

CHAPTER 11 – DIGITAL TRADE

SECTION A – GENERAL PROVISIONS

ARTICLE 11.1 – Scope

1. The Parties recognise the economic growth and opportunities provided by, and the importance of, promoting consumer confidence in digital trade.
2. This Chapter applies to measures of a Party affecting trade enabled, either wholly or partially, by electronic means.
3. This Chapter does not apply to:
 - (a) audio-visual services; 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. Article 11.5 (Cross-border data flows) does not apply to a measure to the extent that such measure is not subject to Section B (Investment liberalisation) or Section C (Cross-border trade in services) of Chapter 9 (Investment liberalisation and trade in services), by reason of:
 - (a) Article 9.10 (Non-conforming measures and exceptions) or Article 9.17 (Non-conforming measures); or
 - (b) entries 9 (Gambling and betting) and 35 (Foreign investment framework) in Appendix 9-D-2 (Schedule of Australia).

ARTICLE 11.2 – Definitions

1. For the purposes of this Chapter, the following definitions apply:
 - (a) the definitions set out in Article 9.2 (Definitions);
 - (b) "consumer" means any natural person engaging in electronic commerce transactions for other than professional purposes or, if provided for in the laws or regulations of a Party, any enterprise engaging in electronic commerce transactions;
 - (c) "direct marketing communication" means any form of commercial advertising by which a

person communicates marketing messages directly to a user via a public telecommunications service and, for the purpose of this Agreement, covers at least electronic mail, text and multimedia messages (SMS and MMS) and phone calls;

- (d) "electronic authentication" means an electronic process that enables the confirmation of:
 - (i) the electronic identification of a person; or
 - (ii) the origin and integrity of data in electronic form;
- (e) "electronic seal" means data in electronic form used by a juridical person which is attached to, or logically associated with, other data in electronic form to ensure the origin and integrity of that other data;
- (f) "electronic signature" means data in electronic form, which is attached to or logically associated with other data in electronic form and that may be used by a signatory to sign that other data;¹
- (g) "government data" means data owned or held by the central or regional levels of government;
- (h) "internet access service" means a public telecommunications service that provides access to the internet, and thereby connectivity to virtually all endpoints of the internet, irrespective of the network technology and terminal equipment used;
- (i) "personal data" means any information relating to an identified or identifiable natural person;
- (j) "public telecommunications service" means a public telecommunications service as defined in point (j) of Article 9.51 (Definitions);
- (k) "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
- (l) "user" means any person using a public telecommunications service.

2. The definition of "customs duty" set out in point (b) of Article 1.3 (General Definitions) does not apply to this Chapter.

¹ In the Union, natural persons use electronic signatures and juridical persons use electronic seals.

ARTICLE 11.3 – Right to regulate

The Parties reaffirm each Party's right to regulate within their territories in pursuit of legitimate public policy objectives, such as the protection of health, social services, public education, safety, the environment, including climate change, public morals, social or consumer protection, animal welfare, privacy and data protection, security of energy supply, the promotion and protection of cultural diversity and, in the case of Australia, the promotion and protection of the rights and interests of Australian First Nations peoples.

ARTICLE 11.4 – Exceptions

For greater certainty, nothing in this Chapter prevents a Party from adopting or maintaining a measure that meets the requirements of Article 23.1 (General exceptions), Article 23.2 (Security exceptions) or Article 9.69 (Measures for prudential reasons).