

Examples of e-commerce provisions in selected RTAs

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CHAPTER 10
ELECTRONIC COMMERCE

Article 1 Objectives

The objectives of this Chapter are to:

- (a) promote electronic commerce among the Parties;
- (b) enhance co-operation among the Parties regarding development of electronic commerce; and
- (c) promote the wider use of electronic commerce globally.

Article 2 Definitions

For the purposes of this Chapter:

- (a) **digital certificates** are electronic documents or files that are issued or otherwise linked to a participant in an electronic communication or transaction for the purpose of establishing the participant's identity;
- (b) **electronic authentication** means the process of testing an electronic statement or claim, in order to establish a level of confidence in the statement's or claim's reliability;
- (c) **electronic signature** has for each Party the meaning set out in its domestic laws and regulations;
- (d) **electronic version** of a document means a document in electronic format prescribed by a Party, including a document sent by facsimile transmission;
- (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; and
- (f) **UNCITRAL** refers to the United Nations Commission on International Trade Law.

Article 3 Transparency

1. Each Party shall publish as promptly as possible or, where that is not practicable, otherwise make publicly available all relevant measures of general application pertaining to or affecting the operation of this Chapter.

2. Each Party shall respond as promptly as possible to relevant requests by another Party for specific information on any of its measures of general application pertaining to or affecting the operation of this Chapter.

Article 4 Domestic Regulatory Frameworks

Each Party shall maintain, or adopt as soon as practicable, domestic laws and regulations governing electronic transactions taking into account the UNCITRAL Model Law on Electronic Commerce 1996.

Article 5 Electronic Authentication and Digital Certificates

1. Each Party shall maintain, or adopt as soon as practicable, measures based on international norms for electronic authentication that:

- (a) permit participants in electronic transactions to determine the appropriate authentication technologies and implementation models for their electronic transactions;
- (b) do not limit the recognition of authentication technologies and implementation models; and
- (c) permit participants in electronic transactions to have the opportunity to prove that their electronic transactions comply with the Party's domestic laws and regulations.

2. The Parties shall, where possible, endeavour to work towards the mutual recognition of digital certificates and electronic signatures that are issued or recognised by governments based on internationally accepted standards.

3. The Parties shall encourage the interoperability of digital certificates used by business.

Article 6 Online Consumer Protection

1. Subject to Paragraph 2, each Party shall, where possible, provide protection for consumers using electronic commerce that is at least equivalent to that provided for consumers of other forms of commerce under its relevant laws, regulations and policies.

2. A Party shall not be obliged to apply Paragraph 1 before the date on which that Party enacts domestic laws or regulations or adopts policies on protection for consumers using electronic commerce.

Article 7 Online Data Protection

1. Subject to Paragraph 2, each Party shall, in a manner it considers appropriate, protect the personal data of the users of electronic commerce.

2. A Party shall not be obliged to apply Paragraph 1 before the date on which that Party enacts domestic laws or regulations to protect the personal data of electronic commerce users.

3. In the development of data protection standards, each Party shall consider the international standards and criteria of relevant international organisations.

Article 8 Paperless Trading

1. Each Party shall, where possible, work towards the implementation of initiatives which provide for the use of paperless trading.

2. The Parties shall co-operate in international fora to enhance acceptance of electronic versions of trade administration documents.

3. In working towards the implementation of initiatives which provide for the use of paperless trading, each Party shall take into account the methods agreed by international organisations including the World Customs Organization.

4. Each Party shall endeavour to make electronic versions of its trade administration documents publicly available.

Article 9 Co-operation on Electronic Commerce

1. Recognising the global nature of electronic commerce, the Parties shall encourage co-operation in research and training activities that would enhance the development of electronic commerce. These co-operative research and training activities may include, but are not limited to:

- (a) promotion of the use of electronic versions of trade administration documents used by any other Party or Parties;
- (b) assisting small and medium enterprises to overcome obstacles encountered in the use of electronic commerce;
- (c) sharing information and experiences and identifying best practices in relation to domestic legal and policy frameworks in the sphere of electronic commerce, including those related to data protection, privacy, consumer confidence, cyber-security, unsolicited electronic mail, electronic signatures, intellectual property rights, and electronic government;
- (d) encouraging co-operative activities to promote electronic commerce including those that would improve the effectiveness and efficiency of electronic commerce;
- (e) exploring ways in which a developed Party or Parties could provide assistance to the developing Parties in implementing an electronic commerce legal framework;
- (f) encouraging co-operation between the relevant authorities to facilitate prompt investigation and resolution of fraudulent incidents relating to electronic commerce transactions;
- (g) encouraging development by the private sector of methods of self-regulation, including codes of conduct, model contracts, guidelines, and enforcement mechanisms, that foster electronic commerce; and
- (h) actively participating in regional and multilateral fora to promote development of electronic commerce.

2. The Parties shall endeavour to undertake forms of cooperation that build on and do not duplicate existing cooperation initiatives pursued in international fora.

Article 10 Non-Application of Chapter 17 (Consultations and Dispute Settlement)

Chapter 17 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

Canada-EU Comprehensive Economic and Trade Agreement (CETA)

CHAPTER SIXTEEN

Electronic commerce

Article 16.1 Definitions

For the purposes of this Chapter:

delivery means a computer program, text, video, image, sound recording or other delivery that is digitally encoded; and

electronic commerce means commerce conducted through telecommunications, alone or in conjunction with other information and communication technologies.

Article 16.2 Objective and scope

1. The Parties recognise that electronic commerce increases economic growth and trade opportunities in many sectors and confirm the applicability of the WTO rules to electronic commerce. They agree to promote the development of electronic commerce between them, in particular by cooperating on the issues raised by electronic commerce under the provisions of this Chapter.

2. This Chapter does not impose an obligation on a Party to allow a delivery transmitted by electronic means except in accordance with the Party's obligations under another provision of this Agreement.

Article 16.3 Customs duties on electronic deliveries

1. A Party shall not impose a customs duty, fee, or charge on a delivery transmitted by electronic means.

2. For greater certainty, paragraph 1 does not prevent a Party from imposing an internal tax or other internal charge on a delivery transmitted by electronic means, provided that the tax or charge is imposed in a manner consistent with this Agreement.

Article 16.4 Trust and confidence in electronic commerce

Each Party should adopt or maintain laws, regulations or administrative measures for the protection of personal information of users engaged in electronic commerce and, when doing so, shall take into due consideration international standards of data protection of relevant international organisations of which both Parties are a member.

Article 16.5 General provisions

Considering the potential of electronic commerce as a social and economic development tool, the Parties recognise the importance of:

- (a) clarity, transparency and predictability in their domestic regulatory frameworks in facilitating, to the maximum extent possible, the development of electronic commerce;
- (b) interoperability, innovation and competition in facilitating electronic commerce; and
- (c) facilitating the use of electronic commerce by small and medium sized enterprises.

Article 16.6 Dialogue on electronic commerce

1. Recognising the global nature of electronic commerce, the Parties agree to maintain a dialogue on issues raised by electronic commerce, which will address, among other things:

- (a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services;
- (b) the liability of intermediary service suppliers with respect to the transmission, or the storage of information;
- (c) the treatment of unsolicited electronic commercial communications; and
- (d) the protection of personal information and the protection of consumers and businesses from fraudulent and deceptive commercial practices in the sphere of electronic commerce.

2. The dialogue in paragraph 1 may take the form of exchange of information on the Parties' respective laws, regulations, and other measures on these issues, as well as sharing experiences on the implementation of such laws, regulations and other measures.

3. Recognising the global nature of electronic commerce, the Parties affirm the importance of actively participating in multilateral fora to promote the development of electronic commerce.

Article 16.7 Relation to other chapters

In the event of an inconsistency between this Chapter and another chapter of this Agreement, the other chapter prevails to the extent of the inconsistency.

Canada-Korea FTA

Chapter Thirteen: Electronic Commerce

Article 13.1: Scope of Application

1. The Parties confirm that trade conducted by electronic means is subject to the provisions of this Agreement, including those in Chapters Two (National Treatment and Market Access for Goods), Nine (Cross-Border Trade in Services), Ten (Financial Services), Eleven (Telecommunications), and Fourteen (Government Procurement). In particular, the Parties recognise the importance of Article 11.2 (Access to and Use of Public Telecommunications Transport Networks and Services) in enabling trade conducted by electronic means.

2. The Parties also confirm that this Chapter does not impose obligations on a Party to allow digital products to be delivered electronically, except in accordance with the commitments of that Party in other Chapters.

Article 13.2: General Provisions

1. The Parties recognise the economic growth and opportunities provided by electronic commerce and the applicability of WTO rules to electronic commerce.

2. Considering the potential of electronic commerce as a social and economic development tool, the Parties recognise the importance of:

- (a) clarity, transparency, and predictability in their domestic regulatory frameworks in facilitating, to the maximum extent possible, the development of electronic commerce;
- (b) encouraging self-regulation by the private sector to promote trust and confidence in electronic commerce, having regard to the interests of users, through initiatives such as industry guidelines, model contracts, and codes of conduct;
- (c) facilitating electronic commerce through interoperability, innovation, and competition;
- (d) ensuring that global and domestic electronic commerce policy takes into account the interest of all stakeholders, including business, consumers, non-government organisations, and relevant public institutions; and
- (e) facilitating the use of electronic commerce of small- and medium-sized enterprises and developing countries.

3. Each Party shall endeavour to adopt measures to facilitate trade conducted by electronic means by addressing issues relevant to the electronic environment.

4. The Parties recognise the importance of avoiding unnecessary barriers to trade conducted by electronic means. Having regard to national policy objectives, each Party shall endeavour to prevent measures that:

- (a) unduly hinder trade conducted by electronic means; or
- (b) have the effect of treating trade conducted by electronic means more restrictively than trade conducted by other means.

Article 13.3: Customs Duties

1. A Party shall not apply customs duties, fees, or charges on or in connection with digital products delivered electronically.

2. For greater certainty, this Chapter does not preclude a Party from imposing internal taxes or other internal charges on digital products delivered electronically, provided that such taxes or charges are imposed in a manner consistent with this Agreement.

Article 13.4: Protection of Personal Information

Each Party shall adopt or maintain measures for the protection of the personal information of the users of electronic commerce. In the development of personal information protection standards, each Party shall take into account international standards of relevant international organisations.

Article 13.5: Paperless Trade Administration

1. Each Party shall endeavour to make 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 those documents.

Article 13.6: Consumer Protection

1. 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.

2. To this end, the Parties should exchange information on their experiences in protecting consumers engaged in electronic commerce.

Article 13.7: Cooperation

Recognising the global nature of electronic commerce, the Parties affirm the importance of:

- (a) working together to facilitate the use of electronic commerce by small- and medium-sized enterprises;
- (b) sharing information and experiences on laws, regulations, and programs pertaining to electronic commerce, including those related data privacy, consumer confidence, security in electronic communications, electronic authentication, intellectual property rights, and electronic government;
- (c) working to maintain cross-border flows of information as an essential element in fostering a vibrant environment for electronic commerce;
- (d) fostering electronic commerce by encouraging the private sector to adopt codes of conduct, model contracts, guidelines, and enforcement mechanisms; and
- (e) actively participating in regional and multilateral fora to promote the development of electronic commerce.

Article 13.8: Relation to Other Chapters

In the event of an inconsistency between this Chapter and another Chapter, the other Chapter prevails to the extent of the inconsistency.

Article 13.9: Definitions

For the purposes of this Chapter:

delivered electronically means delivered through telecommunications, alone or in conjunction with other information and communication technologies;

digital product means computer programs, text, video, images, sound recordings, or other products that are digitally encoded and produced for commercial sale or distribution;

personal information means any information related to an identified or identifiable natural person;

telecommunications means the transmission and reception of signals by any electromagnetic means;

trade administration document means forms that a Party issues or controls that must be completed by or for an importer or exporter in connection with the importation or exportation of goods; and

trade conducted by electronic means means trade conducted through telecommunications, alone or in conjunction with other information and communication technologies.

Chapter fifteen: Electronic commerce

Article 15.01: Definitions

For purposes of this Chapter:

delivered electronically means delivered through telecommunications, alone or in conjunction with other information and communication technologies;

digital product means a computer program, text, video, image, sound recording or other product that is digitally encoded; and

electronic commerce means commerce conducted through telecommunications, alone or in conjunction with other information and communication technologies.

Article 15.02: Scope and Coverage

1. The Parties confirm that this Agreement, including Chapter 2 (National Treatment and Market Access for Goods), Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services), Chapter 11 (Telecommunications), Chapter 12 (Financial Services), Chapter 16 (Government Procurement) and Chapter 23 (Exceptions) applies to electronic commerce. In particular, the Parties recognize the importance of Article 11.03 (Telecommunications - Access to and Use of Public Telecommunications Transport Networks or Services) in enabling electronic commerce.

2. Nothing in this Chapter imposes an obligation on a Party to allow a product to be delivered electronically, except in accordance with the obligations of that Party under another Chapter of this Agreement.

3. For greater certainty, a Party's reservations set out in its Schedule to Annex I, II or III apply to electronic commerce.

Article 15.03: General Provisions

1. The Parties recognize the economic growth and opportunities provided by electronic commerce and the applicability of WTO rules to electronic commerce.

2. Considering the potential of electronic commerce as a social and economic development tool, the Parties recognize the importance of:

- a. clarity, transparency and predictability in their domestic regulatory frameworks in facilitating, to the maximum extent possible, the development of electronic commerce;
- b. encouraging self-regulation by the private sector to promote trust and confidence in electronic commerce, having regard to the interests of users, through initiatives such as industry guidelines, model contracts and codes of conduct;
- c. interoperability, innovation and competition in facilitating electronic commerce;
- d. ensuring that global and domestic electronic commerce policy takes into account the interest of all stakeholders, including business, consumers, non-government organizations and relevant public institutions; and
- e. sharing information and experiences on laws, regulations and programmes in order to facilitate the use of electronic commerce by micro-, small- and medium-sized enterprises.

3. Each Party shall endeavour to adopt measures to facilitate electronic commerce that address issues relevant to the electronic environment.

4. The Parties recognize the importance of avoiding unnecessary barriers to electronic commerce. Having regard to its national policy objectives, each Party shall endeavour to guard against measures that:

- a. unduly hinder electronic commerce; or
- b. have the effect of treating electronic commerce more restrictively than commerce conducted by other means.

Article 15.04: Customs Duties on Digital Products Delivered Electronically

1. A Party shall not apply a customs duty, fee or charge on a digital product delivered electronically.

2. For greater clarity, paragraph 1 does not prevent a Party from imposing an internal tax or other internal charge not prohibited by this Agreement on a digital product delivered electronically.

Article 15.05: Relation to Other Chapters

In the event of an inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter prevails.

Comprehensive and Progressive Trans-Pacific Partnership (CPTPP)

CHAPTER 5

Customs Administration and Trade Facilitation

Article 5.6: Automation

1. Each Party shall:

- (a) endeavour to use international standards with respect to procedures for the release of goods;
- (b) make electronic systems accessible to customs users;
- (c) employ electronic or automated systems for risk analysis and targeting;
- (d) endeavour to implement common standards and elements for import and export data in accordance with the World Customs Organization (WCO) Data Model;
- (e) take into account, as appropriate, WCO standards, recommendations, models and methods developed through the WCO or APEC; and
- (f) work toward developing a set of common data elements that are drawn from the WCO Data Model and related WCO recommendations as well as guidelines to facilitate government to government electronic sharing of data for purposes of analysing trade flows.

2. Each Party shall endeavour to provide a facility that allows importers and exporters to electronically complete standardised import and export requirements at a single entry point.

Article 5.7: Express Shipments

1. Each Party shall adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall:

- (a) provide for information necessary to release an express shipment to be submitted and processed before the shipment arrives;
- (b) allow a single submission of information covering all goods contained in an express shipment, such as a manifest, through, if possible, electronic means;
- (c) to the extent possible, provide for the release of certain goods with a minimum of documentation;
- (d) under normal circumstances, provide for express shipments to be released within six hours after submission of the necessary customs documents, provided the shipment has arrived;
- (e) apply to shipments of any weight or value recognising that a Party may require formal entry procedures as a condition for release, including declaration and supporting documentation and payment of customs duties, based on the good's weight or value; and
- (f) provide that, under normal circumstances, no customs duties will be assessed on express shipments valued at or below a fixed amount set under the Party's law. Footnote 7 Each Party shall review the amount periodically taking into account factors that it may consider relevant such as rates of inflation, effect on trade facilitation, impact on risk management, administrative cost of collecting duties compared to the amount of duties, cost of cross-border trade transactions, impact on SMEs or other factors related to the collection of customs duties.

2. If a Party does not provide the treatment in paragraph 1(a) through (f) to all shipments, that Party shall provide a separate and expedited customs procedure that provides that treatment for express shipments.

Article 5.10: Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. This paragraph shall not require a Party to release a good if its requirements for release have not been met.

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:

- (a) provide for the release of goods within a period no longer than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of the arrival of the goods;
- (b) provide for the electronic submission and processing of customs information in advance of the arrival of the goods in order to expedite the release of goods from customs control upon arrival;
- (c) allow goods to be released at the point of arrival without temporary transfer to warehouses or other facilities; and
- (d) allow an importer to obtain the release of goods prior to the final determination of customs duties, taxes and fees by the importing Party's customs administration when these are not determined prior to or promptly upon arrival, provided that the good is otherwise eligible for release and any security required by the importing Party has been provided or payment under protest, if required by a Party, has been made. Payment under protest refers to payment of duties, taxes and fees if the amount is in dispute and procedures are available to resolve the dispute.

3. If a Party allows for the release of goods conditioned on a security, it shall adopt or maintain procedures that:

- (a) ensure that the amount of the security is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled;
- (b) ensure that the security shall be discharged as soon as possible after its customs administration is satisfied that the obligations arising from the importation of the goods have been fulfilled; and
- (c) allow importers to provide security using non-cash financial instruments, including, in appropriate cases where an importer frequently enters goods, instruments covering multiple entries.

CHAPTER 14

ELECTRONIC COMMERCE

Article 14.1: Definitions

For the purposes of this Chapter:

computing facilities means computer servers and storage devices for processing or storing information for commercial use;

covered person means:

- a) a covered investment as defined in Article 9.1 (Definitions);
- b) an investor of a Party as defined in Article 9.1 (Definitions), but does not include an investor in a financial institution; or
- c) a service supplier of a Party as defined in Article 10.1 (Definitions),

but does not include a "financial institution" or a "cross-border financial service supplier of a Party" as defined in Article 11.1 (Definitions);

digital product means a computer programme, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically; 2, 3

electronic authentication means the process or act of verifying the identity of a party to an electronic communication or transaction and ensuring the integrity of an electronic communication;

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

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 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 access service supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service.

Article 14.2: Scope and General Provisions

1. The Parties recognise the economic growth and opportunities provided by electronic commerce and the importance of frameworks that promote consumer confidence in electronic commerce and of avoiding unnecessary barriers to its use and development.

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 9 (Investment), Chapter 10 (Cross-Border Trade in Services) and Chapter 11 (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 Article 14.4 (Non-Discriminatory Treatment of Digital Products), Article 14.11 (Cross-Border Transfer of Information by Electronic Means), Article 14.13 (Location of Computing Facilities) and Article 14.17 (Source Code) are:

- a) subject to the relevant provisions, exceptions and non-conforming measures of Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services) and Chapter 11 (Financial Services); and
- b) to be read in conjunction with any other relevant provisions in this Agreement.

6. The obligations contained in Article 14.4 (Non-Discriminatory Treatment of Digital Products), Article 14.11 (Cross-Border Transfer of Information by Electronic Means) and Article 14.13 (Location of Computing Facilities) shall not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 9.12 (Non-Conforming Measures), Article 10.7 (Non-Conforming Measures) or Article 11.10 (Non-Conforming Measures).

Article 14.3: Customs Duties

1. No Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of one Party and a person of another 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 14.4: Non-Discriminatory Treatment of Digital Products

1. No 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 another Party, or to digital products of which the author, performer, producer, developer or owner is a person of another Party, than it accords to other like digital products.

2. Paragraph 1 shall not apply to the extent of any inconsistency with the rights and obligations in Chapter 18 (Intellectual Property).

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 14.5: 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 at New York, November 23, 2005.

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.

Article 14.6: 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. No 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 14.7: Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent and deceptive commercial activities as referred to in Article 16.6.2 (Consumer Protection) when they engage in electronic commerce.

2. 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.

3. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare. To this end, the Parties affirm that the cooperation sought under Article 16.6.5 and Article 16.6.6 (Consumer Protection) includes cooperation with respect to online commercial activities.

Article 14.8: Personal Information Protection

1. The Parties recognise the economic and social benefits of protecting the personal information of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.

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 electronic commerce. In the development of its legal framework for the protection of personal information, each Party should take into account principles and guidelines of relevant international bodies.

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

4. Each Party should publish information on the personal information protections it provides to users of electronic commerce, including how:

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

5. Recognising 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 endeavour 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 14.9: Paperless Trading

Each Party shall endeavour to:

- a) make trade administration documents available to the public in electronic form; and
- b) accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

Article 14.10: Principles on Access to and Use of the Internet for Electronic Commerce

Subject to applicable policies, laws and regulations, the Parties recognise 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;
- 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 14.11: Cross-Border Transfer of Information by Electronic Means

1. The Parties recognise 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 the 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:

- 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 14.12: Internet Interconnection Charge Sharing

The Parties recognise that a supplier seeking international Internet connection should be able to negotiate with suppliers of another Party on a commercial basis. These negotiations may include negotiations regarding compensation for the establishment, operation and maintenance of facilities of the respective suppliers.

Article 14.13: Location of Computing Facilities

1. The Parties recognise 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. No 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 14.14: 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 according to 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 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 endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Article 14.15: Cooperation

Recognising the global nature of electronic commerce, the Parties shall endeavour to:

- a) work together to assist SMEs to overcome obstacles to its use;
- b) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:
 - i. personal information protection;
 - ii. online consumer protection, including means for consumer redress and building consumer confidence;
 - iii. unsolicited commercial electronic messages;
 - iv. security in electronic communications;
 - v. authentication; and
 - vi. e-government;
- c) exchange information and share views on consumer access to products and services offered online among the Parties;
- d) participate actively in regional and multilateral fora to promote the development of electronic commerce; and
- e) encourage development by the private sector of methods of self-regulation that foster electronic commerce, including codes of conduct, model contracts, guidelines and enforcement mechanisms.

Article 14.16: Cooperation on Cybersecurity Matters

The Parties recognise the importance of:

- a) building the capabilities of their national entities responsible for computer security incident response; and
- 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 14.17: Source Code

1. No Party shall require the transfer of, or access to, source code of software owned by a person of another Party, as a condition for the import, distribution, sale or use of such software, or of products containing such software, in its territory.

2. For the purposes of this Article, software subject to paragraph 1 is limited to mass-market software or products containing such software and does not include software used for critical infrastructure.

3. Nothing in this Article shall preclude:

- a) the inclusion or implementation of terms and conditions related to the provision of source code in commercially negotiated contracts; or
- b) a Party from requiring the modification of source code of software necessary for that software to comply with laws or regulations which are not inconsistent with this Agreement.

4. This Article shall not be construed to affect requirements that relate to patent applications or granted patents, including any orders made by a judicial authority in relation to patent disputes, subject to safeguards against unauthorised disclosure under the law or practice of a Party.

Article 14.18: Dispute Settlement

1. With respect to existing measures, Malaysia shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement) regarding its obligations under Article 14.4 (Non-Discriminatory Treatment of Digital Products) and Article 14.11 (Cross-Border Transfer of Information by Electronic Means) for a period of two years after the date of entry into force of this Agreement for Malaysia.

2. With respect to existing measures, Viet Nam shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement) regarding its obligations under Article 14.4 (Non-Discriminatory Treatment of Digital Products), Article 14.11 (Cross-Border Transfer of Information by Electronic Means) and Article 14.13 (Location of Computing Facilities) for a period of two years after the date of entry into force of this Agreement for Viet Nam.

EFTA-Central America FTA

ANNEX II

REFERRED TO IN ARTICLE 1.8 REGARDING ELECTRONIC COMMERCE

Article 1 General

The Parties recognise:

- a) the economic growth and opportunities that electronic commerce in goods and services provides in particular for businesses and consumers as well as the potential for enhancing international trade;
- b) the importance of avoiding barriers to the use and development of electronic commerce in goods and services; and
- c) the need to create an environment of trust and confidence for users of electronic commerce which covers, inter alia:
 - i. protection of privacy of individuals in relation to the processing and dissemination of personal data;
 - ii. protection of confidentiality of individual records and accounts;
 - iii. measures to prevent and fight deceptive and fraudulent practices or to deal with the effects of a default on contracts;
 - iv. measures against unsolicited communications; and
 - v. protection of public morals and young generations.

Article 2 Customs Duties

The Parties confirm their current practice under the terms of the decision of 17 December 2011 of the WTO Ministerial Conference of not imposing customs duties on electronic transmissions.

Article 3 Exchange of Information

- 1. The Parties affirm their intent to pursue efforts, as appropriate, to increase cooperation in promoting electronic commerce between them and to strengthen the multilateral trading system.
- 2. The Parties will exchange information in the area of electronic commerce. That may include information on legislative processes, on recent developments, on their respective activities in international *fora*, and on possible ways of cooperation.

CHAPTER 8 - SECTION F

Electronic commerce

ARTICLE 8.70 Objective and general provisions

1. The Parties recognise that electronic commerce contributes to economic growth and increases trade opportunities in many sectors. The Parties also recognise the importance of facilitating the use and development of electronic commerce.
2. The objective of this Section is to contribute to creating an environment of trust and confidence in the use of electronic commerce and to promote electronic commerce between the Parties.
3. The Parties recognise the importance of the principle of technological neutrality in electronic commerce.
4. This Section applies to measures by a Party affecting trade by electronic means.
5. This Section does not apply to gambling and betting services, broadcasting services, audio-visual services, services of notaries or equivalent professions, and legal representation services.
6. In the event of any inconsistency between the provisions of this Section and the other provisions of this Agreement, those other provisions shall prevail to the extent of the inconsistency.

ARTICLE 8.71 Definitions

For the purposes of this Section:

- a) '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; and
- b) 'electronic signature' means data in electronic form which are attached to or logically associated with other electronic data and fulfil the following requirements:
 - i. that it is used by a person to confirm that the electronic data to which it relates have been created or signed, in accordance with each Party's laws and regulations, by that person; and
 - ii. that it confirms that information in the electronic data has not been altered.

ARTICLE 8.72 Customs duties

The Parties shall not impose customs duties on electronic transmissions.

ARTICLE 8.73 Source code

1. A Party may not require the transfer of, or access to, source code of software owned by a person of the other Party. Nothing in this paragraph shall prevent the inclusion or implementation of terms and conditions related to the transfer of or granting of access to source code in commercially negotiated contracts, or the voluntary transfer of or granting of access to source code for instance in the context of government procurement.
2. Nothing in this Article shall affect:
 - a) requirements by a court, administrative tribunal or competition authority to remedy a violation of competition law;
 - b) requirements by a court, administrative tribunal or administrative authority with respect to the protection and enforcement of intellectual property rights to the extent that source codes are protected by those rights; and
 - c) the right of a Party to take measures in accordance with Article III of the GPA.
3. For greater certainty, nothing in this Article shall prevent a Party from adopting or maintaining measures which are inconsistent with paragraph 1, in accordance with Articles 1.5, 8.3 and 8.65.

ARTICLE 8.74 Domestic regulation

Each Party shall ensure that all its measures of general application affecting electronic commerce are administered in a reasonable, objective and impartial manner.

ARTICLE 8.75 Principle of no prior authorisation

1. The Parties will endeavour not to impose prior authorisation or any other requirement having equivalent effect on the provision of services by electronic means.
2. Paragraph 1 shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at services provided by electronic means, and to rules in the field of telecommunications.

ARTICLE 8.76 Conclusion of contracts by electronic means

Unless otherwise provided for in its laws and regulations, a Party shall not adopt or maintain measures regulating electronic transactions that:

- a) deny the legal effect, validity or enforceability of a contract, solely on the grounds that it is concluded by electronic means; or
- b) otherwise create obstacles to the use of contracts concluded by electronic means.

ARTICLE 8.77 Electronic authentication and electronic signature

1. Unless otherwise provided for in its laws and regulations, a Party shall not deny the legal validity of a signature solely on the grounds that the signature is in electronic form.

2. A Party shall not adopt or maintain measures regulating electronic authentication and electronic signature that would:

- a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication methods for their transaction; or
- b) prevent parties to electronic transactions from having the opportunity to establish before judicial or administrative authorities that their electronic transactions comply with any legal requirements with respect to electronic authentication and electronic signature.

3. Notwithstanding paragraph 2, each 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.

ARTICLE 8.78 Consumer protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective consumer protection measures applicable to electronic commerce as well as measures conducive to the development of consumer confidence in electronic commerce.

2. The Parties recognise 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.

3. The Parties recognise the importance of adopting or maintaining measures, in accordance with their respective laws and regulations, to protect the personal data of electronic commerce users.

ARTICLE 8.79 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; and
- b) require the prior consent, as specified according to its laws and regulations, of recipients to receive commercial electronic messages.

2. Each Party shall ensure that commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are made, and contain the necessary information to enable recipients to request cessation free of charge and at any time.

3. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraphs 1 and 2.

ARTICLE 8.80 Cooperation on electronic commerce

1. The Parties shall, where appropriate, cooperate and participate actively in multilateral fora to promote the development of electronic commerce.

2. The Parties agree to maintain a dialogue on regulatory matters relating to electronic commerce with a view to sharing information and experience, as appropriate, including on related laws, regulations and their implementation, and best practices with respect to electronic commerce, in relation to, inter alia:

- a) consumer protection;
- b) cybersecurity;
- c) combatting unsolicited commercial electronic messages;
- d) the recognition of certificates of electronic signatures issued to the public;
- e) challenges for small and medium-sized enterprises in the use of electronic commerce;
- f) the facilitation of cross-border certification services;
- g) intellectual property; and
- h) electronic government.

ARTICLE 8.81 Free flow of data

The Parties shall reassess within three years of the date of entry into force of this Agreement the need for inclusion of provisions on the free flow of data into this Agreement.

Japan-Mongolia EPA

Chapter 9
Electronic Commerce

Article 9.1 General Provisions

1. The Parties recognize the economic growth and opportunities provided by electronic commerce, and the importance of avoiding unnecessary barriers to its use and development.
2. The objective of this Chapter is to contribute to creating an environment of trust and confidence in the use of electronic commerce and to promote electronic commerce between the Parties and the wider use of electronic commerce globally.
3. The Parties recognize the principle of technological neutrality in electronic commerce.
4. In the event of any inconsistency between this Chapter and Chapter 2, 7, 10 or 12, the Chapter other than this Chapter shall prevail to the extent of the inconsistency.

Article 9.2 Definitions

For the purposes of this Chapter:

- a) the term “digital products” means computer programs, text, video, images, sound recordings and other products, that are digitally encoded, regardless of whether they are fixed on a carrier medium or transmitted electronically;
- b) the term “electronic certificate” means an electromagnetic record prepared for certifying that matters used to confirm that the user has performed the electronic signature are pertaining to such user;
- c) the term “electronic signature” means a measure taken with respect to information that can be recorded in an electromagnetic record and which fulfils both of the following requirements:
 - i. that the measure indicates that such information has been approved by a person who has taken such measure; and
 - ii. that the measure confirms that such information has not been altered; and
- d) the term “trade administration documents” means forms that a Party issues or controls and that must be completed by or for an importer or exporter in connection with the importation or exportation of goods.

Article 9.3 Customs Duties

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

Article 9.4 Non-Discriminatory Treatment of Digital Products

1. Neither Party shall adopt or maintain:

- a) measures that accord less favorable treatment to digital products of the other Party than it accords to its own like digital products; and
- b) measures that accord less favorable treatment to digital products of the other Party than it accords to like digital products of a non-Party.

2. Paragraph 1 shall not apply to:

- a) government procurement;
- b) subsidies provided by a Party or a state enterprise, including grants, government-supported loans, guarantees and insurance;
- c) measures maintained by a Party in accordance with paragraph 2 of Article 7.4;
- d) measures adopted or maintained by a Party within the scope of Article 7.3 or 7.5 which are:
 - i. related to the sectors not committed in its Schedule of Specific Commitments in Annex 6; or
 - ii. not inconsistent with the terms, limitations, conditions and qualifications agreed and specified in its Schedule of Specific Commitments in Annex 6; and
- e) non-conforming measures adopted or maintained by a Party in accordance with Article 10.8.

3. In implementing its obligations under paragraph 1, each Party shall, where necessary, determine in good faith whether a digital product is a digital product of a Party, of the other Party or of a non-Party. Such determination shall be made in a transparent, objective, reasonable and fair manner.

4. Each Party shall, upon request of the other Party, explain how it determines the origin of a digital product where it determines such origin in implementing its obligations under paragraph 1.

5. The Parties shall cooperate in international organizations and fora to foster the development of criteria for the determination of the origin of a digital product, with a view to considering the incorporation of such criteria into this Agreement.

Article 9.5 Electronic Signature

1. Neither Party shall adopt or maintain measures regulating electronic signature that would:

- a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic signature methods for their transaction; or
- b) prevent parties to an electronic transaction from having the opportunity to prove in court that their electronic transactions comply with any legal requirements.

2. Notwithstanding paragraph 1, each Party may require that, for a particular category of electronic transactions, the electronic signatures meet certain performance standards or are based on a specific electronic certificate issued by a supplier of certification services accredited or recognized in accordance with the laws and regulations of the Party, provided that the requirement:

- a) serves a legitimate policy objective; and
- b) is substantially related to achieving that objective.

Article 9.6 Consumer Protection

1. The Parties recognize the importance of adopting and maintaining transparent and effective consumer protection measures for electronic commerce as well as measures conducive to the development of consumer confidence.

2. 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.

3. The Parties shall adopt or maintain measures, in accordance with their respective laws and regulations, to protect the personal data of electronic commerce users.

Article 9.7 Unsolicited Commercial E-mail

Each Party shall endeavor to take appropriate and necessary measures to regulate unsolicited commercial e-mail for advertising purposes.

Article 9.8 Paperless Trade Administration

1. Each Party shall endeavor to make all trade administration documents available to the public in electronic form.
2. Each Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such documents.
3. The Parties shall cooperate bilaterally and in international fora to enhance the acceptance of electronic versions of trade administration documents.

Article 9.9 Domestic Regulation

Each Party shall ensure that all its measures affecting electronic commerce are administered in a transparent, objective, reasonable and impartial manner, and are not more burdensome than necessary to meet legitimate policy objectives.

Article 9.10 Prohibition on Requirement concerning the Location of Computing Facilities

1. Neither Party shall require:
 - a) a service supplier of the other Party;
 - b) an investor of the other Party; or
 - c) an investment of an investor of the other Party in the Area of the former Party,as a condition for conducting its business in the Area of the former Party, to use or locate computing facilities in that Area.
2. Notwithstanding paragraph 1, nothing in this Article shall be construed to prevent a Party from adopting or maintaining measures affecting the use or location of computing facilities necessary to achieve a legitimate public policy objective, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

Article 9.11 Source Code

1. Neither Party shall require the transfer of, or access to, source code of software owned by a person of the other Party, as a condition of the import, distribution, sale or use of such software, or of products containing such software, in its Area.
2. For the purposes of this Article, software subject to paragraph 1 is limited to mass-market software or products containing such software, and does not include software used for critical infrastructure.

Article 9.12 Cooperation

1. The Parties shall, where appropriate, cooperate bilaterally and participate actively in regional and multilateral fora to promote the development of electronic commerce.
2. The Parties shall, where appropriate, share information and experiences, including on related laws, regulations and best practices with respect to electronic commerce, related to, inter alia, consumer confidence, cyber-security, combatting unsolicited commercial e-mail, intellectual property, electronic government and personal data protection.
3. The Parties shall cooperate to overcome obstacles encountered by small and medium enterprises in the use of electronic commerce.
4. Each Party shall encourage, through existing means available to it, the activities of non-profit organizations in that Party aimed at promoting electronic commerce, including the exchange of information and views.
5. The Parties recognize the importance of working to maintain cross-border flows of information as an essential element for a vibrant electronic commerce environment.
6. The Parties recognize the importance of further enhancement of trade in digital products.

Article 9.13 Sub-Committee on Electronic Commerce

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Electronic Commerce (hereinafter referred to in this Article as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:
 - a) reviewing and monitoring the implementation and operation of this Chapter;
 - b) discussing any issues related to this Chapter including, where appropriate, the possible review of Article 9.4;
 - c) seeking new opportunities to further enhance trade in digital products;
 - d) reporting the findings of the Sub-Committee to the Joint Committee; and
 - e) carrying out other functions as may be delegated by the Joint Committee.
3. The Sub-Committee shall be composed of representatives of the Governments of the Parties.
4. The Sub-Committee shall hold meetings at such times and venues or by means, as may be agreed by the Parties.

Korea-Australia FTA

CHAPTER 15 ELECTRONIC COMMERCE

ARTICLE 15.1: OBJECTIVES

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 15.2: ELECTRONIC SUPPLY OF SERVICES

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 7 (Cross-Border Trade in Services), 8 (Financial Services) and 11 (Investment), subject to any exceptions or non-conforming measures set out in this Agreement that are applicable to such obligations.

ARTICLE 15.3: CUSTOMS DUTIES

Neither Party shall impose customs duties on electronic transmissions between the Parties.

ARTICLE 15.4: DOMESTIC REGULATION

1. Each Party shall adopt or maintain measures regulating electronic commerce taking into account the *UNCITRAL Model Law on Electronic Commerce* and, as appropriate, other international standards, guidelines and recommendations.

2. Each Party shall endeavour to:

- (a) minimise the regulatory burden on electronic commerce; and
- (b) ensure that its measures regulating electronic commerce support industry-led development of electronic commerce.

ARTICLE 15.5: ELECTRONIC AUTHENTICATION AND ELECTRONIC SIGNATURES

1. Each Party shall adopt or maintain measures regulating electronic authentication that permit parties to an electronic transaction:

- (a) to determine the appropriate authentication methods for that transaction; and
- (b) to have the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with legal requirements with respect to authentication.

2. Notwithstanding paragraph 1, where prescribed by a Party's laws and regulations, a Party may require that, for transactions where a high degree of reliability and security is required, such as electronic financial transactions, the method of authentication meet certain security standards or be certified by an authority accredited in accordance with the Party's laws or policies.

3. The Parties shall work towards the mutual recognition of electronic signatures issued by either Party, based on internationally accepted standards.

4. The Parties shall work towards interoperability of electronic signatures issued by either Party.

ARTICLE 15.6: **ONLINE CONSUMER PROTECTION**

1. Each Party shall adopt or maintain measures to protect consumers engaged in electronic commerce, which are at least equivalent to those provided for consumers engaged in other forms of commerce.

2. The Parties recognise the importance of cooperation between their respective national consumer agencies on activities related to cross-border electronic commerce in order to enhance consumer welfare.

ARTICLE 15.7: **PAPERLESS TRADING**

1. Each Party shall endeavour to make trade administration documents available to the public in electronic form.

2. Each Party shall endeavour to accept electronic trade administration documents as the legal equivalent of the paper version of those documents.

3. In developing initiatives which provide for the use of paperless trading, each Party shall take into account the methods agreed by international organisations.

ARTICLE 15.8: **ONLINE PERSONAL DATA PROTECTION**

Each Party shall adopt or maintain measures which ensure 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, guidelines and recommendations of relevant international organisations.

ARTICLE 15.9: **UNSOLICITED COMMERCIAL ELECTRONIC MESSAGES**

1. Each Party shall endeavour to adopt or maintain measures to regulate unsolicited commercial electronic messages to minimise unsolicited spam and telemarketing.

2. The Parties shall, subject to their respective laws and regulations, cooperate bilaterally and in international fora regarding the regulation of unsolicited commercial electronic messages. Areas of cooperation may include, but should not be limited to, the exchange of information on technical, educational and policy approaches to spam and telemarketing.

ARTICLE 15.10: **DEFINITIONS**

For the purposes of this Chapter:

electronic authentication means the process or act of establishing the identity of a party to an electronic communication or transaction;

electronic signature means information in the form of electronic data attached to, or logically combined with, an electronic record for the purpose of utilising it to identify the signer and to prove that the signer has signed the electronic record;

electronic transmissions means transmissions made using any electromagnetic or photonic means;

personal data means any information about an identified or identifiable individual;

trade administration documents means forms that a Party issues or controls and that must be completed by or for an importer or exporter in connection with the importation or exportation of goods; and

unsolicited commercial electronic message means an electronic message (including a voice service) which is sent for commercial purposes to an electronic address without the consent of the recipient or against the explicit rejection of the recipient, using an Internet carriage service or other telecommunications service.

CHAPTER 4

CUSTOMS ADMINISTRATION AND TRADE FACILITATION

Article 4.2: Release of Goods

1. In order to facilitate bilateral trade, each Party shall adopt or maintain simplified customs procedures for the efficient release of goods.

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:

- a) provide for the release of goods within a period no greater than required to ensure compliance with its domestic customs laws and regulations;
- b) provide for customs information to be submitted and processed electronically before the goods arrive in order for them to be released on their arrival;
- c) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities; and
- d) allow importers to withdraw goods prior to the final determination of customs duties, taxes, and fees by the importing Party's customs authority when these are not determined prior to or promptly upon arrival, provided that all other regulatory requirements have been met.¹

Article 4.7: Express Shipments

Each Party shall adopt or maintain expedited customs procedures for express shipments, regardless of their weights or customs values, while maintaining appropriate customs control and selection. These procedures shall:

- (a) provide a separate and expedited customs procedures for express shipments;
- (b) provide for information necessary to release an express shipment to be submitted and processed electronically before the shipment arrives;
- (c) allow submission of a single manifest covering all goods contained in an express shipment, through, if possible, electronic means;
- (d) to the extent possible, provide for certain goods to be cleared with a minimum of documentation; and
- (e) under normal circumstances, provide that no customs duties or taxes will be assessed on, nor will formal entry documents be required for, express shipments that do not exceed certain value established by the domestic laws and regulations of the Party.

CHAPTER 10

ELECTRONIC COMMERCE

Article 10.1: General Provisions

The Parties recognize the economic growth and opportunity that electronic commerce provides, and the importance of promoting electronic commerce between the Parties, enhancing cooperation between the Parties regarding the development of electronic commerce, and promoting the wider use of electronic commerce globally.

Article 10.2: Customs Duties

1. A Party may not impose customs duties on electronic transmissions in compliance with any agreement relating to electronic commerce under the WTO, to which both Parties are party.

2. For greater certainty, nothing in paragraph 1 shall preclude a Party from imposing internal taxes, fees, or other internal charges on content transmitted electronically.

Article 10.3: Electronic Authentication, Electronic Signatures and Digital Certificates

1. Each Party shall endeavor to adopt or maintain legislation for electronic authentication that would:

- (a) permit parties to an electronic transaction to mutually determine the appropriate authentication technologies and implementation models for their electronic transactions;

- (b) permit parties to an electronic transaction to have the opportunity to prove that their electronic transaction complies with the Party's domestic laws and regulations in respect to electronic authentication; and
- (c) not limit the recognition of authentication technologies and implementation models.

2. The Parties shall, where possible, endeavor to work towards the mutual recognition of digital certificates and electronic signatures that are issued or recognized by them based on internationally accepted standards.

3. The Parties shall encourage the interoperability of digital certificates used by business.

Article 10.4: Domestic Regulatory Frameworks

Each Party shall endeavor to adopt or maintain its domestic laws and regulations governing electronic transactions taking into account the *UNCITRAL Model Law on Electronic Commerce 1996*.

Article 10.5: Online Consumer Protection

1. The Parties shall endeavor to adopt or maintain transparent measures to protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce.

2. Each Party shall, where possible, provide protection for consumers using electronic commerce that is at least equivalent to that provided for consumers of other forms of commerce under its relevant domestic laws, regulations and policies.

Article 10.6: Personal Data Protection

1. Each Party shall endeavor to adopt or maintain legislative measures which ensure the protection of the personal data of the users of electronic commerce. In the development of personal data protection standards in electronic commerce, each Party recognizes the importance of taking into account the international standards and the criteria of relevant international organizations.

2. Each Party recognizes the necessity of taking an adequate level of safeguards for the protection of personal data of the users of electronic commerce that is transferred between the Parties.

Article 10.7: Paperless Trading

1. Each Party shall endeavor to make electronic versions of its trade administration documents publicly available.

2. Each Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

3. Each Party shall, where possible, work towards the implementation of initiatives which provide for the use of paperless trading.

Article 10.8: Cooperation on Electronic Commerce

1. Recognizing the global nature of electronic commerce, the Parties shall maintain mechanisms on cooperation, including research and training activities, which would enhance the development of electronic commerce. These may include, but are not limited to:

- (a) the electronic signatures and the electronic authentication;
- (b) the security of electronic commerce, including protection of personal data and online consumers and facilitation of prompt investigation and resolution of fraudulent incidents;
- (c) the promotion of the use of electronic versions of trade administration documents used by either Party;
- (d) exploring ways to provide assistance between the Parties in implementing an electronic commerce legal framework; and
- (e) actively participating in regional and multilateral fora to promote development of electronic commerce.

2. The Parties shall endeavor to share information and experiences on laws and regulations relating to electronic commerce and to assist small and medium enterprises to overcome the obstacles encountered in the use of electronic commerce.

3. Each Party shall, to the extent possible, make cooperative efforts with competent authorities when personal data transferred across its borders are leaked.

4. The Parties recognize the importance of cooperation between their respective national consumer protection authorities on activities related to cross-border electronic commerce in order to enhance consumer welfare.

Article 10.9: Definitions

For the purposes of this Chapter:

digital certificates means electronic documents or files that are issued or otherwise linked to a participant in an electronic communication or transaction for the purpose of establishing the participant's identity;

electronic signature means data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory's approval of the information contained in the data message; and

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.

Pacific Alliance (Spanish)

CAPÍTULO 13

COMERCIO ELECTRÓNICO

ARTÍCULO 13.1: Definiciones

Para los efectos del presente Capítulo:

comercio realizado por medios electrónicos significa el comercio realizado a través de telecomunicaciones por sí solo, o en conjunto con otras tecnologías de la información y las comunicaciones;

documentos de administración del comercio significa formularios que una Parte expide o controles que tienen que ser completados por o para un importador o exportador en relación con la importación o exportación de mercancías;

información personal significa cualquier información sobre una persona natural identificada o identificable;

interoperabilidad significa la capacidad de dos o más sistemas o componentes de intercambiar información y usar la información que ha sido intercambiada;

mensajes comerciales electrónicos no solicitados significa un mensaje electrónico que se envía con fines comerciales o publicitarios sin el consentimiento de los receptores, o contra la voluntad explícita del destinatario, utilizando un servicio de internet o, de conformidad con la legislación de la Parte, por otros servicios de telecomunicaciones, y

productos digitales significa programas de cómputo, texto, video, imágenes, grabaciones de sonido y otros productos que estén codificados digitalmente.

ARTÍCULO 13.2: Ámbito y Cobertura

El presente Capítulo aplica a las medidas que afectan las transacciones electrónicas de mercancías y servicios, incluidos los productos digitales, sin perjuicio de las disposiciones sobre servicios e inversiones que sean aplicables en virtud del presente Protocolo Adicional.

ARTÍCULO 13.3: Disposiciones Generales

1. Las Partes reconocen el crecimiento económico y las oportunidades proporcionadas por el comercio electrónico.

2. Considerando el potencial del comercio electrónico como un instrumento de desarrollo social y económico, las Partes reconocen la importancia de:

- (a) la claridad, transparencia y previsibilidad de sus marcos normativos nacionales para facilitar, en la medida de lo posible, el desarrollo del comercio electrónico;
- (b) alentar la autorregulación en el sector privado para promover la confianza en el comercio electrónico, teniendo en cuenta los intereses de los usuarios, a través de iniciativas tales

como las directrices de la industria, modelos de contratos, códigos de conducta y sellos de confianza;

- (c) la interoperabilidad, la innovación y la competencia para facilitar el comercio electrónico;
- (d) asegurar que las políticas internacionales y nacionales de comercio electrónico tengan en cuenta el interés de todos los usuarios, incluyendo empresas, consumidores, organizaciones no gubernamentales e instituciones públicas pertinentes;
- (e) facilitar el uso del comercio electrónico por las micro, pequeñas y medianas empresas, y
- (f) garantizar la seguridad de los usuarios del comercio electrónico, tomando en consideración los estándares internacionales de protección de datos.

3. Cada Parte procurará adoptar medidas para facilitar el comercio realizado por medios electrónicos abordando las cuestiones pertinentes al entorno electrónico.

4. Las Partes reconocen la importancia de evitar barreras innecesarias para el comercio realizado por medios electrónicos. Teniendo en cuenta sus objetivos de política nacional, cada Parte procurará evitar medidas que:

- (a) dificulten el comercio realizado por medios electrónicos, o
- (b) tengan el efecto de tratar el intercambio comercial realizado a través de medios electrónicos de manera más restrictiva que el comercio realizado por otros medios.

ARTÍCULO 13.4: Derechos Aduaneros

1. Ninguna Parte podrá aplicar derechos aduaneros, tasas o cargos a la importación o exportación por medios electrónicos de productos digitales.

2. Para mayor certeza, el presente Capítulo no impide que una Parte imponga impuestos internos u otras cargas internas sobre productos digitales transmitidos electrónicamente, siempre que dichos impuestos o cargas no se impongan de una manera que sea incompatible con el presente Protocolo Adicional.

ARTÍCULO 13.5: Transparencia

Cada Parte, de acuerdo a su legislación publicará prontamente o de cualquier otra forma pondrá a disposición del público sus leyes, reglamentos, procedimientos y decisiones administrativas de aplicación general que se relacionen con el comercio electrónico.

ARTÍCULO 13.6: Protección de los Consumidores

1. Las Partes reconocen la importancia de mantener y adoptar medidas transparentes y efectivas para proteger a los consumidores de prácticas comerciales fraudulentas y engañosas en el comercio electrónico.

2. Para los propósitos del párrafo 1, las Partes deberán intercambiar información y experiencias sobre los sistemas nacionales relativas a la protección de los consumidores que participan en el comercio electrónico.

3. Las Partes evaluarán mecanismos alternativos de solución de controversias transfronterizas que se desarrollen a través de medios electrónicos y relativos a la protección del consumidor en las transacciones electrónicas transfronterizas.

ARTÍCULO 13.7: Administración del Comercio sin Papel

1. Cada Parte se esforzará por poner a disposición del público en forma electrónica todos los documentos de administración del comercio.

2. Cada Parte se esforzará por aceptar los documentos de administración del comercio presentados electrónicamente de acuerdo a su legislación, como el equivalente legal de la versión en papel de dichos documentos.

ARTÍCULO 13.8: Protección de la Información Personal

1. Las Partes deberán adoptar o mantener leyes, regulaciones o medidas administrativas para la protección de la información personal de los usuarios que participen en el comercio electrónico. Las Partes tomarán en consideración los estándares internacionales que existen en esta materia.

2. Las Partes deberán intercambiar información y experiencias en cuanto a su legislación de protección de la información personal.

ARTÍCULO 13.9: Mensajes Comerciales Electrónicos no Solicitados

Las Partes adoptarán o mantendrán medidas para proteger a los usuarios, de los mensajes comerciales electrónicos no solicitados.

ARTÍCULO 13.10: Autenticación y Certificados Digitales

1. Ninguna Parte podrá adoptar o mantener legislación sobre autenticación electrónica, que impida a las partes de una transacción realizada por medios electrónicos, tener la oportunidad de probar ante las instancias judiciales o administrativas correspondientes, que dicha transacción electrónica cumple los requerimientos de autenticación establecidos por su legislación.

2. Las Partes establecerán mecanismos y criterios de homologación que fomenten la interoperabilidad de la autenticación electrónica entre ellas de acuerdo a estándares internacionales. Con este propósito, podrán considerar el reconocimiento de certificados de firma electrónica avanzada o digital según corresponda, emitidos por prestadores de servicios de certificación, que operen en el territorio de cualquier Parte de acuerdo con el procedimiento que determine su legislación, con el fin de resguardar los estándares de seguridad e integridad.

ARTÍCULO 13.11: Flujo Transfronterizo de Información

Con el objetivo de profundizar las relaciones en materia de comercio electrónico, las Partes considerarán a futuro la negociación de compromisos relacionados con flujo transfronterizo de información.

ARTÍCULO 13.12: Cooperación

Reconociendo la naturaleza global del comercio electrónico, las Partes afirman la importancia de:

- (a) trabajar conjuntamente para facilitar el uso del comercio electrónico por las micro, pequeñas y medianas empresas;
- (b) compartir información y experiencias sobre leyes, regulaciones, y programas en la esfera del comercio electrónico, incluyendo aquellos relacionados con protección de la información personal, protección del consumidor, seguridad en las comunicaciones electrónicas, autenticación, derechos de propiedad intelectual, y gobierno electrónico;
- (c) trabajar para mantener los flujos transfronterizos de información como un elemento esencial en el fomento de un entorno dinámico para el comercio electrónico;
- (d) fomentar el comercio electrónico promoviendo la adopción de códigos de conducta, modelos de contratos, sellos de confianza, directrices y mecanismos de aplicación en el sector privado, y
- (e) participar activamente en foros regionales y multilaterales, para promover el desarrollo del comercio electrónico.

ARTÍCULO 13.13: Administración del Capítulo

Las Partes trabajarán conjuntamente para alcanzar los objetivos del presente Capítulo a través de diversos medios, tales como las tecnologías de la información y las comunicaciones, reuniones presenciales o grupos de trabajo con expertos.

ARTÍCULO 13.14: Relación con otros Capítulos

En caso de incompatibilidad entre este Capítulo y otro Capítulo del presente Protocolo Adicional, el otro Capítulo prevalecerá en la medida de la incompatibilidad.

Singapore-Australia FTA

Chapter 14 ELECTRONIC COMMERCE

ARTICLE 1 *Definitions*

1. The purposes of this Chapter are to promote electronic commerce between the Parties and to promote the wider use of electronic commerce globally.

2. For the purposes of this Chapter:

- (a) "computing facilities" means computer servers and storage devices for processing or storing information for commercial use;
- (b) "covered person" means:

- i. a “covered investment” as defined in Article 2(c) (General Definitions) of Chapter 1 (Objectives and General Definitions);
- ii. an “investor of a Party” as defined in Article 1 (Definitions) of Chapter 8 (Investment); but does not include an investor in a financial institution; or
- iii. a “service supplier of a Party” as defined in Article 1 (Definitions) of Chapter 7 (Cross-Border Trade in Services)

but does not include a “financial institution” or a “cross-border financial service supplier of a Party” as defined in Article 1 (Definitions) of Chapter 9 (Financial Services);

- (c) “customs duty” has the same meaning as Article 2(e) (General Definitions) of Chapter 1 (Objectives and General Definitions);
- (d) “digital product” means a computer programme, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically;
- (e) “electronic authentication” means the process or act of verifying the identity of a party to an electronic communication or transaction and ensuring the integrity of an electronic communication;
- (f) “electronic transmission” or “transmitted electronically” means a transmission made using any electromagnetic means, including by photonic means;
- (g) “electronic version” of a document means a document in an electronic format prescribed by a Party, including a document sent by facsimile transmission;
- (h) “enterprise” means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation;
- (i) “measure” includes any law, regulation, procedure, requirement or practice;
- (j) “person” means a natural person or an enterprise;
- (k) “person of a Party” means a national or an enterprise of a Party;
- (l) “personal information” means any information, including data, about an identified or identifiable natural person;
- (m) “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;
- (n) “TRIPS Agreement” means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, set out in Annex 1C to the WTO Agreement; and
- (o) “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 access service supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service.

ARTICLE 2 **Scope**

1. The Parties recognise the economic growth and opportunities provided by electronic commerce and the importance of frameworks that promote consumer confidence in electronic commerce and of avoiding unnecessary barriers to its use and development.

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 Chapters 7 (Cross-Border Trade in Services), 8 (Investment) and 9 (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 5 (Non-Discriminatory Treatment of Digital Products), 13 (Cross-Border Transfer of Information by Electronic Means), 15 (Location of Computing Facilities) and 19 (Source Code) are:

- (a) subject to the relevant provisions, exceptions and non-conforming measures of Chapters 7 (Cross-Border Trade in Services), 8 (Investment) and 9 (Financial Services); and
- (b) to be read in conjunction with any other relevant provisions in this Agreement.

6. The obligations contained in Articles 5 (Non-Discriminatory Treatment of Digital Products), 13 (Cross-Border Transfer of Information by Electronic Means) and 15 (Location of Computing Facilities) shall not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 7 (Reservations) of Chapter 7 (Cross-Border Trade in Services) and Article 11 (Reservations) of Chapter 8 (Investment).

ARTICLE 3 *Transparency*

1. Each Party shall promptly publish, or otherwise promptly make publicly available where publication is not practicable, all relevant measures of general application which pertain to or affect the operation of this Chapter.

2. Each Party shall respond promptly to any request by the other Party for specific information on any of its measures of general application within the meaning of paragraph 1.

ARTICLE 4 *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 5 *Non-Discriminatory Treatment of Digital Products*

1. Neither Party shall accord less favourable treatment to a digital product created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of the other Party, or to a digital product of which the author, performer, producer, developer or owner is a person of the other Party, than it accords to other like digital products.

2. Paragraph 1 shall not apply to the extent of any inconsistency with the rights and obligations in the TRIPS Agreement or with Chapter 13 (Intellectual Property).

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 6 *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 at New York, November 23, 2005.

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.

ARTICLE 7 *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 the other Party to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or
- (b) prevent the other Party 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 8 *Online Consumer Protection*

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

2. For the purposes of this Article, fraudulent and deceptive commercial activities refers to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, for example, a practice of:

- (a) making a misrepresentation of material fact, including an implied factual misrepresentation, that causes significant detriment to the economic interests of a misled consumer;
- (b) failing to deliver products or provide services to a consumer after the consumer is charged; or
- (c) charging or debiting a consumer's financial, telephone or other accounts without authorisation.

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 recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare. To this end, the Parties affirm that the cooperation sought includes cooperation with respect to online commercial activities.

ARTICLE 9 *Personal Information Protection*

1. The Parties recognise the economic and social benefits of protecting the personal information of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.

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 electronic commerce. In the development of its legal framework for the protection of personal information, each Party should take into account principles and guidelines of relevant international bodies.

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

4. Each Party should publish information on the personal information protections it provides to users of electronic commerce, including how:

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

5. Recognising 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 endeavour 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 10 *Paperless Trading*

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

2. Each Party shall accept electronic versions of its trade administration documents as the legal equivalent of paper documents except where:

- (a) there is a domestic or international legal requirement to the contrary; or
- (b) doing so would reduce the effectiveness of the trade administration process.

3. The Parties shall cooperate bilaterally and in international fora to enhance the acceptance of electronic versions of trade administration documents.

ARTICLE 11 *Exceptions*

This Chapter shall be subject to Article 16 (General Exceptions) of Chapter 7 (Cross-Border Trade in Services) and Article 19 (General Exceptions) of Chapter 8 (Investment), and to Article 2 (Security Exceptions) of Chapter 17 (Final Provisions).

ARTICLE 12 *Principles on Access to and Use of the Internet for Electronic Commerce*

Subject to applicable policies, laws and regulations, the Parties recognise 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;
- (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 13 *Cross-Border Transfer of Information by Electronic Means*

1. The Parties recognise 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 the 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:

- (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 14 *Internet Interconnection Charge Sharing*

The Parties recognise that a supplier seeking international Internet connection should be able to negotiate with suppliers of the other Party on a commercial basis. These negotiations may include negotiations regarding compensation for the establishment, operation and maintenance of facilities of the respective suppliers.

ARTICLE 15 *Location of Computing Facilities*

1. The Parties recognise 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 16 *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 according to the laws and regulations of each Party, of a recipient to receive commercial electronic messages; or
- (c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

2. Each Party shall provide recourse against a supplier of unsolicited commercial electronic messages that does not comply with the measures adopted or maintained pursuant to paragraph 1.

3. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

ARTICLE 17 *Cooperation*

Recognising the global nature of electronic commerce, the Parties shall endeavour to:

- (a) work together to assist small and medium-sized enterprises to overcome obstacles to its use;
- (b) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:
 - i. personal information protection;
 - ii. online consumer protection, including means for consumer redress and building consumer confidence;
 - iii. unsolicited commercial electronic messages;
 - iv. security in electronic communications;
 - v. authentication; and
 - vi. e-government;
- (c) exchange information and share views on consumer access to products and services offered online between the Parties;
- (d) participate actively in regional and multilateral fora to promote the development of electronic commerce; and
- (e) encourage development by the private sector of methods of self-regulation that foster electronic commerce, including codes of conduct, model contracts, guidelines and enforcement mechanisms.

ARTICLE 18 *Cooperation on Cybersecurity Matters*

The Parties recognise the importance of:

- (a) building the capabilities of their national entities responsible for computer security incident response; and
- (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 19 *Source Code*

1. Neither Party shall require the transfer of, or access to, source code of software owned by a person of the other Party, as a condition for the import, distribution, sale or use of such software, or of products containing such software, in its territory.

2. For the purposes of this Article, software subject to paragraph 1 is limited to mass-market software or products containing such software and does not include software used for critical infrastructure.

3. Nothing in this Article shall preclude:

- (a) the inclusion or implementation of terms and conditions related to the provision of source code in commercially negotiated contracts; or
- (b) a Party from requiring the modification of source code of software necessary for that software to comply with laws or regulations which are not inconsistent with this Agreement.

4. This Article shall not be construed to affect requirements that relate to patent applications or granted patents, including any orders made by a judicial authority in relation to patent disputes, subject to safeguards against unauthorised disclosure under the law or practice of a Party.

**CHAPTER FIFTEEN
ELECTRONIC COMMERCE**

ARTICLE 15.1: GENERAL

The Parties recognize 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 15.2: ELECTRONIC SUPPLY OF SERVICES

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 Eleven through Thirteen (Investment, Cross-Border Trade in Services, and Financial Services), which are subject to any exceptions or non-conforming measures set out in this Agreement that are applicable to such obligations.

ARTICLE 15.3: DIGITAL PRODUCTS

1. Neither Party may impose customs duties, fees, or other charges on or in connection with the importation or exportation of:

- (a) if it is an originating good, a digital product fixed on a carrier medium; or
- (b) a digital product transmitted electronically.

2. Neither Party may accord less favorable treatment to some digital products than it accords to other like digital products

- (a) on the basis that:
 - i. the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party, or
 - ii. the author, performer, producer, developer, distributor, or owner of such digital products is a person of the other Party; or
- (b) so as otherwise to 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.

3. Neither Party may accord less favorable treatment to digital products:

- (a) created, produced, published, 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, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party; or
- (b) whose author, performer, producer, developer, distributor, or owner is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, distributor, or owner is a person of a non-Party.

4. Paragraphs 2 and 3 do not apply to measures adopted or maintained in accordance with Article 11.12 (Non-Conforming Measures), 12.6 (Non-Conforming Measures), or 13.9 (Non-Conforming Measures).

5. Paragraph 2 does not apply to:

- (a) subsidies or grants that a Party provides to a service or service supplier, including government-supported loans, guarantees, and insurance; or
- (b) services supplied in the exercise of governmental authority, as defined in Article 12.1.6 (Scope and Coverage).

6. 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 aural and/or visual reception, and for which the content consumer has no choice over the scheduling of the series.

ARTICLE 15.4: ELECTRONIC AUTHENTICATION AND ELECTRONIC SIGNATURES

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;
 - (b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to authentication; or 15-3
 - (c) deny a signature legal validity solely on the basis that the signature is in electronic form.
2. Notwithstanding paragraph 1, a Party may require that, for a particular category of transactions, the method of authentication meet certain performance standards or be certified by an authority accredited in accordance with the Party's law, provided the requirement:
 - (a) serves a legitimate governmental objective; and
 - (b) is substantially related to achieving that objective.

ARTICLE 15.5: ONLINE CONSUMER PROTECTION

1. The Parties recognize 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.
2. The Parties recognize the importance of cooperation between their respective national consumer protection agencies on activities related to cross-border electronic commerce in order to enhance consumer welfare.
3. Each Party's national consumer protection enforcement agencies shall endeavor to cooperate with those of the other Party, in appropriate cases of mutual concern, in the enforcement of laws against fraudulent and deceptive commercial practices in electronic commerce.

Article 15.6: PAPERLESS TRADING

1. Each Party shall endeavor to make trade administration documents available to the public in electronic form.
2. Each Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

ARTICLE 15.7: PRINCIPLES ON ACCESS TO AND USE OF THE INTERNET FOR ELECTRONIC COMMERCE

To support the development and growth of electronic commerce, each Party recognizes that consumers in its territory should be able to:

- (a) access and use services and digital products of their choice, unless prohibited by the Party's law;
- (b) run applications and services of their choice, subject to the needs of law enforcement; 15-4
- (c) connect their choice of devices to the Internet, provided that such devices do not harm the network and are not prohibited by the Party's law; and
- (d) have the benefit of competition among network providers, application and service providers, and content providers.

ARTICLE 15.8: CROSS-BORDER INFORMATION FLOWS

Recognizing the importance of the free flow of information in facilitating trade, and acknowledging the importance of protecting personal information, the Parties shall endeavor to refrain from imposing or maintaining unnecessary barriers to electronic information flows across borders.

ARTICLE 15.9: DEFINITIONS

For purposes of this Chapter:

carrier medium means any physical object designed principally for use in 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, and includes, but is not limited to, an optical medium, a floppy disk, or a magnetic tape;

digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution, regardless of whether they are fixed on a carrier medium or transmitted electronically; 4

electronic 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;

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 the transfer of digital products using any electromagnetic or photonic means; and

trade administration documents means forms 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.

US-Mexico-Canada Agreement (USMCA)

CHAPTER 19 DIGITAL TRADE

Article 19.1: Definitions

For the purposes of this Chapter:

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

computing facility means a computer server or storage device for processing or storing information for commercial use;

covered person means:

- a) a covered investment as defined in 1.4 (General Definitions);
- b) an investor of a Party as defined in Article 14.1 (Definitions); or
- c) a service supplier of a Party as defined in Article 15.1 (Definitions),

but does not include a covered person as defined in Article 17.1 (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. For greater certainty, digital product does not include a digitized representation of a financial instrument, including money;

electronic authentication means the process or act of verifying the identity of a party to an electronic communication or transaction and ensuring the integrity of an electronic communication;

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

government information means non-proprietary information, including data, held by the central government;

information content provider means a person or entity that creates or develops, in whole or in part, information provided through the Internet or another interactive computer service;

interactive computer service means a system or service that provides or enables electronic access by multiple users to a computer server;

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

trade administration document means a form 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 communication 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.

Article 19.2: 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.

2. This Chapter applies to measures adopted or maintained by a Party that affect trade by electronic means.

3. This Chapter does not apply:

- a) to government procurement; or
- b) except for Article 19.18 (Open Government Data), to information held or processed by or on behalf of a Party, or measures related to that information, including measures related to its collection.

4. For greater certainty, a measure that affects the supply of a service delivered or performed electronically is subject to Chapter 14 (Investment), Chapter 15 (Cross-Border Trade in Services), and Chapter 17 (Financial Services), including any exception or non-conforming measure set out in this Agreement that is applicable to the obligations contained in those Chapters.

Article 19.3: Customs Duties

1. No Party shall impose customs duties, fees, or other charges on or in connection with the importation or exportation of digital products transmitted electronically, between a person of one Party and a person of another Party.

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

Article 19.4: Non-Discriminatory Treatment of Digital Products

1. No Party shall accord less favorable treatment to a digital product created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of another Party, or to a digital product of which the author, performer, producer, developer, or owner is a person of another Party, than it accords to other like digital products.

2. This Article does not apply to a subsidy or grant provided by a Party, including a government-supported loan, guarantee, or insurance.

Article 19.5: 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*.

2. Each Party shall endeavor to:

- a) avoid unnecessary regulatory burden on electronic transactions; and
- b) facilitate input by interested persons in the development of its legal framework for electronic transactions.

Article 19.6: Electronic Authentication and Electronic Signatures

1. Except in circumstances 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. No Party shall adopt or maintain measures for electronic authentication and electronic signatures that would:

- a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods or electronic signatures 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 or electronic signatures.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the electronic signature or method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its law.

4. Each Party shall encourage the use of interoperable electronic authentication.

Article 19.7: Online Consumer Protection

1. The Parties recognize the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent or deceptive commercial activities as referred to in Article 21.4.2 (Consumer Protection) when they engage in digital trade.

2. 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.

3. The Parties recognize the importance of, and public interest in, 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. To this end, the Parties affirm that cooperation under paragraphs 21.4.3 through 21.4.5 (Consumer Protection) includes cooperation with respect to online commercial activities.

Article 19.8: 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 this legal framework, each Party should take into account principles and guidelines of relevant international bodies, such as the *APEC Privacy Framework* and the *OECD Recommendation of the Council concerning Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (2013)*.

3. The Parties recognize that pursuant to paragraph 2, key principles include: limitation on collection; choice; data quality; purpose specification; use limitation; security safeguards; transparency; individual participation; and accountability. The Parties also recognize the importance of ensuring compliance with measures to protect personal information and ensuring that any restrictions on cross-border flows of personal information are necessary and proportionate to the risks presented.

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

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

- a) a natural person can pursue a remedy; and
- b) an enterprise can comply with legal requirements.

6. 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. The Parties shall endeavor to exchange information on the mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them. The Parties recognize that the *APEC Cross-Border Privacy Rules* system is a valid mechanism to facilitate cross-border information transfers while protecting personal information.

Article 19.9: Paperless Trading

Each Party shall endeavor to accept a trade administration document submitted electronically as the legal equivalent of the paper version of that document.

Article 19.10: Principles on Access to and Use of the Internet for Digital Trade

The Parties recognize that it is beneficial for consumers in their territories to be able to:

- a) access and use services and applications of a consumer's choice available on the Internet, subject to reasonable network management;

- 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 19.11: Cross-Border Transfer of Information by Electronic Means

1. No Party shall prohibit or restrict the cross-border transfer of information, including personal information, by electronic means if this activity is for the conduct of the business of a covered person.

2. This Article does not prevent a Party from adopting or maintaining a measure inconsistent with paragraph 1 that is necessary 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 transfers of information greater than are necessary to achieve the objective.

Article 19.12: Location of Computing Facilities

No 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.

Article 19.13: Unsolicited Commercial Electronic Communications

1. Each Party shall adopt or maintain measures providing for the limitation of unsolicited commercial electronic communications.

2. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic communications sent to an electronic mail address that:

- a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages; or
- b) require the consent, as specified in the laws and regulations of each Party, of recipients to receive commercial electronic messages.

3. Each Party shall endeavor to adopt or maintain measures that enable consumers to reduce or prevent unsolicited commercial electronic communications sent other than to an electronic mail address.

4. Each Party shall provide recourse in its law against suppliers of unsolicited commercial electronic communications that do not comply with a measure adopted or maintained pursuant to paragraph 2 or 3.

5. The Parties shall endeavor to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic communications.

Article 19.14: Cooperation

1. Recognizing the global nature of digital trade, the Parties shall endeavor to:

- a) exchange information and share experiences on regulations, policies, enforcement and compliance relating to digital trade, including:
 - i. personal information protection, particularly with a view to strengthening existing international mechanisms for cooperation in enforcing laws protecting privacy,
 - ii. security in electronic communications,
 - iii. authentication, and
 - iv. government use of digital tools and technologies to achieve better government performance;
- b) cooperate and maintain a dialogue on the promotion and development of mechanisms, including the APEC Cross-Border Privacy Rules, that further global interoperability of privacy regimes;
- c) actively participate in regional and multilateral fora to promote the development of digital trade;
- d) 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;

- e) promote access for persons with disabilities to information and communications technologies; and
- f) promote, through international cross-border cooperation initiatives, the development of mechanisms to assist users in submitting cross-border complaints regarding personal information protection.

2. The Parties shall consider establishing a forum to address any of the issues listed above, or any other matter pertaining to the operation of this Chapter.

Article 19.15: Cybersecurity

1. The Parties recognize that threats to cybersecurity undermine confidence in digital trade. Accordingly, the Parties shall endeavor to:

- a) build the capabilities of their respective national entities responsible for cybersecurity incident response; and
- b) strengthen existing collaboration mechanisms for cooperating to identify and mitigate malicious intrusions or dissemination of malicious code that affect electronic networks, and use those mechanisms to swiftly address cybersecurity incidents, as well as for the sharing of information for awareness and best practices.

2. Given the evolving nature of cybersecurity threats, the Parties recognize that risk-based approaches may be more effective than prescriptive regulation in addressing those threats. Accordingly, each Party shall endeavor to employ, and encourage enterprises within its jurisdiction to use, risk-based approaches that rely on consensus-based standards and risk management best practices to identify and protect against cybersecurity risks and to detect, respond to, and recover from cybersecurity events.

Article 19.16: Source Code

1. No Party shall require the transfer of, or access to, a source code of software owned by a person of another Party, or to an algorithm expressed in that source code, as a condition for the import, distribution, sale or use of that software, or of products containing that software, in its territory.

2. This Article does not preclude a regulatory body or judicial authority of a Party from requiring a person of another Party to preserve and make available the source code of software, or an algorithm expressed in that source code, to the regulatory body for a specific investigation, inspection, examination, enforcement action, or judicial proceeding, subject to safeguards against unauthorized disclosure.

Article 19.17: Interactive Computer Services

1. The Parties recognize the importance of the promotion of interactive computer services, including for small and medium-sized enterprises, as vital to the growth of digital trade.

2. To that end, other than as provided in paragraph 4, no Party shall adopt or maintain measures that treat a supplier or user of an interactive computer service as an information content provider in determining liability for harms related to information stored, processed, transmitted, distributed, or made available by the service, except to the extent the supplier or user has, in whole or in part, created, or developed the information.

3. No Party shall impose liability on a supplier or user of an interactive computer service on account of:

- a) any action voluntarily taken in good faith by the supplier or user to restrict access to or availability of material that is accessible or available through its supply or use of the interactive computer services and that the supplier or user considers to be harmful or objectionable; or
- b) any action taken to enable or make available the technical means that enable an information content provider or other persons to restrict access to material that it considers to be harmful or objectionable.

4. Nothing in this Article shall:

- a) apply to any measure of a Party pertaining to intellectual property, including measures addressing liability for intellectual property infringement; or
- b) be construed to enlarge or diminish a Party's ability to protect or enforce an intellectual property right; or
- c) be construed to prevent:

- i. a Party from enforcing any criminal law, or
- ii. a supplier or user of an interactive computer service from complying with a specific, lawful order of a law enforcement authority.

5. This Article is subject to Annex 19-A.

Article 19.18: Open Government Data

1. The Parties recognize that facilitating public access to and use of government information fosters economic and social development, competitiveness, and innovation.
2. To the extent that a Party chooses to make government information, including data, available to the public, it shall endeavor to ensure that the information is in a machine-readable and open format and can be searched, retrieved, used, reused, and redistributed.
3. The Parties shall endeavor to cooperate to identify ways in which each Party can expand access to and use of government information, including data, that the Party has made public, with a view to enhancing and generating business opportunities, especially for SMEs.

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**Chapter Fourteen
Electronic Commerce**

Article 14.1: General

1. The Parties recognize the economic growth and opportunity that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of WTO rules to measures affecting electronic commerce.
2. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from imposing internal taxes, directly or indirectly, on digital products, provided they are imposed in a manner consistent with this Agreement.

Article 14.2: Electronic Supply of Services

For greater certainty, the Parties affirm that measures affecting the supply of a service using electronic means are subject to the obligations contained in the relevant provisions of Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), and Twelve (Financial Services), subject to any exceptions or non-conforming measures set out in this Agreement, which are applicable to such obligations.

Article 14.3: Digital Products

1. Neither Party may impose customs duties, fees, or other charges on or in connection with the importation or exportation of digital products by electronic transmission.
2. For purposes of determining applicable customs duties, each Party shall determine the customs value of an imported carrier medium bearing a digital product based on the cost or value of the carrier medium alone, without regard to the cost or value of the digital product stored on the carrier medium.
3. Neither Party may accord less favorable treatment to some digital products transmitted electronically than it accords to other like digital products transmitted electronically:
 - a) on the basis that
 - i. the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory; or
 - ii. the author, performer, producer, developer, or distributor of such digital products is a person of the other Party or a non-Party, or
 - b) so as otherwise to afford protection to the other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory.
4. Neither Party may accord less favorable treatment to digital products transmitted

electronically:

- a) that are 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 transmitted electronically that are 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 transmitted electronically whose author, performer, producer, developer, or distributor is a person of a non- Party.

5. Paragraphs 3 and 4 do not apply to any non-conforming measure adopted or maintained in accordance with Article 10.13 (Non-Conforming Measures), 11.6 (Non-Conforming Measures), or 12.9 (Non-Conforming Measures).

Article 14.4: Transparency

Each Party shall publish or otherwise make available to the public its laws, regulations, and other measures of general application that pertain to electronic commerce.

Article 14.5: Cooperation

Recognizing the global nature of electronic commerce, the Parties affirm the importance of:

- a) working together to overcome obstacles encountered by small and medium enterprises in using electronic commerce;
- b) sharing information and experiences on laws, regulations, and programs in the sphere of electronic commerce, including those related to data privacy, consumer confidence in electronic commerce, cyber-security, electronic signatures, intellectual property rights, and electronic government;
- c) working to maintain cross-border flows of information as an essential element in fostering a vibrant environment for electronic commerce;
- d) encouraging the private sector to adopt self-regulation, including through codes of conduct, model contracts, guidelines, and enforcement mechanisms that foster electronic commerce; and
- e) actively participating in hemispheric and multilateral fora to promote the development of electronic commerce.

Article 14.6: Definitions

For purposes of this Chapter:

carrier medium means any physical object designed principally for use in 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, and includes an optical medium, a floppy disk, or a magnetic tape;

digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded;²

electronic means means employing computer processing; and

electronic transmission or **transmitted electronically** means the transfer of digital products using any electromagnetic or photonic means.