

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 message⁸⁶ (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.

⁸⁶ For the purpose of this definition, “electronic message” may include a facsimile message.

