request of the delegation of the United States.

#### 1 INTRODUCTION

1.1. The United States has noted with appreciation a revived attention among Members to questions relating to electronic commerce and/or digital trade during the period since the WTO's 10<sup>th</sup> Ministerial Conference. It is encouraging that many WTO Members appear open to exploring how such issues may be relevant to the definition of future work in the WTO. This is particularly the case in light of the rapid growth of an electronic/digital component in global trade flows, and of the apparent interest of many Members in exploring positive linkages between digital trade and economic development.

1.2. The United States perceives that WTO Members remain in a period of defining terminology, studying implications, and considering in a deliberate fashion how best to approach new WTO work on e-commerce/digital trade. At present, the United States has no preconceived views on best approaches, or on whether negotiations on specific aspects of e-commerce should be pursued, and if so on what bases. The United States believes that, in this as in other aspects of our post-Nairobi work, it is critically important to consider all issues carefully, deliberatively, and through a wide variety of conversations.

1.3. In the interest of contributing to this emerging, positive discussion, the United States offers this non-paper outlining a number of trade-related policies that can contribute meaningfully to the flourishing of trade through electronic and digital means. Again, the United States emphasizes that it is advancing no specific negotiating proposals at this time. The concepts presented here are intended solely to contribute to constructive discussion among Members, a process in which the United States looks forward to participating actively.

#### 2 EXAMPLES OF POSITIVE CONTRIBUTIONS TO A FLOURISHING DIGITAL ECONOMY

2.1. PROHIBITING DIGITAL CUSTOMS DUTIES: The complete prohibition on customs duties for digital products can ensure that customs duties do not impede the flow of music, video, software, and games so that creators, artists and entrepreneurs get a fair shake in digital trade.

2.2. SECURING BASIC NON-DISCRIMINATION PRINCIPLES: Fundamental non-discrimination principles are at the core of the global trading system for goods and services. Rules that make clear that the principles of national treatment and MFN apply to digital products can contribute directly to stability in the digital economy.

2.3. **ENABLING CROSS-BORDER DATA FLOWS:** Companies and consumers must be able to move data as they see fit. Many countries have enacted rules that put a chokehold on the free flow of information, which stifles competition and disadvantages digital entrepreneurs. Appropriately crafted trade rules can combat such discriminatory barriers by protecting the movement of data, subject to reasonable safeguards like the protection of consumer data when exported.

2.4. **PROMOTING A FREE AND OPEN INTERNET:** A free and open Internet enables the creation and growth of new, emerging, and game-changing Internet services that transform the social-networking, information, entertainment, e-commerce and other services we have today. The Internet should remain free and open for all legitimate commercial purposes.

2.5. **PREVENTING LOCALIZATION BARRIERS:** Companies and digital entrepreneurs relying on cloud computing and delivering Internet-based products and services should not need to build physical infrastructure and expensive data centers in every country they seek to serve. Such localization requirements can add unnecessary costs and burdens on providers and consumers alike. Trade rules can help to promote access to networks and efficient data processing.

2.6. **BARRING FORCED TECHNOLOGY TRANSFERS:** Requirements that make market access contingent on forced transfers of technology inhibit the development of e-commerce and a flourishing digital economy. Trade rules may be developed to prohibit requirements on companies to transfer technology, production processes, or other proprietary information.

2.7. **PROTECTING CRITICAL SOURCE CODE:** Innovators should not have to hand over their source code or proprietary algorithms to their competitors or a regulator that will then pass them along to a State-owned enterprise. It is important to ensure that companies do not have to share source code, trade secrets, or substitute local technology into their products and services in order to access new markets, while preserving the ability of authorities to obtain access to source code in order to protect health, safety, or other legitimate regulatory goals.

2.8. **ENSURING TECHNOLOGY CHOICE:** Innovative companies should be able to utilize the technology that works best and suits their needs. For example, mobile phone companies should be able to choose among wireless transmission standards like Wi-Fi and LTE. Trade rules may play a role in ensuring technology choice by stipulating that companies are not required to purchase and utilize local technology, instead of technology of their own choosing.

2.9. **ADVANCING INNOVATIVE AUTHENTICATION METHODS:** The availability of diverse electronic signature and authentication methods protects users and their transactions through mechanisms such as secure online payment systems. Trade rules may assist in ensuring that suppliers can use the methods that they think best for this purpose.

2.10. **SAFEGUARDING NETWORK COMPETITION:** It is important to enable digital suppliers to build networks in the markets they serve or access such facilities and services from incumbents – whether landing submarine cables or expanding data and voice networks – to better access consumers and businesses.

2.11. **FOSTERING INNOVATIVE ENCRYPTION PRODUCTS:** Encryption is increasingly seen as an important tool to address protections of privacy and security in the digital ecosystem. Rules may be developed to protect innovation in encryption products to meet consumer and business demand for product features that protect security and privacy while allowing law enforcement access to communications consistent with applicable law.

2.12. **BUILDING AN ADAPTABLE FRAMEWORK FOR DIGITAL TRADE:** New and innovative digital products and services should be protected against future discrimination. Trade-based protections for services and investment should continue to apply as markets change and innovative technologies emerge, unless a specific, negotiated exception applies.

2.13. **PRESERVING MARKET-DRIVEN STANDARDIZATION AND GLOBAL INTEROPERABILITY:** Innovators should not have to design products differently for each market they seek to serve; that is why we have the global standards process, where industry leads and the best technologies win. Trade rules can help to ensure that countries cannot arbitrarily demand that less competitive national standards be forced into innovative products.

2.14. ENSURING FASTER, MORE TRANSPARENT CUSTOMS PROCEDURES: The sorts of provisions contained in the WTO Trade Facilitation Agreement can make very direct contributions to digital trade. Administrative and at-the-border barriers can often be a bigger problem than tariffs for exporters of digital equipment.

2.15. PROMOTING TRANSPARENCY AND STAKEHOLDER PARTICIPATION IN THE DEVELOPMENT OF REGULATIONS AND STANDARDS: The development of new regulations and standards can pose a significant challenge to suppliers of information and communications technology, whose product cycles are short and whose regulatory environment is constantly evolving. A positive environment for e-commerce/digital trade entails strong commitments on transparency, stakeholder participation, coordination, and impact assessment for new regulatory measures, standards, and conformity assessment procedures.

2.16. RECOGNIZING CONFORMITY ASSESSMENT PROCEDURES: Conformity assessment procedures verify that products, including information and communications technology, meet required standards and technical regulations, but overly burdensome conformity assessment procedures can hinder such exports. "National treatment" in conformity assessment, so that testing and certification performed by one qualified conformity assessment body will be accepted as consistent with another Party's requirements, can be an important means of facilitating trade in products relevant to the digital economy.

---