

Chapter 8 Electronic Commerce

Article 70 Scope

This Chapter shall apply to measures by a Party affecting electronic commerce, including for goods and services, in the context of their bilateral trade.

Article 71 General Provisions

1. The Parties recognise the economic growth and opportunity provided by the increasing use of electronic commerce in trade in goods and services, among others, in particular for businesses and consumers, the importance of avoiding barriers to its use and development and the need to create an environment of trust and confidence in its use.

2. The Parties recognise the principle of technological neutrality in the sense that any provisions related to trade in services do not distinguish between the different technological means through which a service may be supplied.

3. In the event of any inconsistency between this Chapter and Chapter 2, 6, 9 or 11, the Chapter other than this Chapter shall prevail to the extent of the inconsistency.

4. This Chapter shall not apply to:

- (a) government procurement;
- (b) subsidies as defined in the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement; and
- (c) taxation measures.

Article 72
Definitions

For the purposes of this Chapter:

- (a) "digital products" means such products as computer programmes, texts, plans, designs, video, images and sound recordings or any combinations thereof, that are digitally encoded and transmitted electronically;

Note 1: For the purposes of this Chapter, digital products do not include those that are fixed on a carrier medium. Digital products that are fixed on carrier medium shall be subject to Chapter 2.

Note 2: For the purposes of this Chapter, digital products are those produced for commercial sale or distribution.

- (b) "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) "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;
- (d) "parties to an electronic transaction" means at least one party in each of the Parties, all of them involved in an electronic transaction or an electronic communication that has significant relevance to that transaction;
- (e) "trade administration documents" means forms that a Party issues or controls that must be completed:
 - (i) by or for an importer or exporter in connection with the importation or exportation of products;
or

- (ii) by a service supplier in connection with trade in services; and

Note: For the purposes of this Chapter, "trade in services" shall have the same meaning as "trade in services" defined in subparagraph (t) of Article 44.

- (f) "transmitted electronically" means transferred by any electromagnetic means.

Article 73

Non-Discriminatory Treatment of Digital Products

1. Unless otherwise specified in its List of Reservations referred to in Articles 57 and 90, which shall apply *mutatis mutandis*, each Party shall:

- (a) not adopt measures that accord less favourable treatment to digital products of the other Party than it accords to its own like digital products. When a Party identifies a measure of such nature that has been adopted before the entry into force of this Agreement and is maintained by the other Party, that other Party shall endeavour to eliminate it; and
- (b) not adopt or maintain measures that accord less favourable treatment to digital products of the other Party than it accords to like digital products of a non-Party.

2. In implementing its obligations under paragraph 1, each Party shall, in good faith, determine 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.

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

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

5. The Parties shall review this Article five years after the date of entry into force of this Agreement, unless they agree otherwise.

Article 74
Non-Discriminatory Treatment of Services

Each Party shall ensure that its measures governing electronic commerce do not discriminate the supply of services transmitted electronically against the supply of like services by other means.

Article 75
Market Access

Unless otherwise specified in its List of Reservations referred to in Articles 57 and 90, which shall apply *mutatis mutandis*, each Party shall not adopt or maintain measures that unduly prohibit or restrict electronic commerce.

Article 76
Customs Duties

1. Recognising the importance of maintaining the current practice of not imposing customs duties on electronic transmissions, the Parties shall cooperate to make this practice binding within the framework of the World Trade Organization, with a view to considering its incorporation into this Agreement.

2. In the context of paragraph 1, the Parties confirm their current practice of not imposing customs duties on electronic transmissions under paragraph 46 of the Hong Kong Ministerial Declaration of December 2005.

Article 77
Domestic Regulation

Each Party shall endeavour to 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.

Article 78
Electronic Signatures and Certification Services

1. Neither Party shall adopt or maintain legislation for electronic signatures that would:

- (a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic signature methods for that transaction or electronic communication that has significant relevance to that transaction;
- (b) prevent parties to an electronic transaction from having the opportunity to prove in court that their electronic transaction or electronic communication that has significant relevance to that transaction complies with any legal requirements with respect to electronic signatures; or
- (c) prevent parties to an electronic transaction from choosing the court or tribunal to which they bring any dispute concerning the transaction.

2. Notwithstanding paragraph 1, each Party may require that, for a particular category of electronic transactions or electronic communications that have significant relevance to those 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 recognised in accordance with the Party's laws and regulations, provided that the requirement:

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

3. This Article shall not apply to any transactions or communications that have significant relevance to those transactions, if those transactions are not permitted to be made electronically under each Party's laws and regulations.

4. Each Party shall, in accordance with its legislation on electronic signatures and certification services, endeavour to facilitate the procedure of accreditation or recognition of suppliers of certification services, which have already obtained accreditation or recognition under the legislation of the other Party.

Article 79
Paperless Trade Administration

1. Each Party shall endeavour to make all trade administration documents available to the public in an electronic form.
2. Each Party shall endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper versions 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 80
Protection of Online Consumers

1. The Parties recognise 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 recognise the importance of cooperation between their respective competent authorities in charge of consumer protection on activities related to electronic commerce in the context of their bilateral trade in order to enhance consumer protection.
3. The Parties recognise the importance of:
 - (a) adopting or maintaining measures, in accordance with their respective laws and regulations, to protect the personal data of electronic commerce users; and
 - (b) taking international standards and criteria into account in developing such measures.

Article 81
Private Sector Participation

1. Each Party shall endeavour to ensure that regulatory frameworks governing electronic commerce support industry-led development of electronic commerce with a view to promoting bilateral trade between the Parties.

2. Each Party shall encourage the private sector to adopt self-regulation, including through codes of conduct, guidelines and enforcement mechanisms, with a view to supporting electronic commerce.

Article 82 Cooperation

1. The Parties shall cooperate to identify and overcome obstacles encountered in particular by small and medium-sized enterprises in using electronic commerce in the context of their bilateral trade.

2. The Parties shall endeavour to share information and experiences, including on related laws, regulations and best practices in the field of electronic commerce in relation to, *inter alia*:

- (a) data privacy;
- (b) fight against unsolicited commercial messages transmitted through the Internet such as electronic mails;
- (c) consumer confidence in electronic commerce;
- (d) cyber-security;
- (e) intellectual property;
- (f) electronic government; and
- (g) public morals, in particular ethics for young generations.

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

4. The Parties shall, where appropriate, cooperate in relevant international organisations and fora to contribute to the development of the international framework for electronic commerce.

Article 83
Exceptions

For the purposes of this Chapter, Articles 22, 55 and 56 shall apply *mutatis mutandis*.