

CHAPTER 13
ELECTRONIC COMMERCE

Article 13.1
Basic Principles

1. The Parties recognise the economic growth and opportunities provided by electronic commerce and the importance of avoiding unnecessary barriers to its use and development.
2. The aim of this Chapter is to contribute to creating an environment of trust and confidence in the use of electronic commerce and to promote electronic commerce between the Parties and the wider use of electronic commerce globally.
3. The Parties recognise the principle of technological neutrality in electronic commerce.

Article 13.2
Definitions

For the purposes of this Chapter:

- (a) the term "digital products" means such products as computer programmes, text, video, images and sound recordings, or any combinations thereof, that are digitally encoded, electronically transmitted, and produced for commercial sale or distribution, and does not include those that are fixed on a carrier medium;

Note 1: For greater certainty, digital products do not include digitised representations of financial instruments, including money.

Note 2: Nothing in this Chapter shall be considered as affecting the views of either Party on whether trade in digital products through electronic transmission is categorised as trade in services or trade in goods.

- (b) the term "electronic signature" means a measure taken with respect to information that can be recorded in an electromagnetic record and which fulfils both of the following requirements:
 - (i) that the measure indicates that such information has been approved by a person who has taken such measure; and
 - (ii) that the measure confirms that such information has not been altered;
- (c) the term "electronic transmissions" means transmissions made using any electromagnetic means;
- (d) the term "personal data" means any information about an identified or identifiable individual; and
- (e) the term "trade administration documents" means forms that 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.

Article 13.3 Customs Duties

Each Party shall maintain its practice of not imposing customs duties on electronic transmissions between the Parties.

Article 13.4 Non-Discriminatory Treatment of Digital Products

1. Neither Party may accord less favourable treatment to some digital products than it accords to other like digital products:

- (a) on the basis that the digital products receiving less favourable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the Area of the other Party;

- (b) on the basis that the author, performer, producer, developer, or distributor of such digital products is a person of the other Party; or
- (c) so as to otherwise 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 Area.

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

2. Neither Party may accord less favourable treatment to digital products:

- (a) created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the Area of the other Party than it accords to like digital products created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in a non-Party; or
- (b) whose author, performer, producer, developer, or distributor is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, or distributor is a person of a non-Party.

3. Paragraphs 1 and 2 do not apply to:

- (a) non-conforming measures adopted or maintained by a Party in accordance with Article 9.7 (Trade in Services - Non-Conforming Measures) or 14.10 (Investment - Non-Conforming Measures and Exceptions);
- (b) the extent that they are inconsistent with Chapter 16 (Intellectual Property);

- (c) government procurement;
- (d) subsidies provided by a Party or a state enterprise including grants, government-supported loans, guarantees, and insurance; and
- (e) services supplied in the exercise of governmental authority, as defined in Article 9.2 (Trade in Services - Definitions).

4. For greater certainty, paragraphs 1 and 2 do not prevent a Party from adopting or maintaining measures, including measures in the audio-visual and broadcasting sectors, in accordance with Article 9.7 (Trade in Services - Non-Conforming Measures) or 14.10 (Investment - Non-Conforming Measures and Exceptions).

Note: Nothing in this Article shall be construed as affecting rights and obligations of the Parties with respect to each other under Article 4 of the TRIPS Agreement.

Article 13.5 Domestic Regulation

1. Each Party shall ensure that measures it adopts or maintains do not unreasonably prohibit or restrict electronic commerce or its development.

2. Neither Party shall adopt or maintain measures regulating electronic transactions that:

- (a) deny the legal effect, validity or enforceability of a transaction, including a contract, solely on the grounds that it is in the form of an electronic communication; or
- (b) discriminate between different forms of technology,

unless such measures are provided for in its laws and regulations and are administered in a reasonable, objective and impartial manner.

3. Each Party shall, when formulating any new regulations relating to electronic commerce, take into account the importance of industry-led development of electronic commerce.

4. Each Party shall encourage the private sector to adopt self-regulation, including codes of conduct, model contracts, guidelines and enforcement mechanisms, with a view to facilitating electronic commerce.

Article 13.6 Electronic Signature

1. Neither Party shall adopt or maintain measures regulating electronic signature that:

- (a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic signature methods for their transaction; or
- (b) prevent parties to an electronic transaction from having the opportunity to prove in court that their electronic transaction complies with any legal requirements.

2. Notwithstanding paragraph 1, where prescribed by a Party's laws and regulations, that Party may require that, for transactions where a high degree of reliability and security is required, the method of authentication meet certain security standards or be certified by an authority accredited in accordance with that Party's laws and regulations.

3. Each Party shall, as appropriate, encourage the use of electronic signatures based on internationally accepted standards.

4. The Parties shall, where possible, cooperate to work toward the mutual recognition of electronic signatures issued or recognised by either Party.

Article 13.7
Consumer Protection

1. The Parties recognise the importance of adopting and maintaining measures which provide, for consumers using electronic commerce, protection that is at least equivalent to that provided for consumers using other forms of commerce, and measures conducive to the promotion of consumer confidence in electronic commerce.

2. The Parties recognise the importance of cooperation between their respective competent authorities in charge of consumer protection activities related to electronic commerce in order to enhance consumer protection.

Article 13.8
Personal Data Protection

1. Each Party shall adopt or maintain measures to protect the personal data of electronic commerce users.

2. In the development of protection standards for the personal data of electronic commerce users, each Party shall take into account relevant international standards and criteria of relevant international bodies.

Article 13.9
Paperless Trade Administration

1. Each Party shall endeavour to make all trade administration documents available to the public in electronic versions.

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

3. In developing initiatives which provide for the use of paperless trade administration, each Party shall take into account international standards or methods made under the auspices of international organisations.

4. The Parties shall cooperate bilaterally and in international fora to enhance the acceptance of trade administration documents submitted electronically.

Article 13.10

Cooperation

1. The Parties shall, where appropriate, cooperate and participate actively in regional and multilateral fora to promote the development of electronic commerce.
2. The Parties shall, as appropriate, share information and experiences, including on related laws, regulations and best practices with respect to electronic commerce, in relation to, *inter alia*, consumer confidence, cyber-security, combatting unsolicited commercial electronic messages, intellectual property, electronic government, personal data protection and electronic signatures.
3. The Parties shall cooperate to overcome obstacles encountered by small and medium enterprises in the use of electronic commerce.
4. Each Party shall, as appropriate, encourage activities by non-government organisations in that Party which promote electronic commerce, including its secure use.
5. The Parties shall endeavour to cooperate, in appropriate cases of mutual concern, in the enforcement of laws against fraudulent and deceptive commercial practices in electronic commerce, subject to the laws and regulations of the respective Parties.