

APPENDIX 8

NEW CHAPTER 18 (ELECTRONIC COMMERCE)

CHAPTER 18

ELECTRONIC COMMERCE

Article 18.1: Definitions

For the purposes of this Chapter:

electronic authentication means the process or act of providing authenticity and reliability verification for the Parties involved in electronic signature to ensure integrity and security of electronic communication or transaction;

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

personal information means any information, including data, about an identified or identifiable individual;

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 or despite the explicit rejection of the recipient, through an internet access service supplier or by other telecommunications services;

trade administration documents means forms issued or controlled by a Party which must be completed by or for an importer or exporter in connection with the import or export of goods; and

covered person means:

- (a) a “covered investment” as defined in subparagraph (a) of Article 10.1 (Definitions) of Chapter 10 (Investment) of the Optimization Protocol;
- (b) an “investor of a Party” as defined in subparagraph (e) of Article 10.1 (Definitions) of Chapter 10 (Investment) of the Optimization Protocol, but does not include an investor in a financial institution or an investor in a financial service supplier; or
- (c) a service supplier of a Party as defined in Article 8.1 (Definitions) of Chapter 8 (Trade in Services) of the Optimization Protocol, but does not include a “financial institution”, a “public entity”, or a “financial service supplier”.

Article 18.2: Scope and General Provisions

1. The Parties recognise the economic growth and trade opportunities provided by electronic commerce, and the importance of frameworks that promote consumer confidence in electronic commerce and of avoiding unnecessary barriers to its use and development.
2. This Chapter shall apply to measures adopted or maintained by a Party that affect electronic commerce.
3. This Chapter shall not apply to:
 - (a) government procurement;
 - (b) information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection; or
 - (c) financial services.
4. For greater certainty, measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapter 8 (Trade in Services), including any exception or limitation set out in this Agreement that is applicable to those obligations.
5. In case of any inconsistency with the rights and obligations in any other chapter of this Agreement, the other Chapter shall prevail.

Article 18.3: Domestic Regulatory Framework

1. Each Party shall maintain a domestic legal framework governing electronic transactions consistent with the principles of the *UNCITRAL Model Law on Electronic Commerce*, adopted by the General Assembly at New York on December 16, 1996 and take into account, as appropriate, other relevant international standards, such as the *United Nations Convention on the Use of Electronic Communications in International Contracts*, done at New York on November 23, 2005 (Electronic Communications Convention).
2. Each Party shall endeavour to:
 - (a) avoid any unnecessary regulatory burden on electronic transactions;
 - (b) facilitate input by interested persons in the development of its legal framework for electronic commerce; and
 - (c) ensure that regulatory frameworks support industry-led development of electronic commerce.

Article 18.4: Customs Duties

1. Each Party shall maintain its current 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 2 March 2024 in relation to the Work Programme on Electronic Commerce (WT/MIN(24)/38).
3. Each Party may adjust its practice referred to in paragraph 1 for any further outcomes in the WTO Ministerial Decisions on customs duties to 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 internal taxes, fees, or other charges on electronic transmissions, provided that such internal taxes, fees, or charges are imposed in a manner consistent with this Agreement.
6. Notwithstanding paragraphs 1 and 2, if the Parties commit permanently to a non-imposition of customs duties to electronic transmissions in a trade agreement to which China and Peru are a Party, this commitment will be automatically incorporated herein.

Article 18.5: Electronic Authentication and Electronic Signature

1. Except in circumstances otherwise provided for under its 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. Each Party shall maintain domestic legislation for electronic signature that permits:
 - (a) parties to electronic transaction to mutually determine the appropriate electronic signature and authentication method; and
 - (b) agencies of electronic authentication or the Parties to an electronic transaction to have the opportunity to prove before judicial or administrative authorities a claim that their electronic authentication to electronic transaction complies with legal requirements with respect to electronic authentication.
3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its laws and regulations.

4. The Parties shall encourage the use of interoperable electronic authentication.

Article 18.6: Online Consumer Protection

1. The Parties recognise the importance of maintaining and adopting transparent and effective measures to protect online consumers and develop consumer confidence.
2. Each Party shall, to the extent possible, adopt or maintain measures which provide protection for consumers that are at least equivalent to measures provided to protect consumers of other forms of commerce, including protection laws to proscribe misleading, fraudulent and deceptive commercial activities that cause harm or potential harm to online consumers.
3. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare.

Article 18.7: Personal Information Protection

1. The Parties recognise the economic and social benefits of protecting the personal information of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.
2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce.
3. Each Party should publish information on the personal information protections it provides to users of electronic commerce, including how:
 - (a) rights individuals can pursue remedies; and
 - (b) business can comply with any legal requirement.
4. The Parties shall encourage enterprises to publish, including on the internet, their policies and procedures related to protection of personal information.

Article 18.8: 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 prevent ongoing reception of those messages;

- (b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages; or
 - (c) otherwise provide for the minimization of unsolicited commercial electronic messages.
2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures implemented by that Party pursuant to its obligation under paragraph 1.
 3. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Article 18.9: Paperless Trading

1. Each Party shall endeavor to make trade administration documents available to the public in electronic form.
2. Each Party shall endeavor to accept the electronic version of trade administration documents as the legal equivalent of the paper version of documents except where:
 - (a) there is a domestic or international legal requirement to the contrary; or
 - (b) the competent authorities require the paper version to protect the integrity of the administrative process.

Article 18.10: Cross-border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.
2. A Party shall not prevent cross-border transfer of information by electronic means where such activity is for the conduct of the business of a covered person.
3. Nothing in this Article shall prevent a Party from adopting or maintaining:
 - (a) any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective,³³ provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or

³³ For the purposes of this subparagraph, the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

- (b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by the other Party.

Article 18.11: Location of Computing Facilities

1. The Parties recognise that each Party may have its own measures regarding the use or location of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.
2. No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that Party's territory.
3. Nothing in this Article shall prevent a Party from adopting or maintaining:
 - (a) any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective,³⁴ provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or
 - (b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by the other Party.

Article 18.12: Cooperation

Recognising the global nature of electronic commerce, the Parties shall endeavor to:

- (a) promote capacity building and work together to encourage MSMEs to overcome obstacles to its use;
- (b) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:
 - (i) personal information protection;
 - (ii) online consumer protection, including means for consumer redress and building consumer confidence;
 - (iii) unsolicited commercial electronic messages; and
 - (iv) electronic authentication.

³⁴ For the purposes of this subparagraph, the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

- (c) participate actively in regional and multilateral fora to promote the development of electronic commerce;
- (d) encourage development by the private sector of methods of self-regulation that foster electronic commerce, including codes of conduct; and
- (e) encouraging their national entities responsible for cybersecurity incident response to work together throughout the improvement of their capabilities.

Article 18.13: Settlement of Disputes

1. In the event of any differences between Parties regarding the interpretation and application of this Chapter, the Party concerned shall first engage in consultations in good faith and make every effort to reach a mutually satisfactory solution.
2. In the event that the consultations referred to in paragraph 1 fail to resolve the differences, any Party may refer the matter to the Free Trade Commission in accordance with Article 170 (Free Trade Commission).
3. No Party shall have recourse to dispute settlement under Chapter 15 (Disputes Settlement) for any matter arising under this Chapter.

Article 18.14: Future Negotiating Clause

The Parties undertake to initiate discussions to further deepen the electronic commerce commitments including source code and non-discriminatory treatment to digital products, if both parties agree to these disciplines in any trade agreement that is subscribed or enters into force after the entry into force of this agreement.