

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
October 3, 2005

CHAPTER FOURTEEN
ELECTRONIC COMMERCE

ARTICLE 14.1: GENERAL

The Parties recognize the economic growth and opportunity that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of the WTO Agreement to measures affecting electronic commerce.

ARTICLE 14.2: ELECTRONIC SUPPLY OF SERVICES

The Parties affirm that measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), and Twelve (Financial Services), subject to any exceptions or non-conforming measures set out in this Agreement that are applicable to such obligations.

ARTICLE 14.3: DIGITAL PRODUCTS

1. Neither Party may apply customs duties, fees, or other charges on or in connection with the importation or exportation of digital products by electronic transmission.
2. Each Party shall determine the customs value of an imported carrier medium bearing a digital product of the other Party based on 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. Neither Party may accord less favorable treatment to some digital products¹ than it accords to other like digital products
 - (a) on the basis that

¹ Recognizing the Parties' objective to promote trade between them, the obligation to accord no less favorable treatment to a digital product applies only if the digital product is created, produced, published, contracted for, or commissioned in the territory of the other Party, or if the author, performer, producer, developer, or owner of the digital product is a person of the other Party.

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- (i) the digital products receiving less favorable treatment are 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, distributor, or owner of such digital products is a person of the other Party; 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.
4. Neither Party may accord less favorable treatment to digital products
- (a) created, produced, published, contracted for, or commissioned in the territory of the other Party than it accords to like digital products created, produced, published, contracted for, or commissioned in the territory of a non-Party; or
 - (b) whose author, performer, producer, developer, or owner is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, or owner is a person of a non-Party.
5. Paragraphs 3 and 4 do not apply to measures adopted or maintained in accordance with Articles 10.12 (Investment - Non-Conforming Measures), 11.6 (Cross-Border Trade in Services - Non-Conforming Measures), and 12.9 (Financial Services - Non-Conforming Measures).

ARTICLE 14.4: CONSUMER PROTECTION

The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce.

ARTICLE 14.5: DEFINITIONS

For purposes of this Chapter:

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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, including an optical medium, a floppy disk, and a magnetic tape;

digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution, regardless of whether they are fixed on a carrier medium or transmitted electronically;

electronic transmission or **transmitted electronically** means the transfer of digital products using any electromagnetic or photonic means.