CHAPTER 12

ELECTRONIC COMMERCE

SECTION A
GENERAL PROVISIONS

Article 12.1: Definitions

For the purposes of this Chapter:

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

(b) **covered person** means:

(i) a “covered investment” as defined in subparagraph (a) of Article 10.1 (Definitions);

(ii) an “investor of a Party” as defined in subparagraph (e) of Article 10.1 (Definitions), but does not include an investor in a financial institution or an investor in a financial service supplier;[1] or

(iii) a service supplier of a Party as defined in Article 8.1 (Definitions),

but does not include a “financial institution”, a “public entity”, or a “financial service supplier”, as defined in Article 1 (Definitions) of Annex 8A (Financial Services);

(c) **electronic authentication** means the process of verifying or testing an electronic statement or claim, in order to establish a level of confidence in the statement’s or claim’s reliability; and

(d) **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.[2]

[1] For greater certainty, an investor in a financial institution or an investor in a financial service supplier may still be a “covered person” in relation to other investments that are not in a financial institution or in a financial service supplier.

Article 12.2: Principles and Objectives

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 development and use of electronic commerce.

2. The objectives of this Chapter are to:

(a) promote electronic commerce among the Parties and the wider use of electronic commerce globally;

(b) contribute to creating an environment of trust and confidence in the use of electronic commerce; and

(c) enhance cooperation among the Parties regarding development of electronic commerce.

Article 12.3: Scope[3]

1. This Chapter shall apply to measures adopted or maintained by a Party that affect electronic commerce.

2. This Chapter shall not apply to government procurement.

3. This Chapter shall not apply to 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 12.14 (Location of Computing Facilities) and Article 12.15 (Cross-Border Transfer of Information by Electronic Means) shall

[2] A Party may apply the definition to unsolicited commercial electronic messages delivered through one or more modes of delivery, including Short Message Service (SMS) or e-mail. Notwithstanding this footnote, Parties should endeavour to adopt or maintain measures consistent with Article 12.9 (Unsolicited Commercial Electronic Messages) that apply to other modes of delivery of unsolicited commercial electronic messages.

[3] For greater certainty, the Parties affirm that the obligations under this Chapter are without prejudice to any Party’s position in the WTO.