

## CHAPTER 10

### E-COMMERCE

#### ARTICLE 10.1: GENERAL

The Parties recognise the economic growth and opportunity provided by electronic commerce and the importance of avoiding barriers to its use and development and the applicability of WTO rules<sup>10-1</sup> to electronic commerce.

#### ARTICLE 10.2: DEFINITIONS

For purposes of this Chapter:

**carrier medium** means any physical object, as listed under the WTO Information Technology Agreement (ITA-1) Attachment A, capable of storing a digital product by any method and from which a digital product can be perceived, reproduced or communicated, directly or indirectly;

**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<sup>10-2</sup>;

**electronic means** means employing computer processing;

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

**person** means either a natural person or a juridical person as defined in Chapter 7.

#### ARTICLE 10.3: ELECTRONIC SUPPLY OF SERVICES

The Parties affirm that the supply of a service using electronic means falls within the scope of the obligations contained in the relevant provisions of Chapters 2, 6 and 7, subject to any reservations or exceptions applicable to such obligations.

#### ARTICLE 10.4: DIGITAL PRODUCTS

1. A Party shall not apply customs duties or other duties, fees or charges on or in connection with the importation or exportation of digital products by electronic transmission<sup>10-3</sup>.

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<sup>10-1</sup> This applies to WTO rules for which both parties are signatories.

<sup>10-2</sup> For greater clarity, digital products do not include digitized representations of financial instruments.

<sup>10-3</sup> The obligation in paragraph 1 does not preclude a Party from imposing internal taxes or other internal charges provided that these are imposed in a manner consistent with Article III of GATT 1994 and its interpretative notes as incorporated into this Agreement by Article 2.2.

2. Each Party shall determine the customs value of imported carrier media bearing digital products according to the cost or value of the carrier medium alone, without regard to the cost or value of the digital products stored on the carrier medium.

3. (a) Each Party shall accord to the digital products of the other Party<sup>10-4</sup> treatment no less favourable than it accords to its own like digital products<sup>10-5</sup> in respect of all measures<sup>10-6</sup> affecting the contracting for, commissioning, creation, publication, production, storage, distribution, marketing, sale, purchase, delivery or use of such digital products.

(b) A Party shall accord treatment no less favourable to digital products whose author, performer, producer, developer or distributor is a person of the other Party than it accords to like digital products whose author, performer, producer, developer or distributor is a person of the first Party.

4 A Party shall not accord treatment less favourable to some digital products on the basis of factors not found in paragraph 3, which have the effect of affording protection to its own digital products and/or which act as a disguised restriction to trade in digital products of the other Party.

#### ARTICLE 10.5: EXCEPTIONS

1 This Chapter is subject to the General and Security exceptions contained in Chapters 2, 6 and 7 and any other relevant exceptions or reservations set forth in other Chapters of this Agreement.

2 The provisions of this Chapter shall not apply to Government Procurement.

3 This Chapter does not apply to measures affecting broadcasting, as defined by each Party under its domestic law, which may include webcasting, cablecasting and video-on-demand.

#### ARTICLE 10.6: TRANSPARENCY

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

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<sup>10-4</sup> **Digital products of the other Party** refers to digital products created, published, produced, stored, contracted for or commissioned in the territory of the other Party.

<sup>10-5</sup> **Its own like digital products** refers to digital products created, published, produced, stored, contracted for or commissioned in its own territory.

<sup>10-6</sup> **Measure** means any measure whether in the form of a law, regulation, rule, procedure, decision, administrative action, requirement or any other form.