

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

- 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.
- The aim of this Chapter is to promote electronic commerce between the Parties and the wider use of electronic commerce globally.
- 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.

第16章 电子商务

第16.1条：定义¹⁶⁻¹

本章规定：

(a) 数字证书是指为建立当事人身份、权限或其他属性，而向电子通信、交易或合同的当事人签发或以其他方式链接的电子文档或文件；(b) 电子认证是指建立对电子通信或交易当事人身份的信任程度的过程；(c) 电子文档是指一方规定的电子格式文档，包括通过传真传输发送的文档；(d) 个人数据是指从信息中可以明显看出或合理推断出身份的个人的信息；(e) 贸易管理文件是指一方签发或控制的表格，进口商或出口商必须根据商品进出口情况填写或提交；(f) 当事人是指参与交易或合同的人；以及(g) 电子传输是指使用任何电磁或光子手段传输数字产品。

第16.2条：一般规定

- 各方承认电子商务带来的经济增长和机遇，以及避免不必要的障碍以促进其与本协议一致的使用和发展的重要性。
- 本章的目的是促进各方之间以及全球范围内的电子商务使用。
- 各方同意，在最大程度上，电子商务双边贸易的管制不得比同类非电子双边贸易更严格。

¹⁶⁻¹ 为进一步明确，这些定义仅适用于本章。

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

- Each Party shall adopt or maintain measures regulating electronic transactions based on the following principles:
 - 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
 - laws should not discriminate arbitrarily between different forms of technology.
- Nothing in paragraph 1 prevents the Parties from making exceptions in their domestic laws to the general principles outlined in that paragraph.
- Each Party shall:
 - minimise the regulatory burden on electronic commerce; and
 - ensure that its measures regulating electronic commerce support industry-led development of electronic commerce.

Article 16.6: Electronic Authentication

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

第16.3条：电子服务提供

本章任何内容均未规定允许服务电子供应或与该等服务相关的电子传输内容的义务，除非根据第9章（跨境服务贸易）、第10章（投资）或第12章（金融服务）的规定，包括附件（不符合措施）。

第16.4条：关税

各当事人不得对当事人之间的电子传输征收关税。

第16.5条：国内电子交易框架

- 各当事人应根据以下原则制定或维持规范电子交易的措施：
 - 一项包含合同的交易不应仅因其采用电子通信形式而否认其法律效力、有效性或可执行性；以及(b) 法律不应任意地歧视不同的技术形式。
- 第1段中的任何内容均不得阻止各方在其国内法中对其所概述的一般原则作出例外规定。
- 各方应：
 - 最大限度地减轻电子商务的监管负担；以及(b) 确保其规范电子商务的措施支持电子商务的产业主导发展。

第16.6条：电子认证

- 各方承认，电子认证代表了一种促进贸易的要素。
- 各方应当基于国际公认标准，在政府层面推动数字证书和电子签名的相互承认。
- 各方应当采用或维持电子认证监管措施，该措施包括：

- (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.

(a) 允许通过电子方式参与交易或合同的各方确定适当的认证技术和实施模型，并且不限制对这类技术和实施模型的认可，除非存在相反的国内或国际法律要求；以及 (b) 允许通过电子方式参与交易或合同的各方有机会在法庭上证明其电子交易符合任何法律要求。

4. 各方应鼓励使用互操作电子认证。

第16.7条：在线消费者保护

- 1. 各方应尽可能并以适当的方式，采取或维持措施，为使用电子商务的消费者提供保护，其保护水平至少应相当于为其他商业形式消费者的保护水平。
- 2. 各方应采取或维持消费者保护措施，其中：
 - (a) 参与电子商务的消费者应享有透明且有效的消费者保护，其保护水平不应低于其他商业形式提供的保护水平；以及 (b) 从事电子商务的企业应充分考虑消费者的利益，并遵守公平的商业、广告和营销行为。
- 3. 每一方应当鼓励商业在与消费者进行电子商务时采用以下公平商业实践：
 - (a) 企业应提供准确、清晰且易于获取的关于自身、所提供的商品或服务以及与交易相关的条款、条件和费用的信息，以便消费者能够就是否进行交易做出知情决定；(b) 为避免对消费者购买意图的歧义，消费者应在完成购买前能够准确识别其希望购买的商品或服务；识别并更正任何错误或修改订单；表达对购买的知情和故意同意；并保留完整准确的交易记录；(c) 消费者应获得易于使用、安全的支付机制以及关于这些机制提供的安全级别的信息。

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

- 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:
 - there is a domestic or international legal requirement to the contrary; or
 - doing so would reduce the effectiveness of the trade administration process.
- For greater certainty, the Parties confirm that Article 5.11 (Paperless Trading – Customs Administration Chapter) applies to paperless trading under this Chapter.
- 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

- 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.
- 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.”

第16.8条：在线个人数据保护

每一方应采纳或维持一个国内法律框架，确保电子商务用户个人数据的保护。在制定个人数据保护标准时，每一方应考虑相关国际机构提供的国际标准和标准。

第16.9条：无纸化贸易

- 各方应努力接受另一方使用的贸易管理文件电子版本，作为纸质文件的法律等效，但除以下情况外：
 - (a) 存在相反的国内或国际法律要求；或 (b) 如此做将降低贸易管理过程的有效性。
- 为进一步明确，各方确认第5.11条（无纸化贸易——海关管理章节）适用于本章下的无纸化贸易。
- 各方应努力开发一个符合相关国际贸易管理国际标准的政府单一窗口¹⁶⁻²，承认每个方都有其独特的要求和条件。

第16.10条：磋商

- 各方将就本章产生的电子商务事项进行磋商，包括与电子签名、数据保护、在线消费者保护以及双方同意的其他事项相关的内容。
- 磋商可以通过电话会议、视频会议或其他方式举行，由双方共同决定。

¹⁶⁻² 各方认为单一窗口的非约束性定义是“一个允许参与贸易和运输的各方向单一入口提交标准化信息和文件，以履行所有与进口、出口和转运相关的监管要求的设施。如果信息是电子的，那么单个数据元素只需提交一次。”