

APPENDIX 6
NEW CHAPTER 19 (ELECTRONIC COMMERCE)

CHAPTER 19

ELECTRONIC COMMERCE

Article 1 Definitions

For the purposes of this Chapter:

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

electronic authentication means the process of verifying or testing an electronic statement or claim, in order to establish a level of confidence in the statement's or claim's reliability;

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 of the data message and to indicate the signatory's approval of the information contained in the data message;

electronic version of a document means a document in electronic format prescribed by a Party, including a document sent by facsimile transmission;

personal information means information about an individual whose identity is apparent, or can reasonably be ascertained, from the information;

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;

UNCITRAL means the United Nations Commission on International Trade Law; 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to an electronic address without the consent of the recipient, including where consent has been explicitly refused or withdrawn, using an internet carriage service or other telecommunications service.¹⁵

Article 2 Objectives

1. The Parties recognize the economic growth and opportunities provided by electronic commerce, the importance of avoiding barriers to its use and development,

¹⁵ For New Zealand, "electronic message" shall not include voice calls.

and the applicability of relevant WTO rules.

2. The objective of this Chapter is to promote electronic commerce that provides economic and social benefits between the Parties.

3. The Parties shall endeavour to ensure that bilateral trade through electronic commerce is no more restrictive than other forms of trade.

Article 3 Scope

This Chapter shall apply to measures adopted or maintained by a Party that affect electronic commerce.

Article 4 Customs Duties

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

2. The practice referred to in paragraph 1 is in accordance with the *WTO Ministerial Decision of 13 December 2017* in relation to the Work Programme on Electronic Commerce (WT/MIN(17)/65).

3. Each Party may adjust its practice referred to in paragraph 1 with respect to any further outcomes in the WTO Ministerial Decisions on customs duties on electronic transmissions within the framework of the Work Programme on Electronic Commerce.

4. The Parties shall review this Article in light of any further WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.

5. For greater certainty, paragraph 1 shall not preclude a Party from imposing taxes, fees, or other charges on electronic transmissions, provided that such taxes, fees, or charges are imposed in a manner consistent with this Agreement.

Article 5 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 a relevant request from the other Party for specific information on any of its measures of general application pertaining to or affecting the operation of this Chapter.

Article 6 Domestic Regulatory Frameworks

1. Each Party shall maintain domestic legal frameworks governing electronic transactions, taking into account the *UNCITRAL Model Law on Electronic Commerce 1996* and, as appropriate, other relevant international standards.
2. Each Party shall:
 - (a) minimise the regulatory burden on electronic commerce; and
 - (b) ensure that regulatory frameworks support industry-led development of electronic commerce.

Article 7 Electronic Authentication, Signature and Digital Certificates

1. Except in circumstances otherwise provided for under its domestic laws and regulations, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.
2. Taking into account international norms for electronic authentication, each Party shall:
 - (a) permit participants in electronic transactions to determine appropriate electronic authentication technologies and implementation models for their electronic transactions;
 - (b) not limit the recognition of electronic authentication technologies and implementation models for electronic transactions; and
 - (c) permit participants in electronic transactions to have the opportunity to prove that their electronic transactions comply with its domestic laws and regulations with respect to authentication.
3. Notwithstanding paragraph 2, each Party may require that, for a particular category of electronic transactions, the method of electronic authentication meets certain performance standards or is certified by an authority accredited in accordance with its domestic laws and regulations.
4. The Parties shall work towards the mutual recognition of digital certificates and electronic signatures.
5. Each Party shall encourage the use of digital certificates in the business sector.

Article 8 Online Consumer Protection

1. The Parties recognize the importance of adopting and maintaining transparent and effective consumer protection measures for electronic commerce.
2. Further to Article 9 of Chapter 21 (Competition Policy), each Party shall; to the extent possible, adopt or maintain laws or regulations to provide protection for consumers using electronic commerce that is at least an equivalent level of protection to that provided for consumers of other forms of commerce under its domestic laws, regulations and policies.
3. Each Party shall publish information on the consumer protection it provides to users of electronic commerce, including how:
 - (a) consumers can pursue remedies; and
 - (b) business can comply with any domestic legal requirements.
4. The Parties shall encourage juridical persons, such as e-commerce platforms, to publish, including on the internet, their policies and procedures related to consumer protection.

Article 9 Online Personal Information Protection

- 1 Each Party shall adopt or maintain a legal framework which ensures the protection of personal information of the users of electronic commerce.
2. In the development of its legal framework for the protection of personal information, each Party shall take into account international standards, principles, guidelines and criteria of relevant international organisations or bodies.
3. Each Party shall promptly 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 domestic legal requirements.
4. The Parties shall encourage juridical persons, such as e-commerce platform operators, to publish, including on the internet, their policies and procedures related to the protection of personal information.
5. The Parties shall cooperate, to the extent possible, for the protection of personal information transferred from a Party.

Article 10 Paperless Trading

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

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

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

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

4. Each Party shall endeavour to make trade administration documents available to the public as electronic versions.

Article 11 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 stop receiving such messages;
- (b) require the consent, as specified according to its domestic laws and regulations, 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 under its domestic laws against suppliers of unsolicited commercial electronic messages who do not comply with its measures implemented 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 12 Cooperation on Electronic Commerce

1. The Parties recognize the importance of existing cooperation arrangements for electronic commerce.
2. The Parties shall encourage further cooperative activities to promote electronic commerce, including those that would improve the effectiveness and efficiency of electronic commerce.
3. The cooperative activities referred to in paragraph 2 may include:
 - (a) sharing information about trade facilitation, online consumer protection and any future development of traceability initiatives;
 - (b) sharing information about regulatory frameworks, including about the cross-border flow of information, and the development of cross-border e-commerce goods trade;
 - (c) promoting the participation of small and medium enterprises in electronic commerce trade, including overcoming obstacles in small and medium enterprises' use of electronic commerce;
 - (d) encouraging, and sharing information about, the development of e-commerce dispute settlement mechanisms; and
 - (e) such other activities as the Parties may mutually determine.
4. The Parties shall endeavour to undertake forms of cooperation that build on and do not duplicate existing cooperation initiatives pursued in international fora.
5. The Parties shall cooperate with each other in regional and multilateral forums to promote the development of electronic commerce.

Article 13 Cyber Security

The Parties recognize the importance of:

- (a) building the capabilities of their respective competent authorities responsible for computer security incident responses; and
- (b) using existing collaboration mechanisms to cooperate on matters related to cyber security.

Article 14 Consultations

1. Each Party shall designate one or more contact points for the purpose of implementing this Chapter and shall provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.

2. A Party may at any time request consultations with the other Party on any matter arising from the operation or implementation of this Chapter. Such consultations shall be conducted through the relevant contact points, and shall take place within 45 days of the request, unless the Parties mutually determine otherwise.

3. In the event that such consultations fail to resolve any such matter, the requesting Party may refer the matter to the FTA Joint Commission for consideration.

Article 15 Non-application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 16 (Dispute Settlement) for any matter arising under this Chapter.