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Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

CHAPTER FOURTEEN
ELECTRONIC COMMERCE

ARTICLE 14.1: GENERAL

The Parties recognize the economic growth and opportunity provided by electronic commerce and the importance of avoiding barriers to its use and development and the applicability of WTO rules to electronic commerce.

ARTICLE 14.2: ELECTRONIC SUPPLY OF SERVICES

The Parties affirm that relevant measures affecting the supply of a service using electronic means fall within the scope of the obligations contained in the relevant provisions of Chapter Ten (Investment), Chapter Eleven (Cross-Border Trade in Services), and Chapter Twelve (Financial Services), subject to any non-conforming measures or exceptions applicable to such obligations.

ARTICLE 14.3: DIGITAL PRODUCTS

1. A Party shall not apply customs duties or other duties, fees, or charges on or in connection with the importation or exportation of digital products by electronic transmission.¹
2. Each Party shall determine the customs value of an imported carrier medium bearing a digital product of the other Party according to the cost or value of the carrier medium alone, without regard to the cost or value of the digital product stored on the carrier medium.
3. (a) A Party shall not accord less favorable treatment to digital products created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party than it accords to like digital products created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party.

(b) A Party shall not accord less favorable treatment to digital products whose author, performer, producer, developer, or distributor is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, or distributor is a person of a non-Party.

¹ Paragraph 1 of this Article does not preclude a Party from imposing internal taxes or other internal charges on digital products provided that these are imposed in a manner consistent with this Agreement.

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4. A Party shall not accord less favorable treatment to a digital product transmitted electronically than it accords to other like digital products transmitted electronically
- (a) on the basis that
 - (i) the digital product receiving less favorable treatment is created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party, or
 - (ii) the author, performer, producer, developer, or distributor of such digital products is a person of the other Party²
- or
- (b) so as otherwise to afford protection to the other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory.

5. The obligations set forth in paragraphs 3 and 4 are subject to the exceptions and non-conforming measures set forth in Chapter Ten (Investment), Chapter Eleven (Cross-Border Trade in Services), and Chapter Twelve (Financial Services).

ARTICLE 14.4: DEFINITIONS

For purposes of this Chapter:

- (a) **carrier medium** means any physical object capable of storing a digital product by any method now known or later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, and includes optical medium, floppy disk, and magnetic tape;
- (b) **digital products** means computer programs, text, video, images, sound recordings, and other products that are digitally encoded, regardless of whether they are fixed on a carrier medium or transmitted electronically;³

² For greater certainty, recognizing the Parties' objective to promote trade between them, the obligation to accord no less favorable treatment to the digital product applies only if one or more of the activities listed in paragraph 4(a)(i) occurs in the territory of the other Party, or one or more persons listed in paragraph 4(a)(ii) are persons of the other Party.

³ For greater clarity, digital products do not include digitized representations of financial instruments.

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- (c) **electronic means** means employing computer processing; and
- (d) **electronic commerce** means the production, distribution, marketing, sales, or delivery of products or services through electronic means.
- (e) **electronic transmission** or **transmitted electronically** means the transfer of digital products using any electromagnetic or photonic means.