

CHAPTER 11

ELECTRONIC COMMERCE

Article 11.1: Definitions

For the purposes of this Chapter:

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

covered person means:

- (a) a service supplier of a Party as defined in Article 8.1 (Definitions) of Chapter 8 (Trade in Services);
- (b) an establishment, as defined in Article 12.1 (Definitions) of Chapter 12 (Establishment and Related Provisions); or
- (c) an investor of a Party, as defined in Article 12.1 (Definitions) of Chapter 12 (Establishment and Related Provisions),

but does not include a “financial institution” or a “cross-border financial service supplier of a Party” as defined in Article 9.1 (Definitions) of Chapter 9 (Financial Services);

digital product means a computer programme, 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}

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

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

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

¹ For greater certainty, digital product does not include a digitised 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.

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 importation or exportation of goods; and

unsolicited commercial electronic message means an electronic message which is sent for commercial purposes without the consent of the recipient or against the explicit rejection of the recipient, using an Internet access service supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service.

Article 11.2: Scope

1. The Parties recognise:
 - (a) the economic growth and opportunities provided by electronic commerce;
 - (b) the importance of promoting consumer confidence in electronic commerce and of avoiding unnecessary barriers to its use and development; and
 - (c) the value of competitive markets in electronic commerce for enhancing consumer choice and supporting the growth of SMEs.
2. This Chapter shall apply to measures adopted or maintained by a Party that affect trade by electronic means.
3. This Chapter shall not apply to:
 - (a) government procurement; 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.
4. For greater certainty, measures affecting the supply of a service delivered or performed electronically are subject to the relevant obligations in Chapter 8 (Trade in Services), Chapter 9 (Financial Services) and Chapter 12 (Establishment and Related Provisions), including any exceptions or non-conforming measures set out in this Agreement that are applicable to those obligations.
5. For greater certainty, the obligations in Articles 11.9, 11.10, 11.11 and 11.16 are:
 - (a) subject to the relevant provisions, exceptions and non-conforming measures of Chapter 8 (Trade in Services), Chapter 9 (Financial Services) and Chapter 12 (Establishment and Related Provisions); and

- (b) to be read in conjunction with any other relevant provisions in this Agreement.

6. The obligations contained in Articles 11.9, 11.10, 11.11 and 11.16 shall not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 8.7 (Non-Conforming Measures) of Chapter 8 (Trade in Services), Article 9.9 (Non-Conforming Measures) of Chapter 9 (Financial Services) or Article 12.6 (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions).

Article 11.3: Review

If the results of the WTO negotiations on trade-related aspects of electronic commerce, or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate, enter into effect, the Parties shall jointly review such results and consider bringing them into effect, as appropriate, under this Agreement.

Article 11.4: Electronic Signatures and Electronic Authentication

1. Except in circumstances otherwise provided for under its laws or regulations, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.
2. Neither 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 standards or is certified by an authority accredited, in accordance with its laws.
4. The Parties shall encourage the use of interoperable electronic authentication.

Article 11.5: Electronic Contracts

Unless otherwise provided for under its laws or regulations, a Party shall not deny

the legal effect, legal validity, or enforceability of an electronic contract³ solely on the basis that the contract has been made by electronic means.

Article 11.6: 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 on 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 11.7: Consumer Protection

1. The Parties recognise the importance of transparent and effective measures that enhance consumer confidence and trust in electronic commerce. Each Party shall adopt or maintain measures to proscribe misleading, fraudulent, and deceptive commercial activities that cause harm, or potential harm, to consumers engaged in electronic commerce⁴.
2. The Parties recognise the importance of cooperation between their respective consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare. To this end, the Parties affirm that the cooperation sought under Article 14.7 (Consumer Protection) of Chapter 14 (Competition) includes cooperation with respect to online commercial activities.

Article 11.8: Customs Duties

1. 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.
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,

³ For greater certainty, an electronic contract includes a contract made by interaction with an automated message system.

⁴ For the purposes of this Article, “engaged in electronic commerce” includes the pre-transaction phase of electronic commerce.

fees or charges are imposed in a manner consistent with this Agreement.

Article 11.9: Non-Discriminatory Treatment of Digital Products

1. Each Party shall endeavour to accord to digital products of the other Party treatment no less favourable than it accords to other like digital products⁵.
2. Paragraph 1 shall not apply to the extent of any inconsistency with the rights and obligations in Chapter 13 (Intellectual Property).
3. For greater certainty, this Article shall 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. The Parties shall take part actively and constructively in negotiations related to non-discriminatory treatment of digital products in multilateral fora in which the Parties participate, with a view to reviewing the results of such negotiations for incorporation into this Agreement as appropriate.

Article 11.10: Movement of Information

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 in connection with 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 such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade, and that such measures do not impose restrictions on transfers of information greater than are required to achieve the objective.

Article 11.11: 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

⁵ 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 the purposes of this paragraph.

security and confidentiality of communication.

2. Neither Party shall require a covered person to use or locate computing facilities in the Area of a Party as a condition for conducting business in that Area.

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 are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade, and that such measures do not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective.

Article 11.12: Protection of Personal Information

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. 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. Each Party shall publish information on the personal information protections it provides to users of electronic commerce, including how:

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

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

Article 11.13: Paperless Trading

Each Party shall endeavour to:

- (a) make trade administration documents available to the public in electronic form; and
- (b) accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents except where there is a legal requirement to the contrary.

Article 11.14: 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 Areas 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;
- (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 11.15: 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 such 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 provide recourse against suppliers of unsolicited commercial electronic messages who do not comply with that Party's measures adopted or maintained pursuant to paragraph 1.

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

Article 11.16: Treatment of Source Code

1. Neither Party shall, as a condition for the importation, distribution, sale or use of software, or of products containing such software, require the transfer of or access to the source code of such software owned by a person of the other Party.⁶
2. For the purposes of this Article, software referred to in 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 be construed to prevent:
 - (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 its 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 laws or practices of a Party.

Article 11.17: Cooperation

1. Recognising the global nature of electronic commerce, the Parties shall endeavour to:
 - (a) work together to assist SMEs 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;
 - (iv) security in electronic communications;

⁶ For greater certainty, this Article shall not prevent a person of a Party from licensing its software on a free and open source basis.

- (v) authentication; and
 - (vi) e-government;
 - (c) participate actively in regional and multilateral fora to promote the development of electronic commerce; and
 - (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.
2. The Parties recognise the importance of:
- (a) building the capabilities of their entities⁷ responsible for computer security incident response; and
 - (b) using existing collaboration mechanisms to cooperatively identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties.
3. The Parties agree that cooperation under this Article shall be conducted in a manner compatible with their respective laws, regulations and competence.

Article 11.18: Future Discussion

The Parties shall initiate discussions within a maximum period of three years, to explore the possibility of extending the relevant commitments on electronic commerce in this Chapter to the financial services covered by Chapter 9 (Financial Services).

⁷ For Peru, this refers to entities at the central level of government.