

CHAPTER 9 DIGITAL TRADE

ARTICLE 9.1 Definitions

For the purposes of this Chapter:

“authentication” means the process of verifying or testing an electronic statement/communication or claim, in order to establish a level of confidence in the statement's or claim's reliability and ensuring the integrity of an electronic communication;

“customs duty” refers to any duty or charge of any kind imposed in connection with the importation of a product, but does not include any:

- (a) charge equivalent to an internal tax imposed in conformity with Article III of the GATT 1994;
- (b) anti-dumping or countervailing duty that is applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on the Implementation of Article VI of the GATT 1994, and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement; or
- (c) fee or other charge in connection with importation commensurate with the cost of services rendered in conformity with Article VIII of the GATT 1994;

“digital or electronic signature” means data in digital or electronic form that is in, affixed to, or logically or cryptographically associated with, a digital or electronic document, and that may be used to identify or verify the signatory in relation to the digital or electronic document and indicate the signatory's approval of the information contained in the digital or electronic document and is as per the legal/regulatory frameworks of the Party;

“electronic transmission” or **“transmitted electronically”** means a transmission made using any electromagnetic means, including by photonic means;

“open data” means non-proprietary information, including data made freely available to the public by the Government, which is machine readable, free to use, reuse, and redistribute;

“personal data” means any information, including data, about or related to an identified or identifiable natural person, whether online or offline or any combination thereof and shall also include any inference drawn from such data for the purpose of profiling; and

“unsolicited commercial electronic message” means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient, through

an internet service supplier or, telecommunications service provider to the extent provided for under the laws and regulations of each Party.

ARTICLE 9.2

Objectives

1. The Parties recognise the economic growth and opportunity that digital trade provides, the importance of avoiding barriers to its use and development, the importance of frameworks that promote consumer confidence in digital trade and the applicability of the WTO Agreement to measures affecting digital trade.
2. The Parties seek to foster an environment conducive to the further advancement of digital trade, including electronic commerce and the digital transformation of the global economy, by strengthening bilateral cooperation on these matters.
3. The Parties seek to enhance cooperation towards the development of digital trade bilaterally as well as globally.

ARTICLE 9.3

General Provisions

1. This Chapter shall apply to measures adopted or maintained by a Party that affect trade by electronic means.
2. This Chapter shall not apply to:
 - (a) government procurement;
 - (b) information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection.
3. For greater certainty, the Parties affirm that measures affecting the supply of a service or good performed or delivered electronically are subject to the relevant provisions of Chapter 2 (Trade in Goods), Chapter 8 (Trade in Services), and Chapter 12 (Investment and Trade), including any Annex, exceptions or limitations set out in this Agreement that are applicable to such provisions. In the event of any conflict between this Chapter and Chapter 2 (Trade in Goods), Chapter 8 (Trade in Services), and Chapter 12 (Investment and Trade), the provisions of those Chapters shall prevail.
4. Neither Party shall have recourse to dispute settlement under Chapter 15 (Dispute Settlement) for any matter arising under this Chapter.

ARTICLE 9.4

Paperless Trading

1. Each Party shall endeavour to:
 - (a) make trade administration documents available to the public in digital or electronic form; and

- (b) accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.
- 2. Each Party shall endeavour to publish information on measures related to paperless trading.

ARTICLE 9.5

Domestic Electronic Transactions Framework

- 1. Each Party shall endeavour to maintain a legal framework governing electronic transactions consistent with the principles of the *UNCITRAL Model Law on Electronic Commerce* (1996).
- 2. Each Party shall endeavour to:
 - (a) avoid any unnecessary regulatory burden on electronic transactions; and
 - (b) facilitate input by interested persons in the development of its legal framework for electronic transactions, including in relation to trade documentation.

ARTICLE 9.6

Authentication

- 1. Except in circumstances otherwise provided for under its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in digital or electronic form.
- 2. Neither Party shall adopt or maintain measures regarding authentication that would:
 - (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or
 - (b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their transaction complies with any legal requirements with respect to authentication.
- 3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its laws and regulatory frameworks.
- 4. The Parties shall endeavour to mutually recognise digital or electronic signatures in accordance with their laws and regulatory frameworks.

ARTICLE 9.7

Digital Identities

Recognising that cooperation between the Parties on digital identities for natural persons and enterprises will promote connectivity and further growth of digital trade, and recognising that each Party may take different legal and technical approaches to digital identities, the Parties shall endeavour to pursue mechanisms to promote cooperation between their respective digital identity regimes. This may include:

- (a) developing appropriate cooperation frameworks involving each Party's implementation methods of digital identities; and
- (b) enhancing cooperation on understanding the legal and technical frameworks and implementation methodologies and endeavouring to cooperate in various international forums.

ARTICLE 9.8

Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from misleading, deceptive and fraudulent commercial practices when they engage in digital trade.

2. Each Party shall endeavour to adopt or maintain consumer protection laws to proscribe misleading, deceptive and fraudulent commercial activities that cause harm or potential harm to consumers engaged in digital trade.¹

3. The Parties recognise the importance of cooperation between their respective consumer protection authorities in order to enhance consumer protection.

4. Each Party shall endeavour to publish information on the consumer protection it provides to consumers, including how:

- (a) consumers can pursue remedies; and
- (b) businesses can comply with any legal requirements.

ARTICLE 9.9

Unsolicited Commercial Electronic Messages

1. Each Party shall endeavour to adopt or maintain measures regarding unsolicited commercial electronic messages that:

- (a) require a supplier of unsolicited commercial electronic messages to facilitate the ability of a recipient to prevent ongoing reception of those messages;

¹ For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as generally-applicable consumer protection laws or regulations or sector- or medium-specific laws or regulations regarding consumer protection.

- (b) require the consent, as specified in the laws and regulations of each Party, of recipients to receive commercial electronic messages; or
 - (c) otherwise provide for the minimisation of unsolicited commercial electronic messages.
2. Each Party shall endeavour to provide recourse against a supplier of unsolicited commercial electronic messages that does not comply with a measure adopted or maintained in accordance with paragraph 1.
3. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

ARTICLE 9.10

Personal Data Protection

1. The Parties recognise the economic and social benefits of protecting the personal data of persons who conduct or engage in electronic transactions and the contribution that this makes to enhancing consumer confidence in digital trade.
2. To this end, each Party shall endeavour to adopt or maintain a legal framework that provides for the protection of the personal data of the users of digital trade.² In the development of any legal framework for the protection of personal data, each Party shall endeavour to take into account principles and guidelines of relevant international organisations.
3. Each Party shall endeavour to publish information on the personal data protection it provides to users, including how:
- (a) individuals can pursue remedies; and
 - (b) businesses can comply with any legal requirements.
4. The Parties shall endeavour to cooperate, to the extent possible, regarding the protection of personal information or personal data transferred from a Party.

ARTICLE 9.11

Cross-Border Flow of Information

The Parties recognise the importance of the flow of information in facilitating trade, and acknowledge the importance of protecting personal data. As such, the Parties shall endeavour to promote electronic information flows across borders subject to their laws and regulatory frameworks.

² For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as a comprehensive privacy, personal information or personal data protection laws, and sector-specific laws covering privacy.

ARTICLE 9.12

Open Data

1. The Parties recognise that facilitating public access to and use of open data contributes to stimulating economic and social welfare, competitiveness, productivity improvements and innovation. Each Party shall endeavour to ensure that such open data is allowed to be searched, retrieved, used, reused, and redistributed freely by the public, to the maximum extent possible, subject to its laws and regulations.
2. The Parties shall endeavour to cooperate to identify ways in which each Party can expand access to, and use of open data, with a view to enhancing and generating business, and research opportunities.

ARTICLE 9.13

Digital Government

1. The Parties recognise that technology can enable more efficient and agile government operations, improve the quality and reliability of government services, and enable governments to better serve the needs of their citizens and other stakeholders.
2. To this end, the Parties shall endeavour to develop and implement programs to digitally transform their respective government operations and services, which may include:
 - (a) adopting open and inclusive government processes focusing on accessibility, transparency, and accountability in a manner that promotes digital inclusion and overcomes digital divides;
 - (b) promoting cross-sectoral and inter-governmental coordination and collaboration on digital agenda issues;
 - (c) shaping government processes, services and policies with digital inclusivity in mind;
 - (d) promoting public digital platforms, digital public goods, and common digital enablers for efficient government service delivery;
 - (e) leveraging emerging technologies to build capabilities to facilitate proactive responses to natural calamities, disasters, and crises;
 - (f) leveraging artificial intelligence and other emerging technologies in government for the efficient planning, delivery and monitoring of public policies;
 - (g) developing rules and ethical principles for the trustworthy and responsible use of emerging technologies; and
 - (h) promoting initiatives to raise the level of digital capabilities and skills of both the populace and the government workforce.

3. Recognising that the Parties can benefit by sharing their experiences with digital government initiatives, the Parties shall endeavour to cooperate on activities relating to the digital transformation of government and government services, which may include:

- (a) exchanging information and experiences on digital government programmes and policies;
- (b) sharing best practices on digital government and the digital delivery of government services; and
- (c) providing advice or training, including through exchange of officials, to assist the other Party in building digital government capacity.

ARTICLE 9.14 **Cooperation on Digital Products**

1. The Parties shall cooperate to mutually promote each other's digital products on the basis that:

- (a) such digital products are created, produced, published and stored in the territory of the other Party; and
- (b) the author, performer, producer or developer of such digital products is a person of the other Party.

2. Paragraph 1 is subject to relevant exceptions, limitations or reservations set out in this Agreement or its Annexes, if any.

3. This Article does not apply to measures affecting the electronic transmission of a series of text, video, images, sound recordings, and other products scheduled by a content provider for audio and/or visual reception, and for which the content consumer has no choice over the scheduling of the series.

ARTICLE 9.15 **Customs Duties**

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

2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on content transmitted digitally or electronically, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

3. Each Party may adjust its practice referred to in paragraphs 1 and 2 with respect to any further outcomes in the WTO Decisions on customs duties on electronic transmission within the framework of the Work Programme on Electronic Commerce.

ARTICLE 9.16
Digital and Electronic Invoicing

1. The Parties recognise the importance of digital and electronic invoicing to increase the efficiency, accuracy and reliability of commercial transactions. Each Party also recognises the benefits of ensuring that the systems used for digital and electronic invoicing within its territory are in accordance with the legal and regulatory frameworks used in the other Party's territory.
2. Each Party shall endeavour to ensure that the implementation of cross-border measures related to digital and electronic invoicing in its territory are based on international frameworks.
3. The Parties recognise the economic importance of promoting the global adoption of digital and electronic invoicing systems, including through international frameworks. To this end, the Parties shall endeavour to:
 - (a) promote, encourage, support or facilitate the adoption of digital and electronic invoicing by enterprises;
 - (b) promote the existence of policies, infrastructure and processes that support digital and electronic invoicing;
 - (c) generate awareness of, and build capacity for, digital and electronic invoicing; and
 - (d) share best practices and promote the adoption of international digital and electronic invoicing systems.

ARTICLE 9.17
Digital and Electronic Payments

Recognising the rapid growth of digital and electronic payments, in particular those provided by non-bank, non-financial institutions and financial technology enterprises, the Parties shall endeavour to support the development of efficient, safe and secure cross-border digital and electronic payments by:

- (a) promoting interoperability and the interlinking of digital electronic payment infrastructures;
- (b) encouraging innovation and competition in digital and electronic payments services;
- (c) facilitate the use of open platforms and architectures such as tools and protocols provided for through Application Programming Interfaces (APIs) and encourage payment service providers to safely and securely make APIs for their products and services available to third parties, where possible, to facilitate greater interoperability, innovation and competition in electronic payments; and

- (d) facilitate innovation and competition and the introduction of new financial and electronic payment products and services in a timely manner, such as through adopting regulatory and industry sandboxes.

ARTICLE 9.18

Principles on Access to and Use of the Internet for Digital Trade

To support the development and growth of digital trade, each Party recognises that consumers in its territory should be able to:

- (a) access and use services and applications of their choice, unless prohibited by the Party's laws and regulatory framework; and
- (b) connect their choice of devices to the internet, provided that such devices do not harm the network and are not otherwise prohibited by the Party's laws and regulatory frameworks.

ARTICLE 9.19

Cyber Security

The Parties have a shared vision to promote secure digital trade and recognise that threats to cybersecurity undermine confidence in digital trade. Accordingly, the Parties recognise the importance of:

- (a) building the capabilities of their appropriate competent authorities responsible for computer security incident response; including through exchange of best practices;
- (b) using existing collaboration mechanisms to further cooperate on matters that affect the cyber security of the digital infrastructure of the Parties with an aim to build safe and secure cyber space; and
- (c) promoting the development of a strong public and private workforce in the area of cybersecurity, including possible initiatives relating to mutual recognition of qualifications.

ARTICLE 9.20

Cooperation

Recognising the importance of digital trade to their collective economies, the Parties shall endeavour to maintain a dialogue on regulatory matters relating to digital trade with a view to sharing information and experiences, as appropriate, including on related laws, regulations and their implementation and best practices with respect to digital trade, including in relation to:

- (a) online consumer protection;
- (b) personal data protection;
- (c) anti-money laundering and sanctions compliance for digital trade;
- (d) unsolicited commercial electronic messages;

- (e) authentication;
- (f) intellectual property concerns with respect to digital trade;
- (g) challenges for small and medium-sized enterprises in digital trade;
- (h) digital government;
- (i) digital identities; and
- (j) any other area mutually agreed by the Parties.