

CHAPTER 12

DIGITAL TRADE

Article 12.1: Definitions

For purposes of this Chapter:

computing facilities means computer servers or storage devices for processing or storing information for commercial use;

covered person means:

- (a) a covered investment as defined in Article 1.2 (General Definitions);
- (b) an investor of a Party as defined in Article 11.1 (Definitions);
or
- (c) a service supplier of a Party as defined in Article 8.1 (Definitions),

customs duty includes any duty or charge of any kind imposed on or in connection with the importation of a good, and any surtax or surcharge imposed in connection with such importation, but does not include any:

- (a) charge equivalent to an internal tax imposed consistently with paragraph 2 of Article III of the GATT 1994;
- (b) fee or other charge in connection with the importation commensurate with the cost of services rendered; or
- (c) antidumping or countervailing duty;

digital product means a computer program, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically;^{1 2}

¹ For greater certainty, digital product does not include a digitalised representation of a financial instrument, including money.

² 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.

electronic authentication means the process or act of verifying the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication;

electronic invoicing means the processing and exchange of an invoice between a seller and a buyer using a structured digital format;

electronic signature means data in electronic form that is in, affixed to or logically associated with, an electronic data message that may be used to identify the signatory in relation to the data message and indicate the signatory's approval of the information contained in the data message;

electronic transmission or **transmitted electronically** means a transmission made using any electromagnetic means, and includes the content of the transmission;

government data means data held by the central government, and public disclosure of which is not restricted under domestic law and which a Party makes digitally available for public access and use;

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

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; 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 or despite the explicit rejection of the recipient, through an internet access service supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service.

Article 12.2: Objectives

1. The Parties recognise the economic growth and opportunity that digital trade provides, the importance of avoiding barriers to its use and development, the importance of frameworks that promote trust and confidence in digital trade, and the applicability of the WTO Agreement to measures affecting digital trade.

2. The Parties seek to foster an environment conducive to the further advancement of digital trade, including electronic commerce and the digital transformation of the global economy, by strengthening their bilateral relations on these matters.

Article 12.3: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party that affect trade by electronic means.
2. This Chapter shall not apply to:
 - (a) government procurement;
 - (b) financial services as defined in Article 1.2 (General Definitions); or
 - (b) information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection, except for Article 12.12.
3. For greater certainty, the Parties affirm that measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapters 8 (Cross-Border Trade in Services) and 11 (Investment) and its Annexes, including any exceptions or non-conforming measures set out in this Agreement that are applicable to those obligations.
4. For greater certainty, the obligations contained in Articles 12.11, 12.18, through 12.20 are:
 - (a) subject to the relevant provisions, exceptions and non-conforming measures of Chapters 8 (Cross-Border Trade in Services) and 11 (Investment); and
 - (b) to be read in conjunction with any other relevant provisions in this Agreement.
5. The obligations contained in Articles 12.11, 12.18 and 12.19 shall not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 8.7 (Non-Conforming Measures) or Article 11.13 (Non-Conforming Measures).

Article 12.4: Domestic Electronic Transactions Framework

1. Each Party shall adopt or maintain a legal framework governing electronic transactions consistent with the principles of the *UNCITRAL Model Law on Electronic Commerce* (1996) or the *United Nations Convention on the*

Use of Electronic Communications in International Contracts, done at New York on 23 November 2005.

2. Each Party shall endeavour to:
 - (a) avoid any unnecessary regulatory burden on electronic transactions; and
 - (b) facilitate input by interested persons in the development of its legal framework for electronic transactions, including in relation to trade administration documents.

Article 12.5: Electronic Authentication and Electronic Signatures

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. Taking into account international norms for electronic authentication, each Party shall:

- (a) permit parties to an electronic transaction to mutually 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 parties to an electronic transaction to have the opportunity to prove that their electronic transactions comply with its laws and regulations with respect to electronic 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 laws and regulations.

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

Article 12.6: Paperless Trading

1. Each Party shall:
 - (a) work towards implementing initiatives which provide for the use of paperless trading, taking into account the methods agreed by international organisations including the World Customs Organization;
 - (b) endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such trade administration documents; and
 - (c) endeavour to make trade administration documents available to the public in electronic form.
2. The Parties shall cooperate in international fora to enhance acceptance of electronic versions of trade administration documents.

Article 12.7: Online Consumer Protection

1. The Parties recognise the importance of:
 - (a) transparent and effective measures that enhance consumer confidence and trust in digital trade; and
 - (b) affording to consumers who are engaged³ in digital trade consumer protection at a level not less than that afforded to consumers who are engaged in other forms of commerce.
2. Each Party shall adopt or maintain laws to proscribe misleading, fraudulent or deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.⁴ Misleading, fraudulent or deceptive commercial activities include:
 - (a) making material misrepresentations, including implied factual misrepresentations, or false claims as to:

³ For greater certainty, the term “engaged” includes the pre-transaction phase of digital trade.

⁴ For greater certainty, a Party may comply with the obligation in this Article by adopting or maintaining a comprehensive consumer protection measure or various sector-specific measures.

- (i) matters such as the qualities, price, suitability for purpose, quantity or origin of goods or services; or
 - (ii) the collection and use of personal data;⁵
- (b) advertising goods or services for supply without intention or reasonable capability to supply;
- (c) failing to deliver goods or provide services to a consumer after the consumer is charged unless justified on reasonable grounds; or
- (d) charging a consumer for goods or services not requested.

3. Additionally, to protect consumers engaged in digital trade, each Party shall endeavour to adopt or maintain measures that aim to ensure:

- (a) that suppliers of goods and services deal fairly and honestly with consumers;
- (b) that suppliers provide complete, accurate and transparent information on goods and services including any terms and conditions of purchase; and
- (c) the safety of goods and, where applicable, services during normal or reasonably foreseeable use.

4. Each Party shall publish its consumer protection laws and regulations.

5. Each Party shall promote access to, and awareness of, consumer redress or recourse mechanisms available under its laws and regulations, including those for consumers transacting cross-border.

6. The Parties recognise that misleading, fraudulent and deceptive online commercial activities increasingly transcend national borders and that cooperation and coordination between the Parties to address these activities effectively is in the public interest. Compatible with its laws and regulations and

⁵ For greater certainty, a Party may comply with the obligation in this sub-subparagraph with respect to material misrepresentations or false claims as to the collection and use of personal data by adopting or maintaining measures that:

- (i) require informed consent from natural persons before their personal data is collected and used; or
- (ii) prohibit inappropriate collection and use of personal data in its personal data protection law.

important interests, and within its reasonably available resources, each Party shall, as agreed, cooperate and coordinate with the other Party on the matters set out in this Article through its consumer protection agencies or other relevant bodies responsible for consumer protection policy, laws and regulations or enforcement. That cooperation and coordination may be based on cooperation mechanisms in existence. Each Party, in accordance with its laws and regulations, shall protect confidential information, including business information, exchanged through such cooperation and coordination.

Article 12.8: Personal Data Protection

1. The Parties recognise the economic and social benefits of protecting the personal data of users of digital trade and the contribution that this makes to enhancing consumer confidence in digital trade.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of personal data.⁶ In the development of this legal framework, each Party shall take into account principles and guidelines of relevant international bodies, such as limitation on collection, data quality, purpose specification, use limitation, security safeguards, transparency, individual participation and accountability.

3. Each Party shall endeavour to adopt non-discriminatory practices in protecting users of digital trade from personal data protection violations occurring within its jurisdiction.

4. Each Party should publish information on the personal data protections it provides to users of digital trade, including how:

- (a) individuals can pursue remedies; and
- (b) enterprises can comply with any legal requirements.

5. Recognising that the Parties may take different legal approaches to protecting personal data, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks. To this end, the Parties shall endeavour to exchange information

⁶ For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as comprehensive privacy, personal information or personal data protection laws, sector-specific laws covering data protection or privacy or laws that provide for the enforcement of voluntary undertakings by enterprises relating to data protection or privacy.

on any such mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.

Article 12.9: Principles on Access to and Use of the Internet for Digital Trade

Subject to their respective applicable policies, laws and regulations, the Parties recognise the benefits of consumers in their territories having the ability to:

- (a) access and use services and applications of a consumer's choice available on the internet, subject to reasonable network management;⁷
- (b) connect the end-user devices of a consumer's choice to the internet, provided that such devices do not harm the network; and
- (c) access information on the network management practices of a consumer's internet access service supplier.

Article 12.10: Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

- (a) require a supplier of unsolicited commercial electronic messages to facilitate the ability of a recipient to prevent ongoing reception of those messages;
- (b) require the consent, as specified in the laws and regulations of each Party, 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 against a supplier of unsolicited commercial electronic messages that does not comply with its measures adopted or maintained in accordance with paragraph 1.

⁷ The Parties recognise that an internet access service supplier that offers its subscribers certain content on an exclusive basis would not be acting contrary to this principle.

3. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Article 12.11: 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 measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

- (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
- (b) does not impose restrictions on transfers of information greater than are required to achieve the objective.

Article 12.12: Open Government Data

1. The Parties recognise that facilitating public access to and use of government data fosters economic and social development, competitiveness and innovation.

2. To the extent that a Party chooses to make government data available to the public, it shall endeavour to ensure that the data is made available in an open or machine-readable format and can be searched, retrieved, used, reused and redistributed.

3. The Parties shall endeavour to cooperate in matters that facilitate and expand public access to and use of government data, including exchanging information and experiences on practices and policies, with a view to encouraging the development of digital trade and creating business opportunities, especially for micro, small and medium enterprises.

4. For greater certainty, this Article is without prejudice to each Party's laws and regulations, including those on intellectual property and personal data protection.

Article 12.13: Cybersecurity

1. The Parties have a shared vision to promote secure digital trade to achieve global prosperity and recognise that cybersecurity underpins the digital economy.
2. The Parties shall endeavour to:
 - (a) build the capabilities of their national entities responsible for managing cybersecurity risks, including those entities responsible for the prevention, detection and mitigation of cybersecurity incidents, such as entities responsible for computer security incident response; and
 - (b) strengthen existing collaboration mechanisms to cooperate to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties.
3. The Parties recognise the importance of workforce development in the area of cybersecurity that may include possible initiatives relating to promoting inclusivity and mutual recognition of qualifications.

Article 12.14: Electronic Invoicing

1. The Parties recognise the importance of electronic invoicing to improve the efficiency, accuracy and reliability of commercial transactions. The Parties recognise that it is beneficial for electronic invoicing systems in their respective territories, in accordance with their respective law and policies, to be interoperable with electronic invoicing systems in the other Party's territory.
2. Except as provided for under its laws and regulations, no Party shall deny legal effect or admissibility as evidence in a legal proceeding to an invoice solely on the basis that the invoice is in electronic form.
3. To the extent that a Party is in the process of developing an electronic invoicing system, the Party shall endeavour, in accordance with its laws and policies, to develop a system that supports cross-border interoperability,⁸ including by taking into account relevant international standards, guidelines or recommendations.

⁸ Such a system allows a seller and a buyer, each using a different electronic invoicing service provider, to exchange an invoice, and utilises open standards.

4. The Parties recognise the economic importance of promoting the adoption of electronic invoicing systems that support cross-border interoperability. The Parties shall endeavour to share best practices and build capacity pertaining to the adoption of electronic invoicing systems, as appropriate.

Article 12.15: Artificial Intelligence

1. The Parties recognise that artificial intelligence can enhance economic and social welfare and digital inclusion, accelerate and advance socially beneficial research and scientific discovery, and support more competitive and environmentally sustainable economic growth.

2. The Parties also recognise that, unless managed responsibly, reliance on products and services incorporating artificial intelligence can bring technical, organisational, environmental and societal challenges, including with respect to equity, non-discrimination and inclusion, and can pose risks to organisations and markets and to the privacy, health, safety, security, welfare and rights of natural persons, including workers and consumers.

3. The Parties should promote the development and adoption of ethical artificial intelligence governance frameworks that support the trusted, safe and responsible design, development, use, and evaluation of artificial intelligence technologies in a manner that protects the rights, privacy and safety of natural persons (hereinafter referred to as “AI Governance Frameworks”). These frameworks should also take into account the prevention of harm and ensure the safety and security of artificial intelligence technologies. The Parties recognise that testing and examination of artificial intelligence technologies that takes into account ethical considerations can support the objectives of AI Governance Frameworks.

4. In developing and adopting AI Governance Frameworks, the Parties should take into consideration relevant international standards or internationally recognised principles or guidelines, including competitiveness explainability, transparency, accountability, fairness, inclusivity, security and privacy, sustainable development, and human-centred values and reliability.

5. The Parties should cooperate through the exchange of best practices and other information concerning AI Governance Frameworks, including capacity building, where appropriate. In addition, the Parties should consider undertaking collaborative activities that support the responsible design, development, use and evaluation of artificial intelligence technologies across the Parties and encourage commercialisation opportunities.

Article 12.16: Digital Trade Standards

1. The Parties recognise the role of international standards in reducing barriers to trade and fostering a well-functioning digital economy, including their potential to decrease compliance costs and increase consistency, interoperability, reliability and efficiency.
2. Each Party shall endeavour to, where appropriate, participate in the work of relevant international bodies relating to the development and adoption of international standards that support digital trade.
3. Each Party shall endeavour to, where appropriate, adopt international standards that support digital trade.
4. The Parties shall endeavour to explore collaborative initiatives, share best practices and exchange information on standards, technical regulations and conformity assessment procedures in areas of mutual interest with a view to facilitating digital trade.

Article 12.17: Customs Duties

1. The Parties acknowledge and recognise that the practice of not imposing customs duties on electronic transmissions has played an important role in the development of the digital economy.
2. Neither Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of a Party and a person of the other Party.
3. For greater certainty, paragraph 2 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.
4. Taking into account the evolving nature of digital trade and digital technology, the Parties shall review this Article in the fifth year after the date of entry into force of this Agreement and periodically thereafter, with a view to assessing the impacts of this Article and whether any amendments are appropriate.

Article 12.18: Non-Discriminatory Treatment of Digital Products

1. Neither 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 the other Party, or to digital products of which the author, performer, producer, developer or owner is a person of the other Party, than it accords to other like digital products.⁹

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 to which either Party is a party.

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.

5. (a) Any differences or dispute between the Parties concerning the interpretation, application or implementation of this Article shall be discussed through Sub-Committee on Digital Trade before having recourse to dispute settlement procedure under Chapter 18 (Dispute Settlement).

(b) A Party may request the convening of the Sub-Committee on Digital Trade, where it considers it necessary to consult on any matter regarding the interpretation, application or implementation of this Article, by delivering a written request containing specific and sufficient information on the matter. The Sub-Committee on Digital Trade shall engage in discussion in good faith and give serious consideration to the concerns raised. The Sub-Committee on Digital Trade shall report the results to the Joint Committee.

Article 12.19: Location of Computing Facilities

1. The Parties recognise that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. Neither 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 territory.

⁹ 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 purposes of this paragraph.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

- (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
- (b) does not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective.

Article 12.20: Source Code

1. Neither Party shall require the transfer of, or access to, source code of software owned by a person of the other Party, or to an algorithm expressed in that source code, as a condition for the import, distribution, sale or use of such software, or of products containing such software, in its territory.

2. For purposes of this Article, software subject to paragraph 1 is limited to mass-market software or products containing such software and does not include software used for critical infrastructure.

3. Nothing in this Article shall preclude:

- (a) the inclusion or implementation of terms and conditions related to the provision of source code in commercially negotiated contracts; or
- (b) a Party from requiring the modification of source code of software necessary for that software to comply with laws or regulations which are not inconsistent with this Agreement.

4. This Article does not preclude a government agency, law enforcement agency, regulatory body or judicial authority (hereinafter referred to as “Relevant Body”) of a Party from requiring a person of the other Party to preserve or make available the source code of software, or an algorithm expressed in that source code, to the Relevant Body for an investigation, inspection, examination, enforcement action, or judicial or administrative proceeding,¹⁰ subject to safeguards against unauthorised disclosure under the laws and regulations of the Party.

¹⁰ Such disclosure shall not be construed to negatively affect the software source code’s status as a trade secret, if such status is claimed by the trade secret owner.

Article 12.21: Logistics

1. The Parties recognise the importance of efficient cross border logistics which help lower the cost and improve the speed and reliability of supply chains.
2. The Parties shall endeavour to share best practices and general information regarding the logistics sector, including the following:
 - (a) last mile deliveries, including on-demand and dynamic routing solutions;
 - (b) the use of electric, remote controlled and autonomous vehicles;
 - (c) facilitating the availability of cross-border options for the delivery of goods; and
 - (d) new delivery and business models for logistics.

Article 12.22: Cooperation

1. Recognising the importance of digital trade to their respective economies, the Parties shall endeavour to maintain a dialogue on regulatory matters relating to digital trade with a view to sharing information and experiences, as appropriate, including on related laws, regulations, and their implementation, and best practices with respect to digital trade, including:
 - (a) online consumer protection;
 - (b) personal data protection;
 - (c) unsolicited commercial electronic messages;
 - (d) electronic signatures and electronic authentication;
 - (e) intellectual property concerns with respect to digital trade;
 - (f) challenges for small and medium-sized enterprises in digital trade;
 - (g) digital government;
 - (h) emerging technologies;
 - (i) digital identities;

- (j) cybersecurity; and
- (k) other areas of mutual interest between the Parties.

Article 12.23: Sub-Committee on Digital Trade

1. The Parties hereby establish a Sub-Committee on Digital Trade composed of government representatives from each Party.
2. The Sub-Committee on Digital Trade shall:
 - (a) consider matters relating to the implementation or operation of this Chapter;
 - (b) oversee cooperation activities set out in this Chapter; and
 - (c) perform any other functions the Parties may decide.
3. The Sub-Committee on Digital Trade may:
 - (a) consider ways to further enhance digital economy cooperation between the Parties, which may include exchanging information, sharing experiences and best practices, capacity building, and discussing developments in the digital economy;
 - (b) work with other Sub-Committees established under this Agreement on matters related to the work of this Chapter, taking into account the need to avoid duplication of activities;
 - (c) establish working groups or subsidiary bodies to undertake cooperation under this Chapter; and
 - (d) consider inviting relevant experts, as appropriate, to support activities of the Sub-Committee on Digital Trade and cooperation under this Chapter.
4. The Sub-Committee on Digital Trade shall meet within one year of the date of entry into force of this Agreement, and thereafter as the Parties may agree.
5. A Party's participation in any activity of the Sub-Committee on Digital Trade under paragraph 3, or any other cooperative or collaborative activity under this Chapter, shall be subject to that Party's reasonably available resources.

Article 12.24: Contact Points

Each Party shall designate and notify a contact point to facilitate communications between the Parties on any matters covered by this Chapter.