

## MODULE 3

### TREATMENT OF DIGITAL PRODUCTS AND RELATED ISSUES

#### Article 3.1: Definitions

For the purposes of this Module:

**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;<sup>9, 10</sup> and

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

#### Article 3.2: 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 3.3: Non-Discriminatory Treatment of Digital Products

The Parties affirm their level of commitments relating to non-discriminatory treatment of digital products, in particular, but not exclusively:

- “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.”<sup>1</sup>*

*F/n 1: For greater certainty, to the extent that a digital product of a non-Party is a “like digital product”, it will qualify as an “other like digital product” for the purposes of this paragraph.*

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<sup>9</sup> For greater certainty, digital product does not include a digitised representation of a financial instrument, including money.

<sup>10</sup> The definition of digital product should not be understood to reflect a Party’s view on whether trade in digital products through electronic transmission should be categorised as trade in services or trade in goods.

2. *Paragraph 1 shall not apply to the extent of any inconsistency with a Party's rights and obligations concerning intellectual property contained in another international agreement a Party is party to.*
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 3.4: Information and Communication Technology Products that Use Cryptography**

The Parties affirm their level of commitments relating to Information and Communication Technology products that use cryptography, in particular, but not exclusively:

- “1. *This section shall apply to information and communication technology (ICT) products that use cryptography.<sup>1</sup>*

*F/n 1: For greater certainty, for the purposes of this section, a “product” is a good and does not include a financial instrument.*

2. *For the purposes of this section:*

***cryptography** means the principles, means or methods for the transformation of data in order to hide its information content, prevent its undetected modification or prevent its unauthorised use; and is limited to the transformation of information using one or more secret parameters, for example, crypto variables, or associated key management;*

***encryption** means the conversion of data (plaintext) into a form that cannot be easily understood without subsequent re-conversion (ciphertext) through the use of a cryptographic algorithm;*

***cryptographic algorithm** or **cipher** means a mathematical procedure or formula for combining a key with plaintext to create a ciphertext; and*

***key** means a parameter used in conjunction with a cryptographic algorithm that determines its operation in such a way that an entity with knowledge of the key can reproduce or reverse the operation, while an entity without knowledge of the key cannot.*

3. *With respect to a product that uses cryptography and is designed for commercial applications, no Party shall impose or maintain a technical regulation or conformity assessment procedure that requires a manufacturer*

*or supplier of the product, as a condition of the manufacture, sale, distribution, import or use of the product, to:*

*(a) transfer or provide access to a particular technology, production process or other information, for example, a private key or other secret parameter, algorithm specification or other design detail, that is proprietary to the manufacturer or supplier and relates to the cryptography in the product, to the Party or a person in the Party's territory;*

*(b) partner with a person in its territory; or*

*(c) use or integrate a particular cryptographic algorithm or cipher,*

*other than where the manufacture, sale, distribution, import or use of the product is by or for the government of the Party.*

*4. Paragraph 3 shall not apply to:*

*(a) Requirements that a Party adopts or maintains relating to access to networks that are owned or controlled by the government of that Party, including those of central banks; or*

*(b) measures taken by a Party pursuant to supervisory, investigatory or examination authority relating to financial institutions or markets.*

*5. For greater certainty, this Section shall not be construed to prevent a Party's law enforcement authorities from requiring service suppliers using encryption they control to provide, pursuant to that Party's legal procedures, unencrypted communications."*