

CHAPTER SIXTEEN

ELECTRONIC COMMERCE

ARTICLE 16.1 : GENERAL

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

ARTICLE 16.2 : ELECTRONIC SUPPLY OF SERVICES

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 Chapters Ten (Cross-Border Trade in Services), Eleven (Investment), and Thirteen (Financial Services), subject to any exceptions applicable to such obligations and to the non-conforming measures described in Articles 10.6 (Non-Conforming Measures), 11.13 (Non-Conforming Measures), or 13.9 (Non-Conforming Measures).

ARTICLE 16.3 : CUSTOMS DUTIES

Neither Party may impose customs duties, fees, or other charges¹⁶⁻¹ on or in connection with the importation or exportation of digital products, regardless of whether they are fixed on a carrier medium or transmitted electronically.

ARTICLE 16.4 : NON-DISCRIMINATORY TREATMENT OF DIGITAL PRODUCTS

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

¹⁶⁻¹For greater clarity, Article 16.3 does not preclude a Party from imposing internal taxes or other internal charges on digital products, provided that such taxes or charges are imposed in a manner consistent with this Agreement.

2. Neither Party may accord less favourable treatment to digital products:¹⁶⁻²
 - (a) 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 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 whose author, performer, producer, developer, or distributor is a person of a non-Party.
3. Paragraphs 1 and 2 do not apply to:
 - (a) non-conforming measures adopted or maintained in accordance with Articles 10.6, 11.13, or 13.9;
 - (b) the extent that they are inconsistent with Chapter Seventeen (Intellectual Property Rights);
 - (c) subsidies or grants that a Party provides to a service or service supplier, including government-supported loans, guarantees, and insurance; and
 - (d) services supplied in the exercise of governmental authority, as defined in Article 1.2.22 (Definitions).
4. For greater clarity, paragraphs 1 and 2 do not prevent a Party from adopting or maintaining measures, including measures in the audio-visual and broadcasting sectors, in accordance with its reservations to Chapters Ten and Eleven.

ARTICLE 16.5 : AUTHENTICATION AND DIGITAL CERTIFICATES

1. Neither Party may adopt or maintain legislation 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 from having the opportunity to prove in court that their electronic transaction complies with any legal requirements with respect to authentication.

¹⁶⁻²Nothing in this Article shall be construed as affecting the Parties' rights and obligations with respect to each other under Article 4 of the TRIPS Agreement.

2. Each Party shall work towards the recognition at the central level of government of digital certificates issued by the other Party or under authorisation of that Party.

ARTICLE 16.6 : ONLINE CONSUMER PROTECTION

The Parties recognise the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce.

ARTICLE 16.7 : 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 16.8 : DEFINITIONS

For the purposes of this Chapter:

1. **authentication** means the process or act of establishing the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication;
2. **carrier medium** means any physical object capable of storing 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, including an optical medium, floppy disk, and magnetic tape;
3. **digital certificate** means an electronic document or file that is issued or otherwise linked to a party to an electronic communication or transaction for the purpose of establishing the party's identity, authority, or other attribute;
4. **digital products** means the digitally encoded form of computer programs, text, video, images, sound recordings, and other products,¹⁶⁻³ regardless of whether they are fixed on a carrier medium or transmitted electronically;¹⁶⁻⁴
5. **electronic transmission** or **transmitted electronically** means the transfer of digital products using any electromagnetic or photonic means; and
6. **trade administration documents** means forms that a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods.

¹⁶⁻³For greater clarity, digital products can be a component of a good, be used in the supply of a service, or exist separately, but do not include digitized representations of financial instruments that are settled or transmitted through central bank-sponsored payment or settlement system.

¹⁶⁻⁴The definition of digital products 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.