

Chapter 9 Electronic Commerce

Article 9.1 General Provisions

1. The Parties recognize the economic growth and opportunities provided by electronic commerce, and the importance of avoiding unnecessary barriers to its use and development.
2. The objective 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 recognize the principle of technological neutrality in electronic commerce.
4. In the event of any inconsistency between this Chapter and Chapter 2, 7, 10 or 12, the Chapter other than this Chapter shall prevail to the extent of the inconsistency.

Article 9.2 Definitions

For the purposes of this Chapter:

- (a) the term "digital products" means computer programs, text, video, images, sound recordings and other products, that are digitally encoded, regardless of whether they are fixed on a carrier medium or transmitted electronically;
- (b) the term "electronic certificate" means an electromagnetic record prepared for certifying that matters used to confirm that the user has performed the electronic signature are pertaining to such user;
- (c) the term "electronic signature" means a measure taken with respect to information that can be recorded in an electromagnetic record and which fulfills 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; and
- (d) the term "trade administration documents" means forms that a Party issues or controls and that must be completed by or for an importer or exporter in connection with the importation or exportation of goods.

Article 9.3 Customs Duties

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

Article 9.4 Non-Discriminatory Treatment of Digital Products

1. Neither Party shall adopt or maintain:
 - (a) measures that accord less favorable treatment to digital products of the other Party than it accords to its own like digital products; and
 - (b) measures that accord less favorable treatment to digital products of the other Party than it accords to like digital products of a non-Party.
2. Paragraph 1 shall not apply to:
 - (a) government procurement;
 - (b) subsidies provided by a Party or a state enterprise, including grants, government-supported loans, guarantees and insurance;
 - (c) measures maintained by a Party in accordance with paragraph 2 of Article 7.4;

- (d) measures adopted or maintained by a Party within the scope of Article 7.3 or 7.5 which are:
 - (i) related to the sectors not committed in its Schedule of Specific Commitments in Annex 6; or
 - (ii) not inconsistent with the terms, limitations, conditions and qualifications agreed and specified in its Schedule of Specific Commitments in Annex 6; and
- (e) non-conforming measures adopted or maintained by a Party in accordance with Article 10.8.

3. In implementing its obligations under paragraph 1, each Party shall, where necessary, determine in good faith whether a digital product is a digital product of a Party, of the other Party or of a non-Party. Such determination shall be made in a transparent, objective, reasonable and fair manner.

4. Each Party shall, upon request of the other Party, explain how it determines the origin of a digital product where it determines such origin in implementing its obligations under paragraph 1.

5. The Parties shall cooperate in international organizations and fora to foster the development of criteria for the determination of the origin of a digital product, with a view to considering the incorporation of such criteria into this Agreement.

Article 9.5 Electronic Signature

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

- (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 transactions comply with any legal requirements.

2. Notwithstanding paragraph 1, each Party may require that, for a particular category of electronic transactions, the electronic signatures meet certain performance standards or are based on a specific electronic certificate issued by a supplier of certification services accredited or recognized in accordance with the laws and regulations of the Party, provided that the requirement:

- (a) serves a legitimate policy objective; and
- (b) is substantially related to achieving that objective.

Article 9.6 Consumer Protection

1. The Parties recognize the importance of adopting and maintaining transparent and effective consumer protection measures for electronic commerce as well as measures conducive to the development of consumer confidence.

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

3. The Parties shall adopt or maintain measures, in accordance with their respective laws and regulations, to protect the personal data of electronic commerce users.

Article 9.7 Unsolicited Commercial E-mail

Each Party shall endeavor to take appropriate and necessary measures to regulate unsolicited commercial e-mail for advertising purposes.

Article 9.8
Paperless Trade Administration

1. Each Party shall endeavor to make all 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 such documents.
3. The Parties shall cooperate bilaterally and in international fora to enhance the acceptance of electronic versions of trade administration documents.

Article 9.9
Domestic Regulation

Each Party shall ensure that all its measures affecting electronic commerce are administered in a transparent, objective, reasonable and impartial manner, and are not more burdensome than necessary to meet legitimate policy objectives.

Article 9.10
Prohibition on Requirement concerning the Location
of Computing Facilities

1. Neither Party shall require:
 - (a) a service supplier of the other Party;
 - (b) an investor of the other Party; or
 - (c) an investment of an investor of the other Party in the Area of the former Party,

as a condition for conducting its business in the Area of the former Party, to use or locate computing facilities in that Area.

2. Notwithstanding paragraph 1, nothing in this Article shall be construed to prevent a Party from adopting or maintaining measures affecting the use or location of computing facilities necessary to achieve a legitimate public policy objective, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

Article 9.11 Source Code

1. Neither Party shall require the transfer of, or access to, source code of software owned by a person of the other Party, as a condition of the import, distribution, sale or use of such software, or of products containing such software, in its Area.

2. For the purposes of this Article, software subject to paragraph 1 is limited to mass-market software or products containing such software, and does not include software used for critical infrastructure.

Article 9.12 Cooperation

1. The Parties shall, where appropriate, cooperate bilaterally and participate actively in regional and multilateral fora to promote the development of electronic commerce.

2. The Parties shall, where appropriate, share information and experiences, including on related laws, regulations and best practices with respect to electronic commerce, related to, *inter alia*, consumer confidence, cyber-security, combatting unsolicited commercial e-mail, intellectual property, electronic government and personal data protection.

3. The Parties shall cooperate to overcome obstacles encountered by small and medium enterprises in the use of electronic commerce.

4. Each Party shall encourage, through existing means available to it, the activities of non-profit organizations in that Party aimed at promoting electronic commerce, including the exchange of information and views.

5. The Parties recognize the importance of working to maintain cross-border flows of information as an essential element for a vibrant electronic commerce environment.

6. The Parties recognize the importance of further enhancement of trade in digital products.

Article 9.13 Sub-Committee on Electronic Commerce

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Electronic Commerce (hereinafter referred to in this Article as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) discussing any issues related to this Chapter including, where appropriate, the possible review of Article 9.4;
- (c) seeking new opportunities to further enhance trade in digital products;
- (d) reporting the findings of the Sub-Committee to the Joint Committee; and
- (e) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall be composed of representatives of the Governments of the Parties.

4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.