

CHAPTER 12 DIGITAL TRADE

Article 12.1 Definitions

For the purposes of this Chapter:

“algorithm” means a defined sequence of steps, taken to solve a problem or obtain a result;

“electronic authentication” means an electronic process that enables the confirmation of:

- (a) the electronic identification of a person; or
- (b) the origin and integrity of data in electronic form;

“electronic invoicing” means the automated creation, exchange and processing of a request for payments between a supplier and a buyer using a structured digital format;

“electronic registered delivery service” means a service that makes it possible to transmit data between persons by electronic means and provides evidence relating to the handling of the transmitted data, including proof of sending and receiving the data, and that protects transmitted data against the risk of loss, theft, damage, or any unauthorised alterations;

“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;¹

“electronic time stamp” means data in electronic form which binds other data in electronic form to a particular date and time, establishing evidence that the latter data existed at that date and time;

“electronic trust service” means an electronic service consisting of:

- (a) the creation, verification and validation of electronic signatures, electronic time stamps, electronic registered delivery services, electronic seals, certificates related to those services, and certificates for website authentication; or
- (b) the preservation of electronic signatures or certificates related to those services;

¹ For greater certainty, nothing in this definition prevents a Party from according greater legal effect to an electronic signature that satisfies certain requirements, such as indicating that the electronic data message has not been altered or verifying the identity of the signatory.

“emerging technology” means an enabling and innovative technology that has potentially significant application across a wide range of existing and future sectors, including:

- (a) artificial intelligence, including machine learning;
- (b) distributed ledger technologies;
- (c) quantum technologies;
- (d) immersive technologies;
- (e) sensing technologies;
- (f) digital twins; and
- (g) the Internet of Things;

“end-user” means a natural person or juridical person to the extent provided for in a Party’s laws and regulations, using or requesting a public telecommunications service for personal, trade, business, or professional purposes;

“measure by a Party” means a measure taken by:

- (a) central government and authorities of that Party; or
- (b) non-governmental bodies in the exercise of powers delegated by central government or authorities of that Party;

“public telecommunications service” means a public telecommunications service as defined in Article 11.1 (Definitions – Telecommunications);

“trade administration document” means a form or document 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 a good; and

“unsolicited commercial electronic message” means an electronic message² that is sent for commercial or marketing purposes directly to an end-user via a public telecommunications service, without the consent of the recipient or despite the explicit rejection of the recipient.

Article 12.2

Objectives

1. The Parties recognise the benefits of, and opportunities provided by, digital trade.
2. The Parties further recognise the importance of:

² For greater certainty, an electronic message includes electronic mail and text (Short Message Service or “SMS”) and multimedia (Multimedia Message Service or “MMS”) messages.

- (a) facilitating the use and development of digital trading systems;
- (b) promoting cooperation among domestic frameworks to facilitate digital trade;
- (c) international cooperation with a view to developing international frameworks to govern digital trade that are free, fair, and inclusive; and
- (d) adopting international and domestic frameworks that:
 - (i) promote the principle of technological neutrality;³
 - (ii) take into account emerging technologies; and
 - (iii) advance the interests of consumers and businesses engaged in digital trade, while promoting consumer confidence in digital trade.

Article 12.3

Scope and General Provisions

1. This Chapter shall apply to measures by a Party affecting trade by electronic means.
2. This Chapter shall not apply to:
 - (a) audio-visual services; or
 - (b) government procurement.
3. For greater certainty, a measure that affects the supply of a service delivered or performed electronically is subject to the obligations contained in relevant provisions of Chapter 8 (Trade in Services), Chapter 9 (Financial Services) and Chapter 11 (Telecommunications), including the Party's schedules of specific commitments, and exceptions set out in this Agreement that are applicable to those obligations.

Article 12.4

Domestic Electronic Transactions Framework

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the *UNCITRAL Model Law on Electronic Commerce (1996)*, adopted by the United Nations General Assembly done at New York on 12 June 1996, with additional *Article 5bis* as adopted in 1998.
2. Each Party shall endeavour to:

³ For greater certainty, subparagraph 2(d)(i) shall not be construed to impose any obligations or commitments, or affect the interpretation of other Chapters in this Agreement.

- (a) avoid overly burdensome regulation of electronic transactions; and
 - (b) facilitate input by interested persons in the development of its legal framework for electronic transactions.
- 3. The Parties recognise the importance of facilitating the use of electronic transferable records. To this end, each Party shall endeavour to adopt or maintain a legal or regulatory framework governing electronic transferable records that:
 - (a) takes into account principles and model texts developed by relevant international bodies, as appropriate; and
 - (b) does not deny the legal effect, validity, or enforceability of an electronic transferable record solely on the basis that it is in electronic form.

Article 12.5

Conclusion of Contracts by Electronic Means

- 1. Except in circumstances otherwise provided for in its law, each Party shall ensure that:
 - (a) its legal framework allows for a contract to be concluded by electronic means; and
 - (b) its law does not result in an electronic contract being deprived of legal effect, enforceability, or validity, solely on the ground that the contract has been concluded by electronic means.
- 2. The Parties recognise the importance of transparency for minimising barriers to the use of electronic contracts in digital trade. To that end, each Party shall:
 - (a) promptly publish the circumstances referred to in paragraph 1 on any official website hosted by the central level of government;⁴ and
 - (b) review those circumstances with a view to reducing them over time.⁵

Article 12.6

Electronic Signature, Electronic Authentication and Electronic Trust Services

- 1. The Parties recognise the benefits of electronic authentication and electronic trust services in providing greater certainty, integrity, and efficiency in the electronic transfer of information or data. Accordingly, the Parties recognise the important contribution of these services to consumer and business trust in the digital economy.

⁴ For greater certainty, subparagraph 2(a) shall apply even where the circumstances are set out only in law at the central level of government.

⁵ For greater certainty, reduction of the circumstances is not required as a result of that review.

2. Except in circumstances otherwise provided for under its applicable laws and regulatory framework, neither Party shall deny the legal effect and admissibility as evidence in legal proceedings of an electronic document, an electronic signature, an electronic seal, an electronic time stamp, the authenticating data resulting from electronic authentication, or of data sent and received using an electronic registered delivery service, solely on the ground that it is in electronic form.
3. Neither Party shall adopt or maintain a measure that would:
 - (a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication method or electronic trust service for that transaction; or
 - (b) prevent parties to an electronic transaction from having the opportunity to establish before judicial and administrative authorities that the use of electronic authentication or an electronic trust service in that transaction complies with the applicable legal requirements.
4. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the relevant method of electronic authentication or electronic trust service is certified by an authority accredited in accordance with its law or meets certain performance standards which shall be objective, transparent, and non-discriminatory, and shall only relate to the specific characteristics of the category of transactions concerned.
5. The Parties shall work towards the mutual recognition of electronic trust services and electronic authentication, and endeavour to engage in regulatory cooperation.

Article 12.7 **Digital Identities**

1. The Parties recognise that cooperation between the Parties on digital identities will promote connectivity and further growth of digital trade, while recognising that each Party may take different legal and technical approaches to digital identities. Accordingly, the Parties shall endeavour to pursue mechanisms to promote compatibility between their respective digital identity regimes.
2. The Parties shall endeavour to facilitate initiatives to promote compatibility, which may include:
 - (a) fostering technical cooperation between each Party's implementation of digital identities;
 - (b) developing comparable protection of digital identities under each Party's legal framework;
 - (c) supporting the development of international frameworks on digital identity regimes;

- (d) identifying and implementing use cases for the mutual recognition of digital identities; and
- (e) exchanging knowledge and expertise on best practices relating to digital identity policies and regulations, technical implementation standards and security standards, and the promotion of the use of digital identities.

Article 12.8

Paperless Trading

1. Each Party shall make trade administration documents available to the public in electronic form, to the extent possible.
2. Each Party shall accept a trade administration document submitted electronically as the legal equivalent of the paper version of that document, except where:
 - (a) that Party is subject to a requirement to the contrary in its domestic law or in international law; or
 - (b) doing so would reduce the effectiveness of the trade administration process.
3. Each Party shall endeavour to publish information on measures related to paperless trading on relevant official websites.
4. The Parties shall, where appropriate, cooperate bilaterally and in international fora on matters related to paperless trading, including by promoting the acceptance of electronic versions of trade administration documents.
5. In developing initiatives concerning the use of paperless trading, the Parties shall take into account the principles and guidelines of relevant international bodies.

Article 12.9

Electronic Invoicing

1. The Parties recognise the importance of electronic invoicing to increase the efficiency, accuracy, and reliability of commercial transactions. Each Party also recognises the benefits of ensuring that the systems used for electronic invoicing within its territory are able to exchange relevant usable information.
2. Each Party shall ensure that the implementation of measures related to electronic invoicing in its territory is designed to support the cross-border exchange of relevant usable information between the Parties' electronic invoicing frameworks. To this end, each Party shall take into account relevant international frameworks when developing measures related to electronic invoicing.

3. The Parties recognise the economic importance of promoting the global adoption of electronic invoicing systems that are able to exchange relevant usable information with each other. To this end, the Parties shall endeavour to:
 - (a) promote, encourage, support or facilitate the adoption of electronic invoicing by juridical persons;
 - (b) promote the existence of policies and processes that support electronic invoicing;
 - (c) generate awareness of, and build capacity for, electronic invoicing; and
 - (d) share best practices and collaborate, where appropriate, on promoting the adoption of electronic invoicing systems that are able to exchange relevant information with each other.

Article 12.10 **Principles on Open Internet Access**

1. Subject to their applicable policies, laws and regulations, each Party shall endeavour to adopt or maintain appropriate measures to ensure that an end-user in its territory may:
 - (a) access, distribute, and use, a service and application of their choice available on the internet, subject to reasonable, transparent, and non-discriminatory network management;
 - (b) connect a device of their choice to the internet, provided that the device does not harm the network; and
 - (c) access information on the network management practices of their internet access service supplier, as appropriate.

Article 12.11 **Data Innovation**

1. The Parties recognise that data innovation promotes economic, societal and consumer benefits through improved data-driven services and technologies. Accordingly, the Parties recognise the importance of creating an environment that enables, supports, and is conducive to, experimentation and innovation, while also acknowledging the need to protect personal information.
2. To this end, the Parties shall endeavour to support data innovation, including through:
 - (a) collaborating on data projects, including projects involving academia or industry, using regulatory sandboxes as required;
 - (b) cooperating on the development of policies, frameworks, and standards for data mobility, including consumer data portability; or

- (c) sharing research and industry practices related to data innovation.

Article 12.12

Open Government Data

1. For the purposes of this Article, **“government data and information”** means non-proprietary data and information held by the central level of government and, to the extent provided for under a Party’s laws and regulations, by other levels of government.⁶
2. The Parties recognise that facilitating public access to and use of government data and information stimulates economic and social development, competitiveness, and innovation. To this end, each Party is encouraged to expand the coverage of government data and information digitally available for public access and use through engagement and consultation with interested stakeholders.
3. Each Party shall provide interested persons with a mechanism to request the disclosure of specific government data and information.
4. To the extent that a Party chooses to make government data and information available to the public, it shall endeavour to ensure that to the extent possible the data and information is in a machine-readable and open format, and can be searched, retrieved, used, reused, and redistributed.
5. To the extent that a Party chooses to make government data and information available to the public, it shall endeavour to avoid imposing a condition that unduly prevents or restricts the user of that data and information from:⁷
 - (a) reproducing, redistributing, or republishing the data and information;
 - (b) regrouping the data and information; or
 - (c) using the data and information for commercial and non-commercial purposes, including in the process of production of a new product or service.
6. The Parties shall endeavour to cooperate to identify ways in which each Party can expand access to, and use of, government data and information that the Party has made public, with a view to enhancing and generating business, and innovation opportunities, especially for SMEs, including start-ups.

⁶ For greater certainty, this Article is without prejudice to a Party’s law pertaining to intellectual property and personal data protection.

⁷ For greater certainty, nothing in this paragraph prevents a Party from requiring a user of that information to link to original sources.

Article 12.13

Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from misleading, deceptive, fraudulent, and unfair commercial practices when they engage in digital trade, as well as measures conducive to the development of consumer confidence.
2. Each Party shall adopt or maintain measures that protect consumers engaged⁸ in digital trade, including laws and regulations that proscribe misleading, deceptive, fraudulent, and unfair commercial activities that cause harm or potential harm to those consumers. The Parties further affirm that paragraphs 2 and 3 of Article 16.4 (Consumer Protection – Competition and Consumer Protection Policy) shall apply when consumers are engaged in digital trade.
3. While recognising that the form of protection may be different as between online and other forms of commerce, each Party shall provide a consumer engaged in an online commercial activity with a level of protection that is, in its effect, not less than that provided under its law to a consumer engaged in another form of commerce.
4. The Parties recognise the importance of online consumer protection and, as appropriate, shall promote cooperation between their respective national consumer protection authorities and agencies or other relevant bodies on activities related to online consumer protection. To this end, the Parties affirm that cooperation under Article 16.5 (Cooperation - Competition and Consumer Protection Policy) includes cooperation with respect to online consumer protection.
5. Each Party shall endeavour to publish information on the consumer protection it provides to consumers, including how:
 - (a) a consumer can pursue a remedy; and
 - (b) a business can comply with any legal requirements.
6. The Parties further recognise the importance of improving awareness of and providing access to consumer redress mechanisms to protect a consumer engaged in an online commercial activity, including for a consumer of a Party transacting with a supplier of the other Party.
7. The Parties shall endeavour to explore the benefits of mechanisms, including alternative dispute resolution, to facilitate the resolution of claims concerning digital trade.

⁸ For the purposes of this Article, the term “engaged” includes the pre-transaction phase of online commercial activities.

Article 12.14
Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:
 - (a) require a supplier of an unsolicited commercial electronic message to facilitate the ability of a recipient to prevent the ongoing reception of those messages;
 - (b) require the consent, pursuant to its laws and regulations, of a recipient to receive a commercial electronic message; or
 - (c) otherwise provide for the minimisation of unsolicited commercial electronic messages.
2. Each Party shall endeavour to ensure, to the extent possible, that an unsolicited commercial electronic message is clearly identifiable as such, clearly discloses on whose behalf it is made, and contains the necessary information to enable an end-user to request cessation at any time.
3. Each Party shall provide access to redress or recourse against a supplier of an unsolicited commercial electronic message that does not comply with a measure adopted or maintained pursuant to paragraphs 1 or 2.
4. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.
5. Paragraphs 1 through 3 shall not apply to unsolicited commercial electronic messages sent via the internet or MMS messages until a Party adopts or maintains those measures regarding unsolicited commercial electronic messages sent via the internet or MMS messages.

Article 12.15
Source Code

1. Neither Party shall require the transfer of, or access to, source code⁹ of software owned by a person of the other Party.
2. Nothing in this Article shall be construed to:^{10 11}
 - (a) preclude a regulatory body, a judicial authority, or an administrative tribunal of a Party, or a designated conformity assessment body

⁹ For greater certainty, for the purposes of this Article, a reference to “source code” includes an algorithm embedded in the source code, but does not include the expression of that algorithm in any other form, including in prose.

¹⁰ For greater certainty, paragraph 2 is without prejudice to Articles 28.1 (General Exceptions - General Provisions and Exceptions) and 28.2 (Security Exceptions - General Provisions and Exceptions).

¹¹ For greater certainty, subparagraphs (a) and (b) apply to a requirement to preserve and make available the source code of software that is designed to promote algorithmic accountability in furtherance of or following an investigation, inspection, examination, enforcement action, or judicial proceeding.

operating in a Party's territory, from requiring a person of the other Party to preserve and make available¹² the source code of software in furtherance of or ensuing an investigation, inspection, examination, enforcement action, or judicial proceeding; or

- (b) apply to a remedy imposed, enforced, or adopted by a regulatory body, a judicial authority, or an administrative tribunal of a Party, in accordance with a Party's laws and regulations, following an investigation, inspection, examination, enforcement action, or judicial proceeding.
- 3. Where source code of software has been revealed to a Party, or to a designated conformity assessment body operating in a Party's territory, upon its request, that Party shall adopt or maintain measures to prevent the unauthorised disclosure of source code of software. To this end, each Party shall provide for appropriate safeguards against that disclosure, including by limiting the access to, and use of, that source code of software to those who are essential to the performance of that activity only.
 - 4. This Article shall not apply to the voluntary transfer of, or granting of access to, source code of software by a person of the other Party:
 - (a) on a commercial basis, such as in the context of a freely negotiated contract; or
 - (b) under an open-source licence, such as in the context of open-source coding.

Article 12.16

Cybersecurity

- 1. The Parties recognise that threats to cyber security undermine confidence in digital trade. Accordingly, the Parties shall endeavour to:
 - (a) build the capabilities of their respective national entities responsible for cybersecurity incident response, taking into account the evolving nature of cybersecurity threats;
 - (b) maintain cooperation to anticipate, identify and mitigate malicious intrusions or dissemination of malicious code that affect electronic networks, and to swiftly address cybersecurity incidents;
 - (c) cooperate by sharing information and best practices on matters related to cybersecurity; and
 - (d) support the development of open, transparent, and multi-stakeholder technical standards.

¹² The Parties understand that this making available shall not be construed to negatively affect the status of the intellectual property rights of that source code of software.

2. Given the evolving nature of cybersecurity threats, the Parties recognise that risk-based approaches can be effective in addressing those threats. Accordingly, each Party shall endeavour to employ, and shall encourage juridical persons within its jurisdiction to use, risk-based approaches to:
 - (a) manage cybersecurity risks and to detect, respond to, and recover from cybersecurity events; and
 - (b) improve their cyber resilience.

Article 12.17

Cooperation on Emerging Technologies

1. The Parties recognise that emerging technologies play important roles in promoting economic competitiveness and facilitating international trade and investment flows, and that coordinated action across multiple trade policy areas helps to maximise economic and social benefits of those technologies.
2. The Parties shall endeavour to develop governance and policy frameworks for the trusted, safe, and responsible use of emerging technologies. In developing those frameworks, the Parties recognise the importance of:
 - (a) taking into account the principles and guidelines of relevant international bodies; and
 - (b) having regard to the principles of technological interoperability and technological neutrality.
3. The Parties shall endeavour to cooperate on matters related to emerging technologies with respect to digital trade. This cooperation may include:
 - (a) exchanging information and sharing experiences and best practices on laws, regulations, policies, enforcement, and compliance;
 - (b) cooperating on issues and developments relating to emerging technologies, such as ethical use, human diversity and unintended biases, technical standards, and algorithmic transparency;
 - (c) promoting collaboration between each Party's governmental and non-governmental entities in relation to research and development opportunities and opportunities for investment in emerging technologies; and
 - (d) playing an active role, including through international fora, in:
 - (i) the development of international standards, regulations; and conformity assessment procedures that support the growth of emerging technologies; and
 - (ii) matters concerning the interaction between trade and emerging technologies.

Article 12.18

Digital Inclusion

1. The Parties recognise the importance of digital inclusion, so that all people and businesses can participate in, contribute to, and benefit from digital trade. To this end, the Parties recognise the importance of expanding and facilitating digital trade opportunities by removing barriers to participation in digital trade, and that this may require tailored approaches, developed in consultation with businesses, individuals, and other groups that disproportionately face those barriers.
2. The Parties shall cooperate on matters relating to digital inclusion, including the participation of women and other groups and individuals that disproportionately face barriers to digital trade. This cooperation may include:
 - (a) identifying and addressing barriers in accessing digital trade opportunities;
 - (b) sharing experiences and best practices for developing datasets, and conducting gender-focused analysis in relation to digital trade policies, including by developing methods for monitoring women's participation in digital trade;
 - (c) improving digital skills and access to online business tools; and
 - (d) other areas as may be mutually agreed by the Parties.
3. The Parties recognise the role played by SMEs, including women-led juridical persons, in economic growth and job creation, and the need to address the barriers to participation in digital trade for those entities. To this end, the Parties shall seek to:
 - (a) promote cooperation on digital trade between SMEs of the Parties;
 - (b) encourage SME participation in platforms that help link them with a potential business partner; and
 - (c) share best practices in improving digital skills and leveraging digital tools and technology to improve access to capital and credit, and other areas that could help SMEs adapt to digital trade.
4. The Parties acknowledge the existence of a digital divide between countries, and the role of digital trade in promoting social and economic development and poverty reduction. To that end, the Parties shall endeavour to undertake and strengthen cooperation, including through existing mechanisms, to promote the participation of countries that face barriers to participation in digital trade. This may include sharing best practices, active engagement in international fora and promoting developing countries' participation in, and contribution to, the global development of digital trade.

5. The Parties shall actively participate in relevant international fora to promote initiatives for advancing digital inclusion in digital trade.

Article 12.19 Cooperation

1. The Parties recognise the fast-paced and evolving nature of digital trade, and the role of cooperation between the Parties in increasing and enhancing opportunities for businesses, consumers, and society at large.
2. In addition to areas of cooperation between the Parties identified in this Chapter, the Parties shall exchange information on, and share experiences and best practices on, laws, regulations, policies, and compliance relating to digital trade.
3. The Parties shall, where appropriate, cooperate and actively participate in relevant international fora to promote the development and adoption of international frameworks for digital trade.
4. The Parties shall encourage the development, by the private sector, of methods of self-regulation that foster digital trade.
5. The Parties shall endeavour to:
 - (a) work together to address challenges for SMEs, including start-ups, in the use of digital trade;
 - (b) promote and facilitate collaboration between government entities, juridical persons, and other non-governmental entities on digital technologies, including digital innovation and emerging technologies, relating to trade, investment, and research and development opportunities; and
 - (c) facilitate participation by women in digital trade, acknowledging the objectives in Chapter 23 (Trade and Gender Equality).

Article 12.20 Forward Review Mechanism

1. After the date of entry into force of this Agreement, if a Party enters into a regional trade agreement¹³ with a non-Party establishing disciplines within the scope of the following subparagraphs, that Party, upon request of the other Party, shall enter into consultations to extend appropriate equivalent

¹³ For greater certainty, for the purposes of this Article, a “regional trade agreement” means a reciprocal preferential trade agreement between two or more parties that covers substantially all trade between those parties and meets the conditions set out in Article XXIV of GATT 1994 or Article V of GATS, as applicable. It does not include a multilateral or plurilateral agreement concluded or any disciplines adopted within the framework of the WTO.

disciplines¹⁴ under this Agreement to those agreed with the non-party addressing:

- (a) the adoption or maintenance of a legal framework for the protection of the data of natural persons;
 - (b) the prohibition or restriction of the cross-border transfer of information for the purposes of trade or investment; and
 - (c) the prohibition of the imposition of requirements to store or process commercial data in that Party's territory as a condition for doing business in that territory.
- 2. This Article shall not affect the protection of personal data provided for under each Party's law.
 - 3. This Article shall not be construed as to oblige a Party to extend to the other Party the benefit of any commitments resulting from regulatory cooperation measures, in particular measures relating to the standards or criteria for the authorisation, licencing, or certification of a natural or juridical person to supply a service, or of prudential measures as referred to in paragraph 3 of the GATS Annex on Financial Services.

Article 12.21 **Review**

- 1. The Parties shall undertake a review of this Chapter within the five years following the date of entry into force of this Agreement.
- 2. A review pursuant to paragraph 1 shall be undertaken to ensure that the disciplines contained in this Chapter remain relevant to the digital trade issues and challenges confronting the Parties.
- 3. A review pursuant to paragraph 1 shall be concluded within a reasonable period of time.
- 4. The Subcommittee on Trade in Services, in pursuance of paragraph 2, may:
 - (a) identify the disciplines or provisions; and
 - (b) make recommendations to the Joint Committee.

¹⁴ For greater certainty and for the purposes of this paragraph, "equivalent disciplines" means disciplines having an equivalent legal effect and which are equivalent in substance.