

CHAPTER 9
ELECTRONIC COMMERCE

Article 9.1: Definitions

For the purposes of this Chapter:

computing facilities means computer servers and storage devices for processing or storing information for commercial use and does not include facilities used for the supply of public telecommunications services;

covered person means:

- (a) a covered investment as defined in Article 7.1 (Definitions);
- (b) an investor of a Party as defined in Article 7.1 (Definitions), but does not include an investor in a financial institution; or
- (c) a service supplier of a Party as defined in Article 8.3.1(f) (Definitions),

but does not include a “financial service supplier” as defined in Article 8.3.1(m) (Definitions) or a financial institution;

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;

financial institution means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the laws and regulations of the Party in whose territory it is located;

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; 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 9.2: Scope

1. The Parties recognise the economic growth and opportunities provided by electronic commerce and the importance of frameworks that promote consumer confidence in electronic commerce and of avoiding unnecessary barriers to its use and development.
2. This Chapter shall apply to measures adopted or maintained by a Party that affect 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, this Chapter may apply to a measure that is also subject to Chapter 7 (Investment) or Chapter 8 (Services).
5. The obligations contained in Article 9.10 (Cross-Border Transfer of Information by Electronic Means, Article 9.11 (Location of Computing Facilities) and Article 9.13 (Source Code) shall not apply to aspects of a Party's measures to the extent that:
 - (a) they are not within the scope of the Party's specific commitments under Article 8.7 (Specific Commitments);
 - (b) any terms, limitations and conditions on market access under Article 8.7 (Specific Commitments) apply;
 - (c) any conditions and qualifications on national treatment under Article 8.7 (Specific Commitments) apply;
 - (d) any exceptions in Chapter 8 (Services) apply;
 - (e) any limitations made in accordance with Article 7.10 (Limitations) apply; or
 - (f) any exceptions in Chapter 7 (Investment) apply.

Article 9.3: Customs Duties

1. No Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of one Party and a person of another 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 9.4: 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 9.5: 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. 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 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 9.6: Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from misleading and deceptive conduct as referred to in Article 11.9.2 (Consumer Protection) when they engage in electronic commerce.
2. Each Party shall adopt or maintain consumer protection laws or regulations to proscribe misleading and deceptive conduct that causes harm or potential harm to consumers engaged in online commercial activities.
3. Each Party shall, where possible, provide protection for consumers using electronic commerce that is at least equivalent to that provided for consumers of other forms of commerce under its relevant laws, regulations and policies.¹
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 this end, the Parties affirm that the cooperation sought pursuant to Article 11.9.5 (Consumer Protection) includes cooperation with respect to online commercial activities.
5. The Parties recognise the benefits of mechanisms, including alternative dispute resolution, to facilitate the resolution of claims over electronic commerce transactions.

Article 9.7: Personal Information Protection

1. The Parties recognise the economic and social benefits of protecting the personal information of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.
2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce. To the extent possible, the legal framework shall take into account principles and guidelines of relevant international bodies such as APEC.
3. Each Party shall:
 - (a) afford protection, through the legal framework referred to in paragraph 2, to the personal information of users of the other Party on a non-discriminatory basis; and
 - (b) adopt non-discriminatory practices in protecting users of electronic commerce from personal information protection violations occurring within its jurisdiction.

¹ For greater certainty, this requirement does not require formally identical treatment, and may be met by providing formally different treatment to online and other consumers, which nonetheless provides an effectively equivalent level of overall protection.

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 shall pursue 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, broader international frameworks, or where practicable, appropriate recognition of comparable protection afforded by their respective legal frameworks, national trustmark or certification frameworks, or other avenues of transfer of personal information between the Parties.

6. 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 9.8: Paperless Trading

1. Each Party shall make publicly available, which may include through a process prescribed by that Party, electronic versions of all existing publicly available versions of trade administration documents.

2. Each Party shall accept the electronic versions of trade administration documents as the legal equivalent of paper documents except where:

- (a) there is a domestic or international legal requirement to the contrary; or
- (b) doing so would reduce the effectiveness of the trade administration process.

3. The Parties shall cooperate bilaterally and in international forums to enhance acceptance of electronic versions of trade administration documents.

4. In developing initiatives which provide for the use of paperless trading, each Party shall endeavour to take into account the methods agreed by international organisations.

Article 9.9: 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 management;²
- (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 9.10: Cross-Border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.
2. 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 is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

Article 9.11: 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 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.
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 is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

Article 9.12: Unsolicited Commercial Electronic Messages

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

² 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.

- (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages;
 - (b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages; or
 - (c) otherwise provide for the minimisation of unsolicited commercial electronic messages.
2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraph 1.
3. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Article 9.13: Source Code

1. No Party shall require the transfer of, or access to, source code of software owned by a person of another 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 9.14: Logistics

1. The Parties recognise the importance of efficient cross border logistics which would help lower the cost and improve the speed and reliability of supply chains.

2. The Parties shall endeavour to share best practices in the logistics sector.

Article 9.15: E-Invoicing

1. The Parties recognise the importance of an e-invoicing system which would help improve the speed and reliability of electronic commerce transactions.
2. The Parties shall endeavour to work towards mutually recognising the e-invoicing system of the other Party and to encourage interoperability between the Parties' e-invoicing systems.
3. The Parties shall endeavour to share best practices pertaining to e-invoicing systems.

Article 9.16: Cooperation

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

- (a) work together to assist business and small and medium sized enterprises to overcome obstacles to its use including the sharing of best practices that would facilitate cross-border electronic commerce;
- (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;
 - (v) authentication; and
 - (vi) e-government;
- (c) exchange information and share views on consumer access to products and services offered online between the Parties;
- (d) participate actively in regional and multilateral fora to promote the development of electronic commerce;

- (e) work together in relevant international fora to promote the adoption of commitments by non-Parties not to impose customs duties on electronic transmissions; and
- (f) 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.

Article 9.17: Cooperation on Cybersecurity Matters

The Parties recognise the importance of:

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