Statement on OECD Contributions to the WTO E-Commerce Talks

25 April 2019

Business at OECD welcomes the confirmed intention of 76 WTO members – including OECD member countries – to start formal WTO negotiations on trade-related aspects of e-commerce.

This is a real opportunity to enable businesses – large and small – and to strengthen global access to scale up, enter new markets, create new quality jobs and enhance consumer choice. As businesses engaging in digital trade mostly have to rely on a patchwork of bilateral and plurilateral rules agreed by some countries, greater development of a multilateral framework is strongly desired. A modernized and high ambition agreement could create the needed degree of certainty on the world market for digital business models across borders.

In their efforts to achieve a high-standard outcome, we encourage negotiators to strongly draw on the OECD’s evidence-based expertise in the area of digital trade. It is important to take a wider look at the digital economy than just “e-commerce” as such, as the time is ripe to define a new framework for global disciplines embracing the whole digital ecosystem. Business at OECD believes that a holistic outcome should include the following selected deliverables¹, and further OECD work in this context may be most useful to inform the talks going forward:

- Market openness principles and modern pro-competitive frameworks should underpin policy making.

Principles underpinning market openness - including non-discrimination, transparency, interoperability and avoidance of unnecessary trade restrictiveness – and the importance of ensuring a modern evidence-based approach to antitrust rules in the digital era - are crucial to address a complex global digital trade environment, and should be recognized in any WTO agreement. Following the 2018 OECD Global Forum on Trade in the Digital Era, the OECD Going Digital Project, and the works on Implications of E-commerce for Competition Policy, the OECD should continue to foster discussions with its membership and beyond to avoid digital protectionism, strengthen market openness, enhance and modernize anti-trust laws and encourage further countries to join. OECD analysis is hugely important in overcoming any potential concerns and skepticism of national governments around the benefits of digital trade. The OECD Principles for Internet Policy-Making should be widely employed.

¹This statement draws on the practical experience of Business at OECD’s wide and regionally diverse business constituency, and provides a considered assessment of issues that affect its members’ ability to benefit from open, international trade.
• Customs duties on electronic transmissions should be prohibited.

Countries should agree to prohibit customs duties on electronic transmissions in order to create the needed degree of certainty on the world market. **OECD should inform trade policy-makers about the challenges and negative effects of uncertainty associated with applying customs processes and procedures to electronic submissions, and drive towards a global agreement prohibiting the implementation of customs duties.**

• Barriers to digitally enabled services should be reduced to facilitate digitally enabled trade across all sectors.

Cross-cutting barriers that inhibit or completely prohibit businesses’ ability to supply goods and services using electronic networks should be minimized irrespective of the sector in which the impacted businesses operate. For example, digitally enabled services underpin digital trade transactions, and the OECD should continue to capture and build on its Digital STRI, to highlight barriers negatively affecting infrastructure and connectivity, electronic transactions, payment systems, intellectual property rights, and others. In this context, cross-border data transfers are particularly important.

• Trade facilitation measures should be further developed to support E-commerce.

The ability of businesses and consumers to participate in e-commerce is critically dependent on the ability of goods to move seamlessly across borders. The WTO Trade Facilitation Agreement provides a good starting base, but we need to continue to encourage trade facilitation measures. **The OECD should promote the inclusion of TFA-plus provisions in the WTO e-commerce agreement to encourage the movement of goods when crossing international borders.**

• Regulation should be designed to achieve its objective in a manner that does not create unnecessary barriers to digital trade.

**Business at OECD** believes that policies and regulations to protect privacy, security and consumers, including through technological solutions and processes, should not and need not create unnecessary barriers to digital trade, including with respect to the cross-border transfer of data. In this context, certain consumer protection elements should be applicable only to B2C transactions, while excluding services dedicated to business customers that normally are provided based on an individually negotiated contract. **OECD guidance, such as the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data and the OECD Recommendation on Consumer Protection in E-commerce can inform trade negotiations by demonstrating how regulatory objectives can be achieved in a manner that facilitates digital trade by creating trust and enabling a cross-border transfer of data. OECD work to support enhanced coordination on other regulatory initiatives, including cybersecurity standards, can also help to align and facilitate regulatory interoperability in a manner that supports digital trade objectives.**