

CHAPTER 11

ELECTRONIC COMMERCE

ARTICLE 11.1 GENERAL

The Parties recognise the economic growth and opportunity that electronic commerce provides, and the importance of avoiding barriers to its use and development.

ARTICLE 11.2 ELECTRONIC SUPPLY OF SERVICES

For greater certainty, the Parties affirm that measures affecting the supply of a service using electronic means fall within the scope of the obligations contained in the relevant provisions of Chapters 8 (Cross-Border Trade in Services) and 9 (Investment) subject to any exceptions or non-conforming measures set out in this Agreement, which are applicable to such obligations.

ARTICLE 11.3 CUSTOMS DUTIES AND INTERNAL TAXES

1. Neither Party may impose customs duties on electronic transmission between the Parties.
2. For the purposes of determining applicable customs duties, each Party shall determine the customs value of an imported carrier medium bearing a digital product based on the cost or value of the carrier medium alone, without regard to the cost or value of the digital product stored on the carrier medium.
3. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from imposing internal taxes, directly or indirectly, on digital products, provided they are imposed in a manner consistent with this Agreement.

ARTICLE 11.4 NON-DISCRIMINATORY TREATMENT

1. Neither Party may accord less favourable treatment to some digital products transmitted electronically than it accords to other like digital products transmitted electronically:
 - (a) on the basis that:
 - (i) the digital products receiving less favourable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory; or
 - (ii) the author, performer, producer, developer, or distributor of such digital products is a person of the other Party or non-Party;

or

- (b) so as otherwise to afford protection to the other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory.

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

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

3. Paragraphs 1 and 2 do not apply to any non-conforming measure adopted or maintained in accordance with Articles 8.6 (Non-Conforming Measures) and 9.11 (Non-Conforming Measures).

ARTICLE 11.5 AUTHENTICATION AND ELECTRONIC SIGNATURES

1. Neither Party may:

- (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction;
- (b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to authentication; or
- (c) deny a signature legal validity solely on the basis that it is an electronic signature.

2. Notwithstanding paragraph 1, the authorities represented by a Party may require that, for a particular category of transactions, the method of authentication meet certain performance standards or be certified by an authority accredited in accordance with the Party's laws and regulations, provided the requirement:

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

ARTICLE 11.6 PAPERLESS TRADE ADMINISTRATION

1. Each Party shall endeavour to make all trade administration documents available to the public in electronic form.
2. Each Party shall endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such documents.

ARTICLE 11.7 COOPERATION

Recognising the global nature of electronic commerce, the Parties affirm the importance of:

- (a) working together to promote the use of electronic commerce by small and medium enterprises;
- (b) sharing information and experiences on laws, regulations, and programs in the sphere of electronic commerce, including those related to data privacy, consumer protection and promoting confidence in electronic commerce and electronic signatures;
- (c) encouraging the private sector to adopt self-regulation, including through codes of conduct, model contracts, guidelines, and enforcement mechanisms that foster electronic commerce; and
- (d) actively participating in bilateral and multilateral fora to promote the development of electronic commerce.

ARTICLE 11.8 DEFINITIONS

For the purposes of this Chapter:

carrier medium means any physical object capable of storing the digital codes that form a digital product by any method now known or later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, and includes, but not limited to, an optical medium, a floppy disk, and a magnetic tape;

digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution, regardless of whether they are fixed on a carrier medium or transmitted electronically²⁸;

electronic authentication means the process of testing an electronic statement or claim, in order to establish a level of confidence in the statement's or claim's reliability;

electronic signature means the meaning set out in its domestic laws and regulations by each

²⁸ For greater certainty, digital products do not include digitised representation of financial instruments, including money.

Party;

electronic means means employing computer processing; and

electronic transmission or transmitted electronically means the transfer of digital products using any electromagnetic or photonic means.