

## **CHAPTER TWELVE**

### **DIGITAL TRADE**

#### **Article 12.1: Scope and General Provisions**

1. The Parties recognize the economic growth and opportunities provided by digital trade and the importance of frameworks that promote consumer confidence in digital trade and of avoiding unnecessary barriers to its use and development. In the same way, the Parties recognize the importance of confidence, interoperability, innovation, and security in digital trade.
2. This Chapter shall apply to measures adopted or maintained by a Party that affect trade by electronic means.
3. This Chapter shall not apply to:
  - (a) government procurement; or
  - (b) information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection.
4. For greater certainty, measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapter Eight (Cross-Border Trade in Services) and Chapter Ten (Financial Services), including any exceptions or non-conforming measures set out in this Agreement that are applicable to those obligations.
5. For greater certainty, the obligations contained in Articles 12.3, 12.14, 12.15, and 12.17 are:
  - (a) subject to the relevant provisions, exceptions and non-conforming measures of Chapter Eight (Cross-Border Trade in Services) and Chapter Ten (Financial Services); and
  - (b) to be read in conjunction with any other relevant provisions in this Agreement.
6. The obligations contained in Articles 12.3, 12.14 and 12.15 shall not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 8.6 (Non-Conforming Measures), or Article 10.9 (Non-Conforming Measures).

## **Article 12.2: Customs Duties**

1. Neither Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of a Party and a person of the other Party.
2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on content transmitted electronically, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

## **Article 12.3: Non Discriminatory Treatment of Digital Products**

1. Neither Party shall accord less favorable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of the other Party, or to digital products of which the author, performer, producer, developer or owner is a person of the other Party, than it accords to other like digital products.<sup>1</sup>
2. Paragraph 1 shall not apply to the extent of any inconsistency with the rights and obligations concerning intellectual property contained in another international agreement to which both Parties are party or in Chapter Thirteen (Intellectual Property Rights).
3. The Parties understand that this Article does not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.
4. This Article shall not apply to broadcasting.

## **Article 12.4: Domestic Electronic Transactions Framework**

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the *UNCITRAL Model Law on Electronic Commerce 1996* or the *United Nations Convention on the Use of Electronic Communications in International Contracts*, done in New York, 23 November 2005.

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<sup>1</sup> In interpreting the obligations of Article 12.3, the Parties understand that the non-discriminatory treatment of digital products shall be limited to national treatment and not cover most-favored-nation treatment.

2. Each Party shall endeavor 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.

#### **Article 12.5: Electronic Authentication and Electronic Signatures**

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 electronic form.
2. Neither Party shall adopt or maintain measures for electronic 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 law.
4. The Parties shall encourage the use of interoperable electronic authentication.

#### **Article 12.6: Online Consumer Protection**

1. The Parties recognize the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent and deceptive commercial activities, unfair contract terms and unconscionable conduct when they engage in digital trade.
2. For the purposes of this Article, fraudulent and deceptive commercial

activities refer to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose a potential threat of such harm if not prevented, for example:

- (a) a practice of making a misrepresentation of material fact, including misleading advertising, that may cause significant detriment to the economic interests of a misled consumer;
- (b) a practice of failing to deliver products or provide services to consumers on purpose after the consumers are charged; or
- (c) a practice of charging or debiting consumers' financial, telephone, digital or other accounts without authorization.

3. Each Party shall adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.

4. The Parties recognize the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border digital trade in order to enhance consumer welfare.

5. To this end, the Parties shall promote, as appropriate and subject to the laws and regulations of each Party, cooperation on matters of mutual interest related to fraudulent and deceptive commercial activities, including in the enforcement of their consumer protection laws with respect to online commercial activities.

6. The Parties recognize the benefits of mechanisms, including alternative dispute resolution, to facilitate the resolution of claims over electronic commerce transactions.

#### **Article 12.7: Personal Information Protection**

1. The Parties recognize the economic and social benefits of protecting the personal information of users of digital trade and the contribution that this makes to enhancing consumer confidence in digital trade.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of digital trade. In the development of its legal framework for the protection of personal information, each Party should take into account the principles and guidelines

of relevant international bodies.<sup>2</sup>

3. Each Party shall endeavor to adopt non-discriminatory practices in protecting users of digital trade from personal information protection violations occurring within its jurisdiction.

4. Each Party shall publish information on the personal information protections it provides to users of digital trade, including how:

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

5. Recognizing that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks. To this end, the Parties shall endeavor to exchange information on any such mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.

#### **Article 12.8: Paperless Trading**

1. Each Party shall make publicly available, including through a process prescribed by that Party, electronic versions of all existing publicly available trade administration documents.

2. Whenever practicable, each Party shall provide electronic versions of trade administration documents referred to in paragraph 1 in English.

3. Each Party shall accept electronic versions of trade administration documents as the legal equivalent<sup>3</sup> of the paper versions of those documents.

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<sup>2</sup>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, sector-specific laws covering privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to privacy.

<sup>3</sup> This includes but is not limited to electronic Certificates of Origin for the purposes of claiming preferential tariff treatment provided for goods traded under the preferential trade agreements between the Parties.

### **Article 12.9: Logistics**

1. The Parties recognize the importance of efficient cross-border logistics which help lower the cost and improve the speed and reliability of supply chains.
2. The Parties shall endeavor to share best practices and general information regarding the logistics sector.

### **Article 12.10: Electronic Invoicing**

1. The Parties recognize the importance of electronic invoicing to increase the efficiency, accuracy and reliability of commercial transactions. Each Party also recognizes the benefits of ensuring that the systems used for electronic invoicing within its territory are interoperable with the systems used for electronic invoicing in the other Party's territory.
2. Except in circumstances otherwise provided by any domestic law and legal framework, each Party shall endeavor to ensure that the implementation of measures related to electronic invoicing in its territory supports cross-border interoperability between the Parties' electronic invoicing frameworks. To this end, each Party shall endeavor to base its measures relating to electronic invoicing on the international frameworks.
3. The Parties recognize the economic importance of promoting the global adoption of interoperable electronic invoicing systems, while taking into account relevant international frameworks. To this end, the Parties shall endeavor to:
  - (a) promote, encourage, support, or facilitate the adoption of electronic invoicing by enterprises;
  - (b) promote the adoption of policies, infrastructure, and process that support electronic invoicing;
  - (c) generate awareness of, and build capacity for, electronic invoicing; and
  - (d) share best practices and promote the adoption of international electronic invoicing systems.

### **Article 12.11: Express Shipments**

1. The Parties recognize that electronic commerce plays an important role

in increasing trade. To facilitate air express shipments, each Party shall ensure that its customs procedures are applied in a manner that is predictable, consistent and transparent.

2. Each Party shall endeavor to adopt or maintain expedited customs procedures for air express shipments while maintaining appropriate customs control and selection.

#### **Article 12.12: Electronic Payments**

1. To facilitate the rapid growth of electronic payments, in particular those provided by non-bank, non-financial institutions and FinTech enterprises, the Parties recognize the importance of developing an efficient, safe, and secure environment for cross-border electronic payments, including by:

- (a) fostering the adoption and use of internationally accepted standards for electronic payments;
- (b) promoting interoperability and the interlinking of electronic payment infrastructures; and
- (c) encouraging innovation and competition in electronic payments services.

2. To this end, each Party shall:

- (a) not arbitrarily or unjustifiably discriminate between financial institutions and non-financial institutions in relation to access to services and infrastructure necessary for the operation of electronic payment systems;
- (b) promote, for the relevant electronic payment systems, the adoption of international standards for electronic payment messaging, for the electronic exchange of data between financial institutions and service providers that allows greater interoperability between electronic payment systems;
- (c) promote 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, competition and the introduction of new financial and electronic payment products and services.

3. In view of paragraph 1, the Parties recognize the importance of upholding safety, efficiency, trust, and security in electronic payment systems through regulations, and that the adoption and enforcement of regulations and policies should be proportionate to the risks undertaken by the payment service providers.

### **Article 12.13: Principles on Access to and Use of the Internet for Digital Trade**

Subject to their respective applicable policies, laws and regulations, the Parties recognize the benefits of consumers in their territories having the ability to:

- (a) access and use services and applications of a consumer's choice available on the Internet, subject to reasonable network management;<sup>4</sup>
- (b) connect the end-user devices of a consumer's choice to the Internet, provided that such devices do not harm the network; and
- (c) access information on the network management practices of a consumer's Internet access service supplier.

### **Article 12.14: Cross-Border Transfer of Information by Electronic Means**

1. The Parties recognize that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of business of a covered person.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

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<sup>4</sup> The Parties recognize that an Internet access service supplier that offers its subscribers certain content on an exclusive basis would not be acting contrary to this principle.



- (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
- (b) does not impose restrictions on transfers of information greater than are required to achieve the objective.

#### **Article 12.15: Location of Computing Facilities**

1. The Parties recognize that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.
2. Neither Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.
3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:
  - (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
  - (b) does not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective.

#### **Article 12.16: Unsolicited Commercial Electronic Messages**

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:
  - (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages;
  - (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 minimization of unsolicited commercial electronic messages.
- 2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraph 1.
- 3. The Parties shall endeavor to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

#### **Article 12.17: Source Code**

- 1. Neither Party shall require the transfer of, or access to, a source code of software owned by a person of the other Party, or to an algorithm expressed in that source code, as a condition for the import, distribution, sale or use of such software, or of products containing such software, in its territory.
- 2. This Article does not preclude a government agency, law enforcement agency, regulatory body, or judicial authority (“Relevant Body”) of a Party from requiring a person of the other Party to preserve or make available the source code of software, or an algorithm expressed in that source code, to the Relevant Body for an investigation, inspection, examination, enforcement action, or judicial or administrative proceeding,<sup>5</sup> subject to safeguards against unauthorized disclosure under the laws and regulations of the Party.

#### **Article 12.18: Cooperation**

- 1. Recognizing the importance of promoting cooperation under this Chapter as a means to build a stronger and more stable partnership in the digital economy, the Parties shall endeavor to:
  - (a) promote collaboration efforts and initiatives;
  - (b) work together to assist MSMEs to overcome obstacles and create opportunities to do business, with a gender and social

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<sup>5</sup> Such disclosure shall not be construed to negatively affect the status of source code of software or algorithm expressed in that source code as a trade secret, if such status is claimed by the trade secret owner.

inclusion approach;<sup>6</sup>

- (c) exchange information and share experiences on regulations, policies, enforcement, and compliance regarding digital trade, including:
  - (i) personal information protection;
  - (ii) online consumer protection, including means for consumer redress and building consumer confidence;
  - (iii) computing facilities;
  - (iv) unsolicited commercial electronic messages;
  - (v) security in electronic communications;
  - (vi) authentication; and
  - (vii) e-government;
- (d) exchange information and share views on consumer access to products and services offered online between the Parties;
- (e) participate actively in regional and multilateral fora to promote the development of digital trade; and
- (f) encourage development by the private sector of methods of self-regulation that foster digital trade, including codes of conduct, model contracts, guidelines, and enforcement mechanisms.

2. To ensure effective cooperation, the Parties shall establish a Digital Trade Working Group as specified in Annex 12-A.

#### **Article 12.19: Cooperation on Cybersecurity Matters**

The Parties recognize the importance of:

- (a) building the capabilities of their national entities responsible for computer security incident responses, including through the exchange of best practices; and

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<sup>6</sup> For Ecuador, sub paragraph (b) also applies to the Social and Solidarity Economy (“SSEs”), as defined in Article 1.4. (Definitions).

- (b) using existing collaboration mechanisms to cooperate to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties.

#### **Article 12.20: Data Innovation**

1. The Parties recognize that digitalization and the use of data in the digital economy promote economic growth. To support the cross-border transfer of information by electronic means and promote data-driven innovation in the digital economy, the Parties further recognize the need to create an environment that enables and supports, and is conducive to, experimentation and innovation, including through the use of regulatory sandboxes where applicable.

2. The Parties shall endeavor to support data innovation through:

- (a) collaborating on data-sharing projects, including projects involving researchers, academics, and industry, using regulatory sandboxes as required to demonstrate the benefits of the cross-border transfer of information by electronic means;
- (b) cooperating on the development of policies and standards for data portability; and
- (c) sharing research and industry practices related to data innovation.

#### **Article 12.21: SMEs and Startups**

1. The Parties recognize the fundamental role of SMEs and Startups in maintaining dynamism and enhancing competitiveness in the digital economy.

2. With a view towards enhancing trade and investment opportunities for SMEs in the digital economy, the Parties shall endeavor to:

- (a) exchange information and best practices in leveraging digital tools and technology to improve the capabilities and market reach of SMEs and Startups;
- (b) encourage participation by SMEs and Startups in online platforms and other mechanisms that could help SMEs and Startups link with international suppliers, buyers, and other potential business partners; and
- (c) foster close cooperation in digital areas that could help SMEs

and Startups adapt and thrive in the digital economy.

#### **Article 12.22: Artificial Intelligence**

1. The Parties recognize that the use and adoption of Artificial Intelligence (“AI”) technologies are becoming increasingly important within a digital economy offering significant social and economic benefits to natural persons and enterprises.
2. The Parties also recognize the importance of ethical governance frameworks for the trusted, safe, and responsible use of AI technologies that will help realize the benefits of AI.
3. In view of the cross-border nature of the digital economy, the Parties shall endeavor to cooperate by promoting dialogue and exchange of experiences on regulations, policies, and initiatives related to the use and adoption of AI technologies.

#### **Article 12.23: Fintech Cooperation**

1. The Parties shall promote cooperation between the FinTech industries in the Parties.
2. The Parties recognize that effective cooperation regarding FinTech will require the involvement of businesses. To this end, the Parties shall endeavor to:
  - (a) promote the development of FinTech solutions for business or financial sectors; and
  - (b) encourage collaboration of entrepreneurship or start-up talent between the Parties in FinTech, consistent with the laws and regulations of the respective Parties.

#### **Article 12.24: Definitions**

For the purposes of this Chapter:

**algorithm** means a defined sequence of steps taken to solve a problem or obtain a result;

**computing facilities** means computer servers and storage devices for

processing or storing information for commercial use but, does not include computer servers or storage devices of or used to access financial market infrastructures;

**covered person** means:

- (a) a “covered investment” as defined in Article 1.4 (Definitions);
- (b) an “investor of a Party” as defined in the Understanding on the Definitions and Obligations Regarding Investment, but does not include an investor in a financial institution; or
- (c) a “service supplier of a Party” as defined in Article 8.12 (Definitions),

but does not include a “financial institution” or a “cross-border financial service supplier of a Party” as defined in Article 10.19 (Definitions);

**digital product** means a computer program, text, video, image, sound recording, or other product that is digitally encoded, produced for commercial sale, or distribution, and that can be transmitted electronically;<sup>7,8</sup>

**electronic authentication** means the process or act of verifying the identity of a Party to an electronic communication or transaction, or ensuring the integrity of an electronic communication;

**electronic invoicing** means the automated creation, exchange, and processing of a request for payment between a supplier and a buyer using a structured digital format;

**electronic payments** means a payer’s transfer of a monetary claim acceptable to a payee made through electronic means;

**electronic signature** means data in electronic form that is in, affixed to, or logically associated with, an electronic document, and that may be used to identify the signatory in relation to the electronic document and indicate the signatory’s approval of the information contained in the electronic document;

**electronic transmission or transmitted electronically** means a transmission

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<sup>7</sup>For greater certainty, “digital product” does not include a digitised representation of a financial instrument, including money.

<sup>8</sup>The definition of “digital product” should not be understood to reflect a Party’s view on whether trade in digital products through electronic transmission should be categorised as trade in services or trade in goods.

made using any electromagnetic means, including by photonic means;

**financial market infrastructure** means systems in which financial services suppliers participate with other financial services, including the operator of the system, used for the purpose of:

- (a) clearing, settling or recording of payments, securities or derivatives; or
- (b) other financial transactions;

**FinTech** means the use of technology to improve and automate the delivery and use of financial services;

**personal information** means any information, including data, about an identified or identifiable natural person;

**trade administration documents** means forms issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the import or export of goods; and

**unsolicited commercial electronic message** means an electronic message, which is sent to an electronic address of a person for commercial or marketing purposes without the consent of the recipient or despite the explicit rejection of the recipient, through an Internet access service suppliers or, to the extent provided for under the laws and regulations of each Party, other telecommunications service.

**Annex 12-A**  
**Digital Trade Working Group**

1. The functions of the Digital Trade Working Group are as follows:
  - (a) promoting collaboration efforts and initiatives;
  - (b) assisting MSMEs to overcome obstacles to its use;
  - (c) exchanging information related to this Chapter;
  - (d) discussing any issues related to this Chapter, including its interpretation and application;
  - (e) implementing other delegated matters; and
  - (f) considering any other issues related to this Chapter as determined by the Joint Committee.
2. The Digital Trade Working Group shall be composed of representatives of the governments of each Party.
3. Where appropriate, and as may be agreed by the Parties, the Digital Trade Working Group may include participation from other interested stakeholders, such as researchers, academics, industry, and other stakeholders. The Parties may collaborate with such stakeholders in convening the Digital Trade Working Group.
4. The Parties shall convene the Digital Trade Working Group at times agreeable to both Parties.



### **Understanding on Article 12.1.6 of Chapter Twelve (Digital Trade)**

The understanding was reached between the delegations of Korea and Ecuador during the course of negotiations on Chapter Twelve (Digital Trade) of this Agreement.

The Parties share the understanding that “*measures adopted or maintained in accordance with Article 8.6 (Non-Conforming Measures)*” referred to in Article 12.1.6 do not cover the non-conforming measure related to the supply of a service by a service supplier of a Party, through commercial presence in the territory of the other Party given the absence of investment chapter under the Strategic Economic Cooperation Agreement.

In this regard, the Parties agree that:

Further to Article 12.1.6, the obligations contained in Articles 12.3, 12.14 and 12.15 shall not apply to the non-conforming aspects of the Parties’ measures related to the supply of a service by a service supplier of a Party, through commercial presence in the territory of the other Party to the extent that such measures are adopted or maintained in accordance with any terms, limitations, qualifications, and conditions specified in a Party’s commitments, or are with respect to a sector that is not subject to a Party’s commitments, made in accordance with Article XX (Schedules of Specific Commitments) of the GATS.

This Understanding shall constitute an integral part of this Agreement.