

Chapter 16

Electronic Commerce

Article 16.1: Definitions¹⁶⁻¹

For the purposes of this Chapter:

- (a) **digital certificates** are electronic documents or files that are issued or otherwise linked to a party to an electronic communication, transaction or contract for the purpose of establishing the party's identity, authority or other attributes;
- (b) **electronic authentication** means the process of establishing levels of confidence in the identity of a party to an electronic communication or transaction;
- (c) **electronic version of a document** means a document in electronic format prescribed by a Party, including a document sent by facsimile transmission;
- (d) **personal data** means information about an individual whose identity is apparent, or can reasonably be ascertained, from the information;
- (e) **trade administration documents** means forms issued or controlled by a Party which must be completed by or for an importer or exporter in relation to the import or export of goods;
- (f) **party** means a person who takes part in a transaction or contract; and
- (g) **electronic transmission** means the transfer of digital products using any electromagnetic or photonic means.

Article 16.2: General Provisions

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 consistent with this Agreement.
2. The aim of this Chapter is to promote electronic commerce between the Parties and the wider use of electronic commerce globally.
3. The Parties agree that, to the maximum extent possible, bilateral trade in electronic commerce shall be no more restricted than comparable non-electronic bilateral trade.

¹⁶⁻¹ For greater certainty, these definitions apply only to this Chapter.

Article 16.3: Electronic Supply of Services

Nothing in this Chapter imposes obligations to allow the electronic supply of a service nor the electronic transmission of content associated with those services, except in accordance with the provisions of Chapter 9 (Cross-Border Trade in Services), Chapter 10 (Investment) or Chapter 12 (Financial Services), including the Annexes (Non-Conforming Measures).

Article 16.4: Customs Duties

Each Party shall not impose customs duties on electronic transmissions between the Parties.

Article 16.5: Domestic Electronic Transactions Frameworks

1. Each Party shall adopt or maintain measures regulating electronic transactions based on the following principles:
 - (a) a transaction including a contract shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of an electronic communication; and
 - (b) laws should not discriminate arbitrarily between different forms of technology.
2. Nothing in paragraph 1 prevents the Parties from making exceptions in their domestic laws to the general principles outlined in that paragraph.
3. Each Party shall:
 - (a) minimise the regulatory burden on electronic commerce; and
 - (b) ensure that its measures regulating electronic commerce support industry-led development of electronic commerce.

Article 16.6: Electronic Authentication

1. The Parties recognise that electronic authentication represents an element that facilitates trade.
2. The Parties shall work towards the mutual recognition of digital certificates and electronic signatures at governmental level, based on internationally accepted standards.
3. Each Party shall adopt or maintain measures regulating electronic authentication that:

- (a) permit parties who take part in a transaction or contract by electronic means to determine the appropriate authentication technologies and implementation models, and do not limit the recognition of such technologies and implementation models, unless there is a domestic or international legal requirement to the contrary; and
 - (b) permit parties who take part in a transaction or contract by electronic means to have the opportunity to prove in court that their electronic transactions comply with any legal requirement.
- 4. The Parties shall encourage the use of interoperable electronic authentication.

Article 16.7: Online Consumer Protection

- 1. Each Party shall, to the extent possible and in a manner considered appropriate, adopt or maintain measures which provide protection for consumers using electronic commerce that is at least equivalent to measures which provide protection for consumers of other forms of commerce.
- 2. Each Party shall adopt or maintain measures regulating consumer protection where:
 - (a) consumers who participate in electronic commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce; and
 - (b) businesses engaged in electronic commerce should pay due regard to the interests of consumers and act in accordance with fair business, advertising and marketing practices.
- 3. Each Party shall encourage business to adopt the following fair business practices where business engages in electronic commerce with consumers:
 - (a) businesses should provide accurate, clear and easily accessible information about themselves, the goods or services offered, and about the terms, conditions and costs associated with a transaction to enable consumers to make an informed decision about whether to enter into the transaction;
 - (b) to avoid ambiguity concerning the consumer's intent to make a purchase, the consumer should be able, before concluding the purchase, to identify precisely the goods or services he or she wishes to purchase; identify and correct any errors or modify the order; express an informed and deliberate consent to the purchase; and retain a complete and accurate record of the transaction;
 - (c) consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.

Article 16.8: Online Personal Data Protection

Each Party shall adopt or maintain a domestic legal framework which ensures the protection of the personal data of the users of electronic commerce. In the development of personal data protection standards, each Party shall take into account the international standards and criteria of relevant international bodies.

Article 16.9: Paperless Trading

1. Each Party shall endeavor to accept electronic versions of trade administration documents used by the other Party as the legal equivalent of paper documents, except where:
 - (a) there is a domestic or international legal requirement to the contrary; or
 - (b) doing so would reduce the effectiveness of the trade administration process.
2. For greater certainty, the Parties confirm that Article 5.11 (Paperless Trading – Customs Administration Chapter) applies to paperless trading under this Chapter.
3. Each Party shall work towards developing a single window¹⁶⁻² to government incorporating relevant international standards for the conduct of trade administration, recognising that each Party will have its own unique requirements and conditions.

Article 16.10: Consultations

1. The Parties will consult on electronic commerce matters arising under this Chapter including in relation to electronic signatures, data protection, online consumer protection and any other matters agreed by the Parties.
2. The consultations may be held via teleconference, videoconference, or through other means, as mutually determined by the Parties.

¹⁶⁻² The Parties consider a non-binding definition of a single window is “A facility that allows parties involved in trade and transport to lodge standardised information and documents with a single entry point to fulfil all import, export and transit related regulatory requirements. If information is electronic, then individual data elements should only be submitted once.”