

CHAPTER 13 ELECTRONIC COMMERCE

ARTICLE 13.1: GENERAL

The Parties recognize the economic growth and opportunity that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of the WTO Agreement to measures affecting electronic commerce.

ARTICLE 13.2: ELECTRONIC SUPPLY OF SERVICES

1. The Parties affirm that measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapters 9 (Investment) and 10 (Cross-Border Trade in Services), which are subject to any exceptions or non-conforming measures set out in this Agreement that are applicable to such obligations.
2. This Chapter shall not apply to government procurement.

ARTICLE 13.3: CUSTOMS DUTIES

1. No Party may impose customs duties on or in connection with electronic transmissions of digital products.
2. For greater certainty, paragraph 1 does not preclude a Party from imposing internal taxes or other internal charges on electronic transmissions of digital products, provided that the taxes or charges are imposed in a manner consistent with this Agreement.

ARTICLE 13.4: NON-DISCRIMINATORY TREATMENT OF DIGITAL PRODUCTS

1. No Party may accord less favorable treatment to some digital products¹ transmitted electronically than it accords to other like digital products
 - (a) on the basis that:
 - (i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned or first made available on commercial terms in the territory of the other Party; or

¹ Recognizing the Parties' objective of promoting bilateral trade, "some digital products" in paragraph 1 refers solely to those digital products created, produced, published, contracted for, or commissioned in the territory of the other Party, or digital products of which the author, performer, producer, developer, or owner is a person of the other Party.

- (ii) the author, performer, producer, developer, distributor or owner of such digital products is a person of the other Party; or
 - (b) so as otherwise to afford protection to other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned or first made available on commercial terms in its territory.
- 2. Paragraph 1 does not apply to measures adopted or maintained in accordance with Article 9.12 (Non-Conforming Measures) or 10.6 (Non-Conforming Measures).
- 3. Paragraph 1 does not apply to:
 - (a) subsidies or grants that a Party provides to a service or service supplier, including government-supported loans, guarantees and insurance; or
 - (b) services supplied in the exercise of governmental authority, as defined in Article 10.1 (Scope).

ARTICLE 13.5: ELECTRONIC AUTHENTICATION AND ELECTRONIC SIGNATURES

- 1. Except where otherwise provided for in its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.
- 2. No Party may adopt or maintain measures for electronic authentication that would:
 - (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or
 - (b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to authentication.
- 3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meet certain performance standards or be certified by an authority accredited in accordance with the Party's law, provided the requirement:
 - (a) serves a legitimate governmental objective; and
 - (b) is substantially related to achieving that objective.

ARTICLE 13.6: ONLINE CONSUMER PROTECTION

- 1. The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce.
- 2. The Parties recognize the importance of cooperation between their respective national

consumer protection agencies on activities related to cross-border electronic commerce in order to enhance consumer welfare.

3. Each Party's national consumer protection enforcement agencies shall endeavor to cooperate with those of the other Party in appropriate cases of mutual concern involving fraudulent and deceptive commercial practices in electronic commerce.

ARTICLE 13.7: PERSONAL DATA PROTECTION

Recognizing the importance of protecting personal data in electronic commerce, each Party shall adopt or maintain measures for the protection of the personal data of users of electronic commerce and share information and experience on the protection of personal data in electronic commerce. In the development of personal data protection standards, each Party shall take into account principles and guidelines of relevant international organizations.

Article 13.8: PAPERLESS TRADING

1. Each Party shall endeavor to make trade administration documents available to the public in electronic form.

2. Each Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

Article 13.9: COOPERATION

1. The Parties shall endeavor to establish cooperation mechanisms on issues arising from electronic commerce, which will, *inter alia*, address the following:

- (a) the recognition of certificates of electronic signature issued to the public and the facilitation of cross-border certification services;
- (b) the protection of personal data;
- (c) the liability of providers with respect to the transmission or storage of information;
- (d) the treatment of unsolicited commercial electronic messages;
- (e) technology for electronic commerce;
- (f) the protection of consumers in the field of electronic commerce; and
- (g) any other issue relevant for the development of electronic commerce.

2. The Parties shall endeavor to share information and experiences on laws and regulations related to electronic commerce and shall cooperate to help micro, small and medium-sized enterprises overcome the obstacles they face in the use of electronic commerce.

3. Recognizing the global nature of electronic commerce, the Parties agree to actively participate in regional and multilateral fora to promote the development of electronic commerce and to exchange views, as necessary, within the framework of such fora on issues related to electronic commerce.

ARTICLE 13.10: DEFINITIONS

For the purposes of this Chapter:

digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution;^{2 3}

electronic authentication means the process or act of verifying the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication;

electronic signature means data in electronic form that is in, affixed to or logically associated with an electronic document and that may be used to identify the signatory in relation to the electronic document and indicate the signatory's approval of the information contained in the electronic document;

electronic transmission or transmitted electronically means the transfer of digital products using any electromagnetic or photonic means;

personal data means any information about an identified or identifiable natural person;

trade administration documents means forms a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods; and

unsolicited commercial electronic messages means an electronic message including a voice or fax message which is sent for commercial purposes to a consumer without the consent of the recipient, or against the explicit rejection of the recipient, using an internet carriage service or other telecommunications services.

² For greater certainty, digital product does not include a digitized representation of a financial instrument.

³ The definition of digital product should not be understood to reflect a Party's view on whether digital products transmitted electronically are goods or services.