

## CHAPTER NINE

### DIGITAL TRADE

#### Article 9.1: Definitions

For purposes of this Chapter:

**computing facilities** means computer servers and storage devices for processing or storing information for commercial use;

**covered person** means a service supplier of a Party as defined in Article 8.1 (Definitions);

**digital product** means a computer programs, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically;<sup>1 2</sup>

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

**electronic invoicing** means the automated creation, exchange, and processing of a request for payment between a supplier and a buyer using a structured digital format;

**electronic payments** means a payer's transfer of a monetary claim acceptable to a payee made through electronic means;

**electronic signature** means data in electronic form that is in, affixed to, or logically or cryptographically associated with, an electronic document, and that may be used to identify or verify 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 a transmission made using any electromagnetic means, including by photonic means;

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<sup>1</sup> For greater certainty, "digital product" does not include a digitized representation of a financial instrument, including money.

<sup>2</sup> The definition of "digital product" should not be understood to reflect a Party's view on whether trade in digital products through electronic transmission should be categorized as trade in services or trade in goods.

**FinTech** means the use of technology to improve and automate the delivery and use of financial services;

**open data** means digital data that is made available with the technical and legal characteristics necessary for it to be freely used, reused, and redistributed. This definition relates only to information held or processed by or on behalf of a Party;

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

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

**unsolicited commercial electronic message** means an electronic message which is sent for commercial or marketing purposes to an electronic address of a person, without the consent of the recipient or despite the explicit rejection of the recipient, through an Internet access service supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service.

## **Article 9.2: Objectives**

1. The Parties recognize the economic growth and opportunity that digital trade provides, the importance of avoiding barriers to its use and development, the importance of frameworks that promote consumer confidence in digital trade, and the applicability of the WTO Agreement to measures affecting digital trade.

2. The Parties seek to foster an environment conducive to the further advancement of digital trade, including electronic commerce and the digital transformation of the global economy, by strengthening their bilateral relations on these matters.

## **Article 9.3: Scope and General Provisions**

1. This Chapter shall apply to measures adopted or maintained by a Party that affect trade by electronic means.

2. This Chapter shall not apply to:

- (a) government procurement;

- (b) except for Article 9.15, information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection.

3. For greater certainty, 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 Chapter Eight (Trade in Services) and its Annexes, including any exceptions set out in this Agreement that are applicable to those obligations.

4. Articles 9.5, 9.13, and 9.14 shall not apply to aspects of a Party's measures that do not conform with an obligation in Chapter Eight (Trade in Services) to the extent that such measures are adopted or maintained in accordance with:

- (a) any terms, limitations, qualifications, and conditions specified in a Party's commitments, or are with respect to a sector that is not subject to a Party's commitments, made in accordance with Article 8.6 (Schedules of Specific Commitments); or
- (b) any exception that is applicable to the obligations in Chapter Eight (Trade in Services).

#### **Article 9.4: Customs Duties**

1. Neither Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of a Party and a person of the other Party.

2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees, or other charges on content transmitted electronically, provided that such taxes, fees, or charges are imposed in a manner consistent with this Agreement.

#### **Article 9.5: Non-discriminatory Treatment of Digital Products**

1. Neither Party shall accord less favorable treatment to a digital product created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party, or to a digital

product of which the author, performer, producer, developer, or owner is a person of the other Party, than it accords to other like digital products.<sup>3</sup>

2. Paragraph 1 shall not apply to the extent of any inconsistency with the rights and obligations in Chapter Ten (Intellectual Property).

3. The Parties understand that this Article shall not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

4. Paragraph 1 shall not apply to broadcasting.

#### **Article 9.6: Domestic Electronic Transactions Framework**

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the *UNCITRAL Model Law on Electronic Commerce* (1996) or the *United Nations Convention on the Use of Electronic Communications in International Contracts*, done at New York, on 23 November 2005.

2. Each Party shall endeavor to:

- (a) avoid any unnecessary regulatory burden on electronic transactions; and
- (b) facilitate input by interested persons in the development of its legal framework for electronic transactions.

#### **Article 9.7: Electronic Authentication and Electronic Signatures**

1. Except in circumstances otherwise provided for under 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. Neither Party shall adopt or maintain measures regarding electronic authentication that would:

- (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or

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<sup>3</sup> In interpreting the obligations of Article 9.5, the Parties understand that the non-discriminatory treatment of digital products shall be limited to national treatment and not cover most-favored-nation treatment.

- (b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their 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 meets certain performance standards or is certified by an authority accredited in accordance with its law.
- 4. The Parties shall encourage the use of interoperable electronic authentication.

#### **Article 9.8: Paperless Trading**

- 1. Each Party shall:
  - (a) to the extent practicable, make trade administration documents available to the public in electronic form;
  - (b) to the extent practicable, accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents; and
  - (c) to the extent practicable, provide electronic versions of trade administration documents referred to in subparagraph (a) in English.
- 2. Noting the obligations in the *Agreement on Trade Facilitation* in Annex 1A to the WTO Agreement, each Party shall establish or maintain a single window that enables persons to submit trade administration documents and data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies.
- 3. Each Party shall endeavor to establish or maintain a seamless, trusted and secure interface with the other Party's single window to facilitate the exchange of data relating to trade administration documents, which may be agreed by the Parties.
- 4. The Parties shall endeavor to develop data exchange systems to support the exchange of data relating to the trade administration documents referred to in paragraph 3 between the competent authorities of each Party.
- 5. The Parties recognize that the data exchange systems referred to in paragraph 4 should, as far as possible, be compatible and interoperable with

each other. To this end, the Parties shall endeavor to work towards the development and adoption of internationally recognized standards in the development and governance of the data exchange systems.

6. In developing initiatives that provide for the use of paperless trading, each Party shall endeavor to take into account the methods agreed by international organizations.

### **Article 9.9: Online Consumer Protection**

1. The Parties recognize the importance of adopting and maintaining transparent and effective measures to protect consumers from misleading, deceptive, and fraudulent commercial practices when they engage in digital trade.

2. Each Party shall adopt or maintain consumer protection laws to proscribe misleading, deceptive, and fraudulent commercial activities that cause harm or potential harm to consumers engaged in digital trade.<sup>4</sup>

3. Each Party shall publish information on the consumer protection it provides to users of electronic commerce, including how:

- (a) consumers can pursue remedies; and
- (b) business can comply with any legal requirements.

### **Article 9.10: Personal Data Protection**

1. The Parties recognize the economic and social benefits of protecting the personal data of users of digital trade and the contribution that this makes to enhancing consumer confidence in digital trade.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal data of the users of digital trade.<sup>5</sup> In the development of any legal framework for the protection of personal data, each Party should endeavor to take into account principles and guidelines of relevant international organizations or bodies.

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<sup>4</sup> For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as generally-applicable consumer protection laws or regulations.

<sup>5</sup> For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as comprehensive privacy or personal data protection laws, sector-specific laws covering privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to privacy.

3. Each Party shall endeavor to adopt non-discriminatory practices in protecting users of digital trade from personal data protection violations occurring within its jurisdiction.

4. Each Party shall publish information on the personal data protections it provides to users of digital trade, including how:

- (a) individuals can pursue remedies; and
- (b) business can comply with any legal requirements.

#### **Article 9.11: Principles on Access to and Use of the Internet for Digital Trade**

To support the development and growth of digital trade, each Party recognizes that consumers in its territory should be able to:

- (a) access and use services and applications of their choice, unless prohibited by the Party's law;
- (b) run services and applications of their choice, subject to the Party's law, including the needs of legal and regulatory enforcement activities; and
- (c) connect their choice of devices to the Internet, provided that such devices do not harm the network and are not otherwise prohibited by the Party's law.

#### **Article 9.12: Unsolicited Commercial Electronic Messages**

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages sent to an electronic mail address that:

- (a) require a supplier of unsolicited commercial electronic messages to facilitate the ability of a recipient to prevent ongoing reception of those messages;
- (b) require the consent, as specified in the laws and regulations of each Party, of recipients to receive commercial electronic messages; or
- (c) otherwise provide for the minimization of unsolicited commercial electronic messages.

2. Each Party shall provide recourse against a supplier of unsolicited commercial electronic messages that does not comply with a measure adopted or maintained in accordance with paragraph 1.

3. The Parties shall endeavor to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

### **Article 9.13: Cross-Border Flow of Information<sup>6</sup>**

1. The Parties recognize that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. Neither Party shall prohibit or restrict the cross-border transfer of information by electronic means, including personal data, if this activity is for the conduct of business of a covered person.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

- (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
- (b) does not impose restrictions on transfers of information greater than are required to achieve the objective.

### **Article 9.14: Location of Computing Facilities<sup>7</sup>**

1. The Parties recognize that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. Neither Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate

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<sup>6</sup> This Article shall not apply to financial services.

<sup>7</sup> This Article shall not apply to financial services.

public policy objective, provided that the measure:

- (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
- (b) does not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective.

### **Article 9.15: Open Government Data**

1. The Parties recognize that facilitating public access to and use of government information may foster economic and social development, competitiveness, and innovation.
2. To the extent that a Party makes government information, including data, available to the public, it shall endeavor to ensure that the information is made available as open data.
3. The Parties shall endeavor to cooperate to identify ways in which the Parties can expand access to and use of open data, with a view to enhancing and generating business opportunities.

### **Article 9.16: Digital Government**

1. The Parties recognize that technology can enable more efficient and agile government operations, improve the quality and reliability of government services, and enable governments to better serve the needs of their citizens and other stakeholders.
2. To this end, each Party shall endeavor to develop and implement strategies to digitally transform its government operations and services, which may include:
  - (a) adopting open and inclusive government processes focusing on accessibility, transparency, and accountability in a manner that overcomes digital divides;
  - (b) promoting cross-sectoral and cross-governmental coordination and collaboration on digital agenda issues;
  - (c) shaping government processes, services and policies with digital inclusivity in mind;

- (d) providing a unified digital platform and common digital enablers for government service delivery;
- (e) leveraging emerging technologies to build capabilities in anticipation of disasters and crises and facilitating proactive responses;
- (f) generating public value from government data by applying it in the planning, delivering and monitoring of public policies, and adopting rules and ethical principles for the trustworthy and safe use of data;
- (g) making government data and policy-making processes (including algorithms) available for the public to engage with; and
- (h) promoting initiatives to raise the level of digital capabilities and skills of both the populace and the government workforce.

3. Recognizing that the Parties can benefit by sharing their experiences with digital government initiatives, the Parties shall endeavor to cooperate on activities relating to the digital transformation of government and government services, which may include:

- (a) exchanging information and experiences on digital government strategies and policies;
- (b) sharing best practices on digital government and the digital delivery of government services; and
- (c) providing advice or training, including through exchange of officials, to assist the other Party in building digital government capacity.

#### **Article 9.17: Electronic Invoicing**

1. The Parties recognize the importance of electronic invoicing to increase the efficiency, accuracy, and reliability of commercial transactions. Each Party also recognizes the benefits of ensuring that the systems used for electronic invoicing within its territory are interoperable with the systems used in the other Party's territory.

2. Each Party shall endeavor to ensure that the implementation of measures related to electronic invoicing in its territory supports cross-border interoperability between the Parties' electronic invoicing frameworks. To this end, each Party shall endeavor to base its measures relating to electronic invoicing on international frameworks.

3. The Parties recognize the economic importance of promoting the global adoption of interoperable electronic invoicing systems, including interoperable international frameworks. To this end, the Parties shall endeavor to:

- (a) promote, encourage, support, or facilitate the adoption of electronic invoicing by enterprises;
- (b) promote the existence of policies, infrastructure, and processes that support electronic invoicing;
- (c) generate awareness of, and build capacity for, electronic invoicing; and
- (d) share best practices and promote the adoption of interoperable international electronic invoicing systems.

#### **Article 9.18: Electronic Payments**

1. Recognizing the rapid growth of electronic payments, in particular those provided by non-bank, non-financial institutions and financial technology (FinTech) enterprises, the Parties shall endeavor to support the development of efficient, safe, and secure cross-border electronic payments by:

- (a) fostering the adoption and use of internationally accepted standards for electronic payments;
- (b) promoting interoperability and the interlinking of electronic payment infrastructures; and
- (c) encouraging innovation and competition in electronic payments services.

2. To this end, each Party shall endeavor to:

- (a) make publicly available its laws and regulations of general applicability relating to electronic payments, including in

relation to regulatory approval, licensing requirements, procedures and technical standards;

- (b) finalize decisions on regulatory or licensing approvals relating to electronic payments in a timely manner;
- (c) not arbitrarily or unjustifiably discriminate between financial institutions and non-financial institutions in relation to access to services and infrastructure necessary for the operation of electronic payment systems;
- (d) adopt or utilize international standards for electronic data exchange between financial institutions and services suppliers to enable greater interoperability between electronic payment systems;
- (e) facilitate the use of open platforms and architectures such as tools and protocols provided for through Application Programming Interfaces (APIs) and encourage payment service providers to safely and securely make APIs for their products and services available to third parties, where possible, to facilitate greater interoperability, innovation, and competition in electronic payments; and
- (f) facilitate innovation and competition and the introduction of new financial and electronic payment products and services in a timely manner, such as through adopting regulatory and industry sandboxes.

3. In view of paragraph 1, the Parties recognize the importance of upholding safety, efficiency, trust, and security in electronic payment systems through regulations, and that the adoption and enforcement of regulations and policies should be proportionate to the risks undertaken by the payment service providers.

### **Article 9.19: Digital Identities**

1. Recognizing that cooperation between the Parties on digital identities for natural persons and enterprises will promote connectivity and further growth of digital trade, and recognizing that each Party may take different legal and technical approaches to digital identities, the Parties shall endeavor to pursue mechanisms to promote compatibility between their respective digital identity regimes. This may include:

- (a) developing appropriate frameworks and common standards to foster technical interoperability between each Party's

implementation of digital identities;

- (b) developing comparable protection of digital identities under each Party's respective legal frameworks, or the recognition of their legal effects, whether accorded autonomously or by agreement;
- (c) supporting the development of international frameworks on digital identity regimes; and
- (d) exchanging knowledge and expertise on best practices relating to digital identity policies and regulations, technical implementation and security standards, and the promotion of the use of digital identities.

2. For greater certainty, nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 1 to achieve a legitimate public policy objective.

#### **Article 9.20: Cooperation**

Recognizing the importance of digital trade to their economies, the Parties shall endeavor to maintain a dialogue on regulatory matters relating to digital trade with a view to sharing information and experiences, as appropriate, including on related laws, regulations, and their implementation, and best practices with respect to digital trade, including in relation to:

- (a) online consumer protection;
- (b) personal data protection;
- (c) anti-money laundering and sanctions compliance for digital trade;
- (d) unsolicited commercial electronic messages;
- (e) electronic authentication;
- (f) intellectual property concerns with respect to digital trade;
- (g) challenges for small and medium-sized enterprises in digital trade;
- (h) digital government;
- (i) open government data; and

- (j) any other area mutually agreed by the Parties.

### **Article 9.21: Cybersecurity**

The Parties have a shared vision to promote secure digital trade and recognize that threats to cybersecurity undermine confidence in digital trade. Accordingly, the Parties recognize the importance of:

- (a) building the capabilities of their appropriate competent authorities responsible for cybersecurity incident response;
- (b) strengthening existing collaboration mechanisms and further cooperation through exchanging experiences and best practices; and
- (c) cooperating on identification and mitigation of malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties.

### **Article 9.22: FinTech Cooperation**

The Parties shall promote cooperation between their FinTech industries. The Parties recognize that effective cooperation regarding FinTech will require involvement of businesses. To this end, the Parties shall:

- (a) promote development of FinTech solutions for business or financial sectors; and
- (b) encourage collaboration of entrepreneurship or start-up talent between the Parties in FinTech, consistent with their respective laws and regulations.

### **Article 9.23: Artificial Intelligence**

1. The Parties recognize that the use and adoption of Artificial Intelligence (AI) technologies are becoming increasingly important within a digital economy offering significant social and economic benefits to natural persons and enterprises.

2. The Parties also recognize the importance of developing ethical governance frameworks for the trusted, safe, and responsible use of AI

technologies that will help realize the benefits of AI. In view of the cross-border nature of the digital economy, the Parties further acknowledge the benefits of ensuring that such frameworks are internationally aligned as far as possible.

3. To this end, the Parties shall endeavor to:
  - (a) collaborate on and promote the development and adoption of frameworks that support the trusted, safe, and responsible use of AI technologies (AI Governance Frameworks), through relevant regional, multilateral, and international fora;
  - (b) take into consideration internationally-recognized principles or guidelines when developing such AI Governance Frameworks; and
  - (c) cooperate through promoting dialogue and sharing experiences on regulations, policies and initiatives relating to the use and adoption of AI technologies.