Department of Foreign Affairs and Trade

Submission to the Inquiry into the Trade System and the Digital Economy

Introduction

The Department of Foreign Affairs and Trade (the Department) welcomes the opportunity to make a submission to the Joint Standing Committee on Trade and Investment Growth's (the Committee) inquiry into the trade system and the digital economy. The Department notes the terms of reference to this inquiry; namely:

"to inquire into and report on:

- the responsiveness of Australia's trade architecture and regulatory system to the contemporary needs of the digital economy and disruptive technology; and
- measures to improve the cyber resilience of Australia's trade-focused business sector."

The increasing prominence of the digital economy and disruptive technologies present both unprecedented opportunities for Australian business and the Australian economy, as well as new challenges. For the Department, our main contribution to maximising the benefits and minimising the risks of the expanding digital economy is through actively shaping an enabling environment for digital trade. Our focus is on building trade architecture and international regulatory cooperation that is responsive to the contemporary needs of the digital economy, and which assists Australian businesses and consumers to successfully engage in international digital trade.

We do this through:

- Shaping international rules through trade negotiations – including advocating rules that support digitalisation of trade related practices, build trust and confidence in the online environment, and reduce barriers to digital trade.
- Engaging and participating in international fora which support digital trade initiatives, particularly with regard to harmonisation of standards and regulatory cooperation (e.g. Asia-Pacific Economic Cooperation (APEC) and the Group of Twenty (G20))
- Advocating to other governments the importance of minimising any trade distorting impacts when considering rules affecting digital trade
- Supporting digital trade capacity in other countries through targeted Aid for Trade assistance.

Within the same portfolio, Austrade also supports Australian business through its trade promotion activities. Austrade will be separately providing a submission to the Committee on its digital trade activities.

In addition, the Department notes the contribution of our Ambassador for Cyber Affairs, who leads Australia's international cyber engagement. However, the Department's international cyber engagement is not directly relevant to the terms of reference of this inquiry, as it does not deal specifically with measures to improve the cyber resilience of Australia's trade-focussed business sector, which is a domestic responsibility. For the information of the Committee, Australia's International Cyber Engagement Strategy, launched on 4 October 2017, can be found at http://dfat.gov.au/international-relations/themes/cyber-affairs/aices/index.html.

1. Digital trade environment

Digitalisation, expanding internet connectivity and disruptive technologies are increasingly the drivers of growth in goods and services trade across the globe (according to the McKinsey Global Institute, "[a]pproximately 12% of global consumer goods trade is now conducted via international e-commerce".[1]) They make it easier, quicker and cheaper for consumers and businesses to trade goods, services and exchange information around the world. .

Many new businesses are utilising digital trade, including trading or delivering services online as an integral part of their business model. Whether or not businesses choose to trade internationally, digitalisation of traditional activities and business models presents significant opportunities and challenges for businesses operating in the domestic and international economy.

Some of the opportunities for businesses and consumers include:

1) Decreased costs of starting/doing business/engaging in trade
2) Cheaper and wider range of consumer goods and business inputs available
3) Increased speed of payment/processing/delivery
4) Expanded markets as cross–border supply becomes more feasible, and as more consumers utilise the internet
5) Development of more efficient business models and operations through the improved capacity to move data quickly and more effective means of communicating with employees, customers and suppliers.

These opportunities to increase productivity and make efficiencies in business models can only be capitalised upon if there is access to reliable digital infrastructure and a facilitative regulatory environment that protects businesses and consumers when they engage in online business.

As such, the opportunities of digitalisation are accompanied by specific challenges. All countries have obstacles to overcome in ensuring their populations have access to modern, efficient digital infrastructure, and have the skills and knowledge to exploit the employment opportunities created in a digital world. Governments may also have the challenge of formulating appropriate policy responses when responding to market disruptions stemming from technological change. These challenges are magnified for developing countries. Aid for trade programs are increasingly focussed on assisting developing countries to benefit from the opportunities of digitalisation and address the digital divide evident between countries, age groups and gender. More than 40 per cent of the world's population currently

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[1] *Business brief: The ascendancy of digital trade: A new world order?*, McKinsey Global Institute, http://www.oecd.org/trade/ascendancy-digital-trade-new-world-order.htm

have access to the internet, with many more coming online every day, notably through mobile phones.[2]

Digital trade is not just about buying and selling goods and services online, it is also the transmission of information and data across borders. The opportunities outlined above dramatically increase the exposure of consumers and businesses to the international market. Regulatory environments must strike a balance between facilitating international trade and protecting the interests of consumers and businesses. Australia seeks to respond to these concerns by pursuing trade rules and standards that provide consumers with similar protections when they engage in online trade as when they physically purchase goods and services.

Given data has become a critical asset for business and optimising the use, management and integrity of data is also fundamental to remaining competitive. Governments need to provide certainty for businesses that obtain, store and process their data internationally that they can transmit information safely and securely across physical borders and are aware of their legal obligations with respect to such activities. Protection from malicious cyber activity for businesses, government agencies and individuals is also important.

Faced with these concerns, some governments in our region are putting in place measures that have the potential to significantly dampen international digital trade such as restrictive cyber security measures, onerous privacy requirements, data localisation requirements and censorship. The Department engages these governments to highlight the importance of not unduly undermining trade opportunities.

2. Australia - maximising the benefits of digital trade

The Australian Government is committed to ensuring that Australian businesses and consumers can benefit from the enormous growth in digital trade, in addition to addressing concerns around cyber security and consumer protection. According to Australia's International Business Survey in 2016, 60 per cent of businesses in Australia that engaged in international trade were using e-commerce to sell goods; 26 per cent to sell services; and 14 per cent to sell both – the digital trade agenda is important to the growth of both Australia's goods and services exporters.

In consultation with private sector, non-government and public sector stakeholders, the Department works to support digital trade growth through establishing international trade rules, architecture and cooperation that are facilitative, but which also adequately protect consumers and provide greater transparency for businesses. The implementation of Australia's International Cyber Engagement Strategy will complement this work.

The Department also provides advice to domestic agencies on the type of regulatory system and infrastructure necessary to facilitate digital trade and be responsive to the contemporary needs of the digital economy. In addition, the Department provides targeted aid for trade to developing countries in our region to assist in developing their digital trade capacity and narrowing the digital divide. Supporting economic growth and prosperity in the region through digital trade is also one of the priorities for Australia's Cyber Cooperation Program.

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[2] World Bank (2016) Digital Dividends: World Development Report: Among the poorest 20 percent of households (globally) nearly 7 out of 10 have a mobile phone.

2.1 International Trade Commitments

The Department is responsible for negotiating Australia's international trade commitments, including those that support businesses engaging in the digital economy and international trade. The Department looks to create trade rules that facilitate digital trade, whether it be enabling the import and export of goods purchased online, or enabling the provision and consumption of services online. The Department negotiates these commitments in consultation with agencies across the Australian Government as well as individuals, businesses, civil society and academia, to ensure that our negotiating priorities reflect the current needs the economy, business and consumers.

2.1.1 World Trade Organization

Under the World Trade Organization (WTO), there is not yet a formal multilateral agreement that governs digital trade. There has been a temporary moratorium in place amongst WTO Members on applying customs duties to electronic transmissions since May 1998, which some countries, including Australia, would like to see made permanent. In 1998, WTO Members also agreed to a Work Programme on Electronic Commerce. However, after many years of discussion, there has been limited progress within the Work Programme. Australia is playing a leadership role amongst the WTO membership to achieve liberalising outcomes for electronic commerce, particularly in the context of the WTO Eleventh Ministerial Conference, which will take place from 11-14 December 2017 in Buenos Aires, Argentina.

While existing WTO Agreements such as the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS) cover all trade in goods and services, countries like Australia want to see the WTO negotiate multilateral rules specifically focused on electronic commerce, which could complement existing obligations in the GATT and GATS. New rules could ensure, for example, that all WTO Members recognise electronic signatures and do not prescribe the means by which two parties to an electronic transaction authenticate that transaction. Australia would also like to see rules governing how WTO Members deal with unsolicited electronic messages (spam), and in more complex areas such as the free flow of data and limiting requirements to store data in particular markets.

Although there is currently no consensus amongst WTO Members that the WTO should negotiate specific multilateral rules on e-commerce, Australia has signed two agreements negotiated within the WTO containing elements that facilitate e-commerce/digital trade.

The Information Technology Agreement (ITA) is an undertaking to liberalise global trade in IT products. The original agreement entered into force on 1 July 1997 and now comprises 81 participants whose trade in IT products accounts for 97 per cent of global trade. In December 2015, some participating members, including Australia, agreed to update the agreement and expand the coverage to cover additional goods. The expansion of the ITA was the first major tariff-cutting deal at the WTO since the original ITA. The ITA has been one of the most effective mechanisms in reducing duties on IT products thereby making IT inputs cheaper for business and consumers.

Another WTO agreement that contains commitments relevant to e-commerce is the Trade Facilitation Agreement (TFA), which entered into force for all WTO Members on 22 February 2017. Customs, licensing and transit formalities involve complicated administrative processes and burdensome documentation requirements for international trade in goods. The TFA commits parties to reducing red tape and the burden of administrative costs associated with exporting and importing, including through the implementation of a 'single window'. A single window is a facility that allows businesses to lodge documents required to

satisfy export, import and transit-related regulatory requirements through a single entry point. The Australian Government is committed to establishing a single window for export documentation to make it easier for Australian businesses to enter overseas markets.

<u>2.1.2 Trade in Services Agreement</u>

Australia has also been active in the negotiations among 23 WTO Members on the plurilateral Trade in Services Agreement (TiSA), which aims to set a new standard in services liberalisation, including e-commerce. The negotiations, co-chaired by Australia, the EU and the United States, made good progress in 2016 with only a small number of issues outstanding at the end of the last round of talks in December 2016.

The TiSA negotiations have been on hold since that time, pending clarity from the US Administration regarding its position. Should the TiSA negotiations resume, the Department anticipates it would result in a comprehensive set of rules that would benefit digital trade, alongside market access commitments from the Parties. We are also optimistic that TiSA may provide a pathway to eventual multilateralisation of its commitments to create a globally consistent approach to digital trade.

<u>2.1.3 Bilateral and Regional Free Trade Agreements</u>

At a bilateral and regional level, Australia has commitments on e-commerce in the majority of its free trade agreements (see <u>Attachment A</u>). In Australia's older agreements, these commitments generally focused on aspects of each country's domestic regulatory system to ensure that online commerce was not treated any differently to physical commerce. In more modern agreements, Australia seeks commitments that also address a broader range of cross-border issues, such as commitments to allow the flow of data across borders and prohibitions on requirements to store data locally. As FTAs are designed to be in place for long periods of time (at the minimum they will remain in place until a country withdraws from the treaty or they are terminated by a country), Australia seeks rules that are, wherever possible, technology-neutral (that is, provisions that do not depend on or presuppose the use of particular types of technology). That is, although e-commerce provisions address trade that may be conducted online, they do not prescribe the particular means of trading or communicating. This ensures that the provisions are futureproofed and substantive obligations of an FTA remain relevant even while technology evolves.

Australia is currently negotiating other free trade agreements, with one additional negotiation slated to commence (<u>Attachment A</u>). Australia will be seeking e-commerce chapters in all of these FTAs.

Digital trade provisions in FTAs

E-commerce chapters negotiated by Australia generally contain a number of features to facilitate trade by electronic means, while also reserving appropriate regulatory and policy space for Australia to accommodate policy sensitivities (including with regard to health, environment, consumer and privacy protections and security). The following is an illustrative list of the provisions Australia generally seeks in an e-commerce chapter[3]:

- ***Domestic regulation*** – this provision makes reference to the United Nations Commission on International Trade Law *Model Law on Electronic Commerce 1996* (Model Law) and the newer *United Nations Convention on the Use of Electronic*

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[3] The Department notes that, as each FTA represents a deal negotiated with a particular country, it will not necessarily include every feature in the illustrative list.

Communications in International Contracts 2005[4] (the Convention). The Model Law creates internationally acceptable rules that countries can use in their domestic legislation, and includes provisions such as the fundamental principle that data messages should not be discriminated against. The Convention provides that contracts concluded, and communications exchanged electronically are valid and enforceable as their paper-based equivalents.

- *Electronic authentication* – this allows flexibility in determining the process by which the parties to an electronic transaction can be identified.

- *Transparency* –Chapter-specific transparency provisions exist in some Australian FTAs. Other FTAs include Agreement-wide transparency provisions. These provisions generally contain an obligation to publish measures that are relevant to the obligations in the Chapter or across the Agreement.

- *Electronic Signatures* –provisions in Chapters differ in scope, but generally contain an obligation that if a signature is in electronic form, it should not be rejected or denied by a country. Other FTAs encourage parties to use electronic signatures based on internationally accepted standards.

- *Cross-border transfer of information by electronic means (data flows)*- this provision operates to obligate a country to permit the flow of data across borders, but may allow a country to impose conditions or limitations on data flows as long as it is for a legitimate public policy purpose. The aim of this provision is to ensure that data can flow as unimpeded as possible, recognising that restrictions on data flows can be a barrier to trade.

- *Paperless trading* – this element existed in some of the earliest e-commerce chapters, and captures the ability for business to conduct trade through paperless means (for instance, via email or messaging platforms). Under this provision. paperless trade does not affect the legality of the transaction. Paperless trading reflects the reality that often documentation is transmitted by electronic means in modern business transactions. In more recent FTAs, this provision has been further developed to help ensure that forms used for cross-border trade are published in electronic format and it also provides for the submission of export or import documentation electronically.

- *Location of Computing Facilities (Data Localisation)* – this provision restricts a country from requiring a business to use or locate computing facilities in that country's territory, unless the requirement is for a legitimate public policy purpose. The intent of this provision is to provide flexibility to business in order to identify data storage facilities that best suits its business model, whether that be in the destination country or in cloud facilities.

- *Treatment of Source Code* - obligation that a country not require access to, or transfer of, source code of software as a pre-condition to import, distribution, sale or use of that software into the local market. This obligation exists to give certainty to business, for instance, that business won't be required to disclose software, to which is has proprietary rights, to a third party.

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[4] Only in the Trans-Pacific Partnership and Singapore-Australia Free Trade Agreement.

- *Unsolicited Electronic Messages* – provision under which a country endeavours to adopt or maintain measures to deal with unwanted commercial messages (for instance, spam).

- *Online Consumer Protection* – recognition of the importance of adopting and maintaining measures for the protection of consumers using electronic commerce. Measures for the protection for online consumers should be the same as for any other consumer.

- *Protection of Personal Information* - obligation to adopt or maintain a legal framework for protecting the data of electronic commerce consumers.

- *Performance Requirements* – prohibition of requirement to provide technological transfers as a condition of investing in another country.

- *Elimination of customs duties on electronic transactions* – obligation that parties continue the practice of not applying customs duties to electronic transmissions.

- *Elimination of customs duties on information technology products* – tariff elimination on information technology products can reduce costs of information technology inputs for businesses and consumers. FTAs often result in wider tariff elimination than has been achieved through the ITA.

2.2 Supporting trade architecture through international organisations

The digital economy is an increasingly prominent topic on the agenda of major regional and multilateral economic fora with which Australia engages, including:

- the Group of Twenty (G20), comprising 20 of the largest developed and developing countries

- the 21 regional economies of Asia Pacific Economic Cooperation (APEC)

- the 34 members (and 70 non-members) of the Organisation for Economic Cooperation and Development (OECD).

These organisations provide ongoing opportunities to work on initiatives that promote digital trade development with major trading partners and key developing countries, through regular meetings of officials and ministers.

The Department engages in these forums on voluntary initiatives that complement our broader trade negotiation objective, that is, to establish rules that facilitate digital trade in goods and services. International collaboration on digital trade is essential to address emerging issues in this field. Australia's objectives are to develop best practice exchange and internationally coherent approaches to regulation of the digital economy, and prevent barriers to free and open trade.

2.2.1 G20

The Digital Economy was a specific focus during 2017, Germany's G20 hosting year. At the Hamburg Summit, Leaders agreed to constructively engage in WTO and other international discussions on e-commerce and digital trade to foster digital economy development and trade. An agreed G20 Roadmap for Digitalisation will guide future G20 work on a range of

digital issues, including improving measurement of digital trade, effective international engagement on rules, and the need to enhance participation of developing and least developed countries to more fully engage in digital trade.

The Australian government recognises that policy makers, as well as the public more broadly, need better internationally benchmarked evidence on the growth of digital trade to frame appropriate regulations and identify business opportunities. During 2017, G20 countries made commitments to improve the measurement of digital trade, making the most of new data sources, and accounting for new data-driven sources of value in the economy (for example, the use of online maps, or social media, where no money exchanges hands). The G20 initiative builds on work of international organisations[5] to effectively measure digitally enabled trade, internet use, the value of data flows and other key indicators of digitally enabled economic activity.

2.2.2 APEC

Australia works closely with APEC members to promote economic reforms and to advocate for trade and investment liberalisation which will support open and transparent markets in the region. The Ambassador for APEC leads the Department's engagement with the 21 economies of APEC, which has long standing cooperation on e-commerce and an increasing focus on maximising the opportunities from digital trade for regional economic growth. APEC cooperation includes a voluntary approach to the protection of personal information during trade across borders, through the APEC Cross-Border Privacy Rules System. One of the aims of such cooperation is to build trust in the digital economy as it develops. APEC has recently re-framed its policy cooperation on ecommerce, digital trade and the digital economy and future cooperation will be guided by the APEC Ecommerce Facilitation Framework and the APEC Internet and Digital Economy Roadmap.

The APEC Services Competitiveness Roadmap, agreed by APEC leaders in November 2016, aims to expand services trade across the region, including by developing adequate responses to the challenges and opportunities of information and communications technology (ICT) and internet- enabled business models and cross-border trade. Australia is contributing $2 million to help build the capacity of developing economies to develop free and open services trade through this APEC initiative. This APEC cooperation builds understanding and capacity across the 21 member economies, including through dialogue with international experts and the private sector.

2.2.3 OECD

Australia is participating in the OECD's 'Going Digital' project, designed to assist policy makers to better understand the digital transformation taking place and develop policy tools as enablers of economic and social prosperity. It is a multidisciplinary, cross cutting initiative across core OECD committees, reference groups, country representatives and stakeholders. As part of this work, the OECD will chart how digitalisation may transform how we think about trade and market openness and will aim to establish a solid foundation for subsequent empirical analysis, illustrating how aspects of market openness and digital connectivity are interrelated.

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[5] Including the Organisation for Economic Cooperation and Development (OECD), WTO, International Telecommunications Union (ITU) and United Nations Conference on Trade and Development (UNCTAD) : see for example: http://www.oecd.org/g20/summits/hamburg/Towards-a-G20-Initiative-on-Measuring-Digital-Trade.pdf

2.3 Aid for Trade – Closing the digital divide and expanding digital markets

For many developing countries, getting the most from digital trade and e-commerce is hampered by lack of access to ICT infrastructure, and lack of appropriate skills to use it. The OECD has estimated that globally some 3.9 billion people are offline. This is particularly the case for disadvantaged groups, such as women, in least developed countries.

Through its aid for trade investments, Australia is helping build the capacity of developing country partners to implement regulations and standards that facilitate digital trade, and encourage their take up of digital technologies that make trade more efficient.

Australia has been working successfully in the Pacific to promote digital connectivity as a platform for trade. This includes facilitating internet connectivity in Tonga and Fiji, telecommunications in Vanuatu and mobile coverage in Kiribati and the Solomon Islands.

This work has helped lead to a boom in mobile phone use in the Pacific. An estimated 60 per cent of Pacific Islanders now have access to a mobile phone, compared to less than 10 per cent in 2006. Australia also has partnerships with the private sector through banks and telecommunications companies, who are bringing innovative mobile banking services to poor women and men throughout the region.

Australia is working to strengthen digital trade in developing countries through increased awareness of 'disruptive' technologies. For example, Australia organised a conference in Colombo in October 2017 to demonstrate to Sri Lankan Government and business representatives how blockchain technology developed by CSIRO can help digitise, streamline and protect trade-related documentation, leading to improved processing times, reduced private sector costs and increased trade flows. The conference also demonstrated how digitisation could help to map transport supply chains and pinpoint bottlenecks and inefficiencies.

More broadly, Australia has committed $10 million to multilateral aid for trade programs that assist developing countries to undertake trade facilitation reform. This includes the World Bank's *Trade Facilitation Support Program*, WTO *Trade Facilitation Agreement Facility*, and the *Global Alliance for Trade Facilitation*. In 2015, Australia endorsed the G20 *Digital Economy Development and Cooperation Initiative*, which seeks to improve digital trade outcomes, including for developing countries and vulnerable groups.

A key part of Aid for Trade is the development of fundamental telecommunications infrastructure, particularly in the Pacific, which underpins the expansion of digital markets and the opportunities of the digital economy.

Australia's Cyber Cooperation Program funds practical initiatives in the Indo-Pacific region under the auspices of the International Cyber Engagement Strategy and complements aid for trade activities.

3. Conclusion

The digital economy and digital trade relies on an open, free and secure internet, and require a regulatory environment that balances growth with security, and is able to adapt and respond as technologies change. The Department contributes to achieving these outcomes by enabling digital trade through ever-evolving international trade architecture, international regulatory cooperation, and aid for trade. We also feed into the development of domestic regulation relevant to the digital economy.

Across this work, the Department is particularly mindful of the need to maximise responsiveness of trade architecture as the needs of the digital economy continue to change. Australia's FTAs are only one part of Australia's trade architecture, but are a good example of the responsiveness of that architecture to the contemporary needs of the digital economy, with e-commerce provisions in FTAs steadily evolving to respond to modern challenges and emergent technologies, which has been aided by employing technologically neutral provisions. While older FTAs dealt with transactional business issues such as paperless trading and electronic signatures (that is, business to customer and business-to-business transactions), newer FTAs are now providing users with confidence in the online environment and encouraging the development of digital trade (through facilitation of data flows and restricting data localisation). FTAs now encompass provisions to ensure a transparent and liberal environment for digital trade. We expect that rules on electronic commerce will continue to develop and evolve in future trade agreements.

We remain open to new and innovative ways in which the Department's work can support Australian businesses in exporting their goods and services abroad. DFAT welcomes submissions as part of its FTA negotiation processes. More information is available at http://dfat.gov.au/trade/agreements/Pages/trade-agreements.aspx.

We thank the Joint Committee for the opportunity to lodge a submission.

Australian Free Trade Agreements - E-Commerce Chapters

Specific E-commerce Chapter (in force)

ASEAN-Australia-New Zealand Free Trade Agreement	Chapter 10
Australia-Chile Free Trade Agreement	Chapter 16
Australia-United States Free Trade Agreement	Chapter 16
China-Australia Free Trade Agreement	Chapter 12
Korea-Australia Free Trade Agreement	Chapter 15
Japan-Australia Economic Partnership Agreement	Chapter 13
Malaysia-Australia Free Trade Agreement	Chapter 15
Singapore-Australia Free Trade Agreement	Chapter 14
Thailand-Australia Free Trade Agreement	Chapter 11

E-commerce Chapter (signed but not entered into force)

Trans-Pacific Partnership	Chapter 14
Agreement to Amend the Singapore-Australia Free Trade Agreement	
	Chapter 14

No E-commerce Chapter (but covers digital trade)

Australia-New Zealand Closer Economic Relations Agreement[6]

No E-commerce Chapter

Pacific Agreement on Closer Economic Relations Plus

Under negotiation

Regional Comprehensive Economic Partnership

Australia – Hong Kong, China Free Trade Agreement

Indonesia-Australia Comprehensive Economic Partnership Agreement

Pacific Alliance Free Trade Agreement

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[6] Although ANZCERTA has no specific chapter, it covers digital trade by virtue of its liberalised coverage.

Peru-Australia Free Trade Agreement

Trade in Services Agreement

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Negotiations not commenced

Australia-European Union Free Trade Agreement