

Chapter 12 Electronic Commerce

Article 12.1: General

1. The Parties recognize the economic growth and opportunities 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 12.2: Definitions

For purposes of this Chapter:

carrier medium means any physical object capable of storing the digital codes that form 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, and a magnetic tape;

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 electronically²⁹;

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

using electronic means means employing computer processing.

Article 12.3: Electronic Supply of Services

For greater certainty, the Parties affirm that measures affecting the supply of a service using electronic means fall within the scope of the obligations contained in the relevant provisions of Chapter 10 (Trade in Services) and Chapter 11 (Investment), subject to any exceptions or non-

²⁹ For greater certainty, digital products do not include digitized representations of financial instruments.

conforming measures set out in this Agreement, which are applicable to such obligations.

Article 12.4: Digital Products

1. Neither Party shall impose customs duties, fees, or other charges on or in connection with the importation or exportation of digital products by electronic transmission.

2. 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 shall accord less favourable 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 favourable 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 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 territory³⁰.

4. Neither Party shall accord less favourable 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

³⁰ For greater certainty, this paragraph does not provide any right to a non-Party or a person of a non-Party.

- (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 described in Articles 10.7 (Non-Conforming Measures), or 11.13 (Non-Conforming Measures).

6. This Article does not apply to measures affecting broadcasting services, including 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 12.5: 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 12.6: Cooperation

Recognizing the global nature of electronic commerce, the Parties shall encourage cooperative activities to promote it. The areas of cooperation may include the following:

- (a) promoting and facilitating the use of electronic commerce by small and medium sized enterprises; and
- (b) sharing information and experiences as mutually agreed on laws, regulations and programmes in the sphere of electronic commerce.