

CHAPTER NINE

DIGITAL TRADE

Article 9.1: Definitions

For purposes of this Chapter:

covered person means a service supplier, as defined in Article 8.1 (Definitions), of the other Party;

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;^{1, 2}

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 in accordance with each Party's regulatory frameworks;

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

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

¹ For greater certainty, "digital product" does not include a digitized representation of a financial instrument, including money.

² 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 categorized as trade in services or trade in goods.

government data means non-proprietary data, held by the central level of government;

personal data means any information about or relating to 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 a commercial electronic message that is sent without the consent of the recipient or despite the explicit rejection of the recipient.

Article 9.2: Objectives

1. The Parties recognize 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.
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 mutual cooperation on these matters.

Article 9.3: Scope and 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) except for Article 9.12, 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 delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapter Eight (Trade in

Services) and its Annexes, including any exceptions set out in this Agreement that are applicable to those obligations.

4. Article 9.14 and 9.11 shall not apply to aspects of a Party's measures that do not conform with an obligation in Chapter Eight (Trade in Services) to the extent that such measures are adopted or maintained in accordance with:

- (a) 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 8.7 (Schedules of Specific Commitments); or
- (b) any exception that is applicable to the obligations in Chapter Eight (Trade in Services).

5. The Parties shall not have recourse to dispute settlement under Chapter Fifteen (Dispute Settlement) for any matter arising under this Chapter. In the event of any differences between the Parties regarding the interpretation and application of this Chapter, the Parties shall engage in consultations in good faith and make every effort to reach a mutually satisfactory solution by referring these issues to the Joint Committee.

6. For purposes of this Chapter, encompasses digitally enabled transactions in trade in goods and services which can be either digitally or physically delivered involving consumers.

Article 9.4: Paperless Trading

1. Each Party shall endeavor to 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 endeavor to accept trade administration documents submitted electronically as the legal equivalent³ of the paper versions of those documents.

³ 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 9.5: Domestic Electronic Transactions Framework

1. Each Party shall endeavor to maintain a legal framework governing electronic transactions taking into account the principles of the *UNCITRAL Model Law on Electronic Commerce 1996*.
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, including in relation to trade documentation.

Article 9.6: Electronic Authentication and Electronic Signature

1. Except in circumstances otherwise provided for under its law, neither Party shall deny the legal validity of an electronic signature solely on the basis that the signature is in electronic form.
2. Neither Party shall adopt or maintain measures regarding 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 laws and regulations.
4. The Parties shall encourage the use of interoperable electronic authentication.

Article 9.7: Digital Identities

1. Recognising that the cooperation of the Parties on digital identities, individual or corporate, will increase regional and global connectivity, and recognising that each Party may have different implementations of, and legal approaches to, digital identities, each Party shall endeavor to promote the interoperability between their respective regimes for digital identities. This may include:

- (a) the establishment or maintenance of appropriate frameworks to foster technical interoperability or common standards between each Party's implementation of digital identities;
- (b) the recognition of each Party's digital identities and their legal effects, whether accorded autonomously or by mutual agreement;
- (c) the establishment or maintenance of broader international frameworks; and
- (d) the exchange of knowledge and expertise on best practices relating to digital identity policies and regulations, technical implementation and security standards, and user adoption.

2. For greater certainty, nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 1 to achieve a legitimate public policy objective.

Article 9.8: Online Consumer Protection

1. The Parties recognize 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 adopt or maintain consumer protection laws to proscribe misleading, deceptive, and fraudulent commercial activities that cause harm or potential harm to consumers engaged in electronic commerce.

3. The Parties recognize the importance of cooperation between their respective competent authorities in charge of consumer protection on activities related to electronic commerce in order to enhance consumer protection.

4. Each Party shall publish information on the consumer protection it provides to users of electronic commerce, including how:

- (a) consumers can pursue remedies; and

- (b) business can comply with any legal requirements.

Article 9.9: Unsolicited Commercial Electronic Messages

1. Each Party shall 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;
- (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 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 endeavor to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

4. The Parties shall endeavor to extend the discretion to the receiver to opt-in/opt-out of unsolicited messages and commercials.

Article 9.10: Personal Data Protection

1. The Parties recognize 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 adopt or maintain a legal framework that provides for the protection of the personal data of the users of digital trade.⁴

⁴ 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 or laws that provide for the enforcement of voluntary undertakings by enterprises relating to privacy.

In the development of its legal framework for the protection of personal data, each Party shall endeavor to take into account principles and guidelines of relevant international organizations or bodies.

3. Each Party shall publish information on the personal data protection it provides to users, including how individuals can pursue remedies.

4. The Parties shall encourage enterprises to publish, including on the internet, their policies and procedures related to the protection of personal data.

Article 9.11: Cross-Border Transfer of Information by Electronic Means⁵

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

2. Neither Party shall prevent cross-border transfer of information by electronic means where such activity is for the conduct of the business of covered person.

3. Nothing in this Article shall prevent a Party from adopting or maintaining:

- (a) any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective ⁶, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or
- (b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by the other Party.

Article 9.12: Open Government Data

⁵ This Article shall not apply to financial services.

⁶ For the purposes of this subparagraph, the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

1. The Parties recognize that facilitating public access to and use of government data contributes to stimulating economic and social benefit, competitiveness, productivity improvements and innovation.
2. In accordance with its laws and regulations, each Party shall endeavor, to the extent possible, to ensure that such government data is in a machine readable and open format that allows it to be searched, retrieved, used, reused and redistributed freely by the public.

Article 9.13: Digital Government

1. The Parties recognize 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 endeavor 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 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 endeavor 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 programs 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: Non-Discriminatory Treatment of Digital Products

1. Neither Party shall accord less favourable 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.⁷

2. Paragraph 1 shall not apply to the extent of any inconsistency with the rights and obligations concerning intellectual property contained in Chapter Twelve (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 9.15: Customs Duties

⁷ In interpreting the obligations of Article 9.14, the Parties understand that the non-discriminatory treatment of digital products shall be limited to national treatment and not cover most-favored-nation treatment

1. Each Party shall maintain its current practice of not imposing customs duties on electronic transmissions between the Parties. Each Party reserves the right to adjust its practice consistent with any changes to the WTO relevant Ministerial Decision.

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.

Article 9.16: 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 national laws and legal frameworks, each Party shall endeavor to ensure that the implementation of measures related to electronic invoicing in its territory supports cross-border interoperability between each Party's electronic invoicing frameworks. To this end, each Party shall endeavor to base its measures relating to electronic invoicing on 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 processes 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 9.17: Electronic Payments

Recognising the rapid growth of electronic payments and the importance of developing an efficient, safe, secure, and interoperable electronic payment systems, each Party shall, in accordance with its laws and regulations, endeavor to:

- (a) promote interoperability and the interlinking of electronic payment infrastructures;
 - (b) encourage innovation and competition in electronic payments services;
 - (c) facilitate the use of open platforms and architectures such as 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 established third parties within their territory, 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.
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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 recognizes 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 framework.

Article 9.19: Cybersecurity

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

- (a) building the capabilities of their appropriate competent authorities responsible for cybersecurity incident response;
- (b) strengthening existing collaboration mechanisms and further cooperation through exchanging experiences and best practices; and
- (c) emphasizing the cooperation on identification and mitigation of malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties.

Article 9.20: SMEs and Startups

1. The Parties recognize the fundamental role of SMEs and Startups in maintaining dynamism and enhancing competitiveness in the digital trade.
2. With a view towards enhancing trade and investment opportunities for SMEs in the digital trade, 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 trade.

Article 9.21: Artificial Intelligence

1. The Parties recognize that the use and adoption of Artificial Intelligence (AI) technologies are becoming increasingly important within a digital trade offering significant social and economic benefits to natural persons and enterprises.
2. The Parties also recognize the importance of developing ethical governance frameworks for the trusted, safe, and responsible use of AI technologies that will help realise the benefits of AI. In view of the cross-border nature of the digital trade, the Parties further acknowledge the benefits of ensuring that such frameworks are internationally aligned as far as possible.

3. To this end, the Parties shall endeavor to:
- (a) collaborate on and promote the development and adoption of frameworks that support the trusted, safe, and responsible use of AI technologies (AI Governance Frameworks), through relevant regional and international fora;
 - (b) take into consideration internationally-recognized principles or guidelines when developing such AI Governance Frameworks; and
 - (c) cooperate through promoting dialogue and sharing experiences on regulations, policies and initiatives relating to the use and adoption of AI technologies.

Article 9.22: Cooperation

Recognizing the importance of digital trade to the Parties, the Parties shall endeavor 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 for digital trade;
- (d) unsolicited commercial electronic messages;
- (e) intellectual property concerns with respect to digital trade;
- (f) challenges for small and medium-sized enterprises in digital trade;
- (g) digital government;
- (h) digital identities;
- (i) FinTech; and
- (j) any other area mutually agreed by the Parties.