

CHAPTER 13
ELECTRONIC COMMERCE

Article 13.1: Definitions

For the purposes of this Chapter:

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

covered person means:

- (a) a covered investment as defined in Article 8.1 (Definitions);
- (b) an investor of a Party as defined in Article 8.1 (Definitions), but does not include an investor in a financial institution; or
- (c) a service supplier of a Party as defined in Article 9.1 (Definitions);

but does not include:

- (a) a financial institution as defined in Article 8.1 (Definitions); or
- (b) a person of a Party that is engaged in the business of supplying a financial service, as defined in paragraph 5(a) of the Annex on Financial Services of GATS, and that seeks to supply or supplies a financial service within the territory of the other Party through the cross-border supply of such service.

digital products means computing programmes, texts, videos, images, sound recordings or other digitally encoded products, produced for commercial sale or distribution, and that can be transmitted electronically;¹

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

electronic transmission or **transmitted electronically** means a transmission made using any electromagnetic means, including by photonic means;

¹ For greater certainty, digital products do not include digital representations of financial instruments, including money. The definition of digital products 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.

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

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

unsolicited commercial electronic messages means electronic messages sent for commercial or marketing purposes to an electronic address without the consent of the recipients, or despite the explicit rejection of the recipient, through an internet access service supplier or by other telecommunications services.

Article 13.2: 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) information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection; or
 - (b) government procurement.
3. 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 (Investment) and Chapter 9 (Cross-Border Trade in Services), 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 Article 13.6, Article 13.14, Article 13.15 and Article 13.18 are:
 - (a) subject to the relevant provisions, exceptions and non-conforming measures of Chapter 8 (Investment) and Chapter 9 (Cross-Border Trade in Services); and
 - (b) to be read in conjunction with any other relevant provisions in this Agreement.
5. The obligations contained in Article 13.6, Article 13.14 and Article 13.15 shall not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 8.11 (Non-Conforming Measures) or Article 9.7 (Non-Conforming Measures).

Article 13.3: General Provisions

1. The Parties recognise the economic growth and opportunities provided by electronic commerce, the importance of frameworks that promote consumer confidence in electronic commerce and the importance of facilitating the use and development of electronic commerce.

2. Considering the potential that electronic commerce has as an instrument for social and economic development, the Parties recognise the importance of:

- (a) clarity, transparency and predictability of their national policy frameworks to facilitate, to the extent possible, the development of electronic commerce;
- (b) interoperability, innovation and competition to facilitate electronic commerce; and
- (c) international and national policies concerning electronic commerce taking into account the interests of all users, including enterprises, consumers, non-governmental organisations and relevant public institutions.

Article 13.4: 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* or the *United Nations Convention on the Use of Electronic Communications in International Contracts*, done at New York, November 23, 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.

Article 13.5: Customs Duties

1. No 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.

2. For greater certainty, paragraph 1 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.

Article 13.6: Non-Discriminatory Treatment of Digital Products

1. No 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.²
2. For greater certainty, this Article does not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.
3. This Article shall not apply to broadcasting.

Article 13.7: Transparency

1. Each Party shall publish information, including on the internet, on its personal information protections and, to the extent possible, other types of protection it provides for users of electronic commerce, including information on:
 - (a) how individuals can pursue remedies; and
 - (b) how businesses can comply with legal requirements.
2. The Parties shall encourage enterprises to publish, including on the internet, their policies and procedures related to protection of personal information.

Article 13.8: Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from misleading or deceptive commercial activities as referred to in Article 15.7 (Consumer Protection) when they engage in electronic commerce.
2. Each Party shall adopt or maintain consumer protection laws to proscribe misleading or deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.
3. The Parties shall consider ways to cooperate in addressing cross-border complaints related to online consumer protection.
4. 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. To that end, the Parties shall endeavour to facilitate that cooperation and promote capacity-building initiatives, in a manner compatible

² For greater certainty, to the extent that a digital product of a State other than the Parties is a “like digital product”, it will qualify as an “other like digital product” for the purposes of this paragraph.

with their respective laws and regulations, important and mutual interests, and within their reasonably available resources.

5. The Parties affirm that the cooperation sought under Article 15.7 (Consumer Protection) includes cooperation with respect to online commercial activities.

Article 13.9: Paperless Administration of Trade

1. Each Party shall endeavour to make trade administration documents available to the public in electronic form.

2. Each Party shall endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

Article 13.10: Principles on Access to and Use of the Internet for Electronic Commerce

Subject to 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 management³;
- (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 13.11: 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. In the development of its legal framework for the protection of personal information, each Party should take into account principles and guidelines of relevant international bodies.

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

4. Recognising that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. These mechanisms may include broader international frameworks or mutual recognition arrangements. To this end, the Parties shall endeavour to exchange information on any such mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.

Article 13.12: Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages sent to an electronic mail address that:

- (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages; or
- (b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages.

2. Each Party shall endeavour to adopt or maintain measures that enable recipients to reduce or prevent unsolicited commercial electronic messages sent other than to an electronic mail address, or otherwise provide for the minimisation of these messages.

3. For measures adopted or maintained pursuant to paragraph 1 or when a Party adopts or maintains measures pursuant to paragraph 2, the Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with those measures.

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

Article 13.13: Electronic Authentication And Electronic Signatures

1. Except in circumstances otherwise provided for under its laws and regulations, no Party shall deny the legal validity of a signature solely on the basis that the signature is in electronic form.

2. No Party shall adopt or maintain measures for electronic authentication that would:

- (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or
- (b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their transaction complies with any legal requirements with respect to authentication.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meets certain performance reliability and security standards or is certified by an authority accredited in accordance with the laws and regulations of that Party.

4. The Parties shall encourage the use of interoperable electronic authentication methods based on international or regional standards.

Article 13.14: 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. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this 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 13.15: Localisation 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. 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 territory.⁴

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 such measures:

- (a) are 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 13.16: Cooperation

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

- (a) work together to assist micro, small and medium-sized enterprises to overcome obstacles to its use;
- (b) exchange information and experiences on laws, regulations, policies, enforcement, compliance and initiatives relating to electronic commerce, including in relation to personal information protection, online consumer protection including means for consumer redress and building consumer confidence, unsolicited commercial electronic messages, security in electronic communication, authentication, and e-government;
- (c) work together to promote cross-border information flows as an essential element in the promotion of a dynamic environment for electronic commerce;
- (d) encourage development by the private sector of methods of self-regulation that foster electronic commerce, including codes of conduct, model contracts, guidelines and enforcement mechanisms;
- (e) participate actively in regional and multilateral forums to promote the development of electronic commerce, including in relation to the development and application of international standards for electronic commerce;
- (f) promoting access for persons with disabilities to information and communications technologies; and

⁴ For greater certainty, nothing in this paragraph shall prevent a Party from conditioning the receipt of an advantage, or continued receipt of an advantage, on compliance with a requirement to locate computing facilities in that Party's territory, in accordance with Article 8.9.4 (Performance Requirements).

- (g) exchange information and share views on consumer access to products and services offered online among the Parties.

Article 13.17: Cooperation on Cybersecurity Matters

The Parties recognise the importance of:

- (a) building the capabilities of their national entities responsible for cyber security, including computer security incident response; and
- (b) using existing collaboration mechanisms to cooperate on matters related to cyber security, including to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties.

Article 13.18: Source Code

1. No Party shall require the transfer of, or access to, source code of software owned by a person of the other Party, as a condition for the import, distribution, sale or use of such software, or of products containing such software, in its territory.
2. For the 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 shall not be construed to affect requirements that relate to patent applications or granted patents, including any orders made by a judicial authority in relation to patent disputes, subject to safeguards against unauthorised disclosure under the law or practice of a Party.

Article 13.19: Administration of this Chapter

Matters relating to administration of this Chapter, including the development of activities undertaken pursuant to Article 13.16, shall be considered by the Parties through the Services,

Investment and E-Commerce Committee established under Article 22.5(b) (Establishment of Cross-Cutting Committees).