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JOINT STATEMENT INITIATIVE ON E-COMMERCE

DISCUSSION PAPER ON DIGITAL INCLUSION LANGUAGE FOR CONSIDERATION BY JSI PARTICIPANTS

Communication from New Zealand

The following communication, dated 25 November 2022, is being circulated at the request of the delegation of New Zealand.

New Zealand provides this paper without prejudice to its position in negotiations.

1 DIGITAL INCLUSION – BACKGROUND AND CONTEXT

1.1. This discussion paper provides background on Aotearoa New Zealand's proposal for inserting 'Digital Inclusion' language into existing text within the WTO Joint Statement Initiative (JSI) on Electronic Commerce (E-commerce).

1.2. Digital Inclusion is an issue that is growing in importance in parallel with the rapidly increasing adoption of e-commerce worldwide. An inclusive approach in the WTO Joint Statement Initiative on E-commerce would ensure that we better reflect contemporary issues in e-commerce, and that we make sure that all parts of our communities can participate in and enjoy the benefits from this rapidly growing sector.

1.3. Our proposed language reflects a move in many economies to ensure trade policies are more inclusive, and that the benefits of trade and investment need to be shared more widely, including with indigenous peoples, women, rural communities and micro, small, and medium sized enterprises. Momentum for an inclusive approach can be seen in other WTO Joint Statement Initiatives, and should also be reflected in the E-commerce JSI. We have looked to our experience in the [Digital Economy Partnership Agreement \(DEPA\)](#) and our recent practice negotiating free trade agreements in putting together these text proposals.

1.4. The role that e-commerce can play to enable wider participation in cross-border trade is particularly important, as evidence shows that businesses that engage in exporting tend to be more productive and pay higher salaries¹. At present, however, almost 37% of the world's population has never used the internet for reasons such as limited connectivity, skills, and resources.² Fostering collaboration on digital inclusion will be important to ensure trade remains equitable for all groups of society, particularly as our economies recover from the effects of the global pandemic.

1.5. Aotearoa New Zealand has been reviewing the E-commerce JSI text and considers there are a number of paragraphs where an inclusive approach could be streamlined into the text. These

¹ Page 11, "All for Trade and Trade for All: Inclusive and productive characteristics of New Zealand goods exporting firms", New Zealand Ministry of Foreign Affairs and Trade Working Paper, February 2022
<https://www.mfat.govt.nz/assets/Trade-General/Trade-stats-and-economic-research/Inclusive-and-productive-characteristics-of-New-Zealand-goods-exporting-firms-MFAT-Working-Paper.pdf>

² United Nations International Telecommunication Union webpage, December 2021,
<https://www.un.org/en/delegate/itu-29-billion-people-still-offline>

provisions include the existing preamble, data rules, source code and cooperation articles. In addition, we propose an exception for indigenous peoples. For all of these areas, this discussion paper sets out our proposed texts and explanations.

1.6. In the context of the E-commerce JSI, our proposal seeks to acknowledge the different needs and interests of the diverse communities within each JSI participant, and that Members may require bespoke policy approaches to ensure their meaningful participation in the digital economy. Our proposal looks at ways that we can create avenues for cooperation to share information and experiences on our initiatives to make trade more accessible and equitable for the different groups in our society.

1.7. We welcome further discussion with JSI participants, and encourage Members to consider co-sponsoring these text proposals.

1.8. If you have any questions, please contact Lydia Berlad (Lydia.Berlad@mfat.govt.nz) based at the Ministry of Foreign Affairs and Trade in Wellington, Aotearoa New Zealand.

2 AOTEAROA NEW ZEALAND'S EXPLANATIONS AND PROPOSED TEXTS

2.1. We have explored where we can insert language on Digital Inclusion in the existing preamble, cooperation article, data rules, and source code in the consolidated text. We also propose a general exception related specifically to indigenous peoples.

Preamble

2.2. Aotearoa New Zealand proposes to insert into Preamble Alt 2 language on the right to regulate. This language is intended to capture the right of a Party to regulate in the interest of public good and makes it clear that this right is preserved. Including a proactive statement to this effect may help address any concerns about the impact of new international e-commerce obligations on the ability of our governments to pursue public goods. It gives a non-exhaustive list of policy objectives which governments may wish to pursue. Right to regulate language is fairly common in the preamble of trade agreements and we think the below is a suitable addition for the JSI.

[NZ: Reaffirming the inherent right of [Parties/Members] to regulate to achieve legitimate policy objectives, such as the protection of human, animal or plant life or health, social services, public education, safety, the environment including climate change, public morals, social or consumer protection, animal welfare, privacy and data protection, and the promotion and protection of cultural diversity and the rights, interests, duties and responsibilities of indigenous peoples in its territory].

General Exceptions

2.3. While we note that discussions on legal form are still in their infancy, Aotearoa New Zealand wishes to signal now our intent to include a cross cutting indigenous peoples exception in the JSI. Our domestic experience indicates that there are specific rights and interests of indigenous peoples that need to be protected when it comes to e-commerce, particularly as they relate to the relationship between indigenous peoples and their data. This exception recognises those unique considerations.

[NZ: Article [x] Indigenous Peoples

1. Nothing in this Agreement shall preclude a Party/Member from adopting or maintaining measures it deems necessary to protect or promote rights, interests, duties, and responsibilities of indigenous peoples in its territory, including in fulfilment of its obligations under its legal, constitutional or Treaty arrangements with those indigenous peoples.
2. The Parties/Members agree that the interpretation of a Party's/Member's legal, constitutional or Treaty arrangements with indigenous peoples in its territory, including as to the nature of its rights and obligations under it, shall not be subject to the dispute settlement provisions in this agreement.]

Data Flow and Localisation Articles

2.4. While acknowledging that the discussion on the data obligations is relatively nascent within the wider JSI, Aotearoa New Zealand would like to propose language in both the data flows and data localisation articles that makes clear that protecting the rights and interests of indigenous peoples falls within the scope of a legitimate public policy objective.

[NZ: F/n For greater certainty, legitimate public policy objectives include the protection or promotion of the rights, interests, duties and responsibilities of indigenous peoples.]

Source Code Article

2.5. Given the rapidly evolving nature of technology and the integral role of source code in this evolution, Aotearoa New Zealand proposes to insert language into the source code article that highlights the importance of developing technology in a safe and responsible way, free from discrimination and in a way that builds public trust. In the source code obligation, it should be clear that governments can access source code to determine compliance with its laws and regulations, including those relating to non-discrimination and the prevention of bias.

[NZ: The Parties/Members recognise the increasing social and economic importance of the use of digital technologies, and the importance of the safe and responsible development and use of such technology including in respect of source code to foster public trust.]

[6(a), 9(2)(j)] [NZ: including those relating to non-discrimination and the prevention of bias,] [6(a), 9(2)(j)].

Cooperation Article

Aotearoa New Zealand proposes to include a specific focus on digital inclusion within Alt 1 of the current JSI cooperation text.

Aotearoa New Zealand's proposed additions are designed to establish a shared recognition among JSI Members of the importance of digital inclusion, recognise that individualised approaches may be required for each Member to address its own needs, and provide a non-prescriptive range of practical cooperation ideas. We are happy to discuss these proposals in more detail should there be interest.

(4) Cooperation

1. [6(a), 9(2)(j)] [NZ: promote access to E-commerce and] [6(a), 9(2)(j)] NZ: indigenous peoples, rural populations, low socio-economic groups, women, and persons with disabilities, [6(a), 9(2)(j)].

(f) [NZ: Recognise the importance of digital inclusion and that all people and businesses can participate in, contribute to, and benefit from electronic commerce. To promote digital inclusion, the Parties/Members shall endeavour to cooperate on matters relating to digital inclusion. This may include:

- (i) identifying and addressing barriers to accessing e-commerce opportunities;
- (ii) developing programmes to promote participation of all groups in the digital economy, including for example improving digital skills and access to online business tools;
- (iii) sharing methods and procedures for the responsible collection of disaggregated data, the use of indicators, and the analysis of statistics related to participation in the digital economy;
- (iv) sharing experiences and best practices, including exchange of experts, with respect to digital inclusion; and
- (v) other areas as jointly agreed by the Parties/Members.

Cooperation activities relating to digital inclusion may be carried out through the coordination, as appropriate, of the Parties'/Members' respective indigenous peoples, agencies, companies, labour unions, civil society, academic institutions, and non-governmental organizations, among others.]
