

**A Comparative Guide to the Chile-United States Free Trade Agreement and the
Dominican Republic-Central America-United States Free Trade Agreement
A STUDY BY THE TRIPARTITE COMMITTEE**

Chapter Fifteen: Electronic Commerce

[Comparative Study](#)

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CHILE – U.S.
Date of Signature: June 6, 2003
Chapter Fifteen:
Electronic Commerce

DR - CAFTA
Date of Signature: August 5, 2004
Chapter Fourteen:
Electronic Commerce

[*Article 15.1: General*](#)

[*Article 14.1: General*](#)

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

1. 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 rules to measures affecting electronic commerce.

2. Nothing in this Chapter shall be construed to prevent a Party from imposing internal taxes, directly or indirectly, on digital products, provided they are imposed in a manner consistent with this Agreement.

2. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from imposing internal taxes, directly or indirectly, on digital products, provided they are imposed in a manner consistent with this Agreement.

3. This Chapter is subject to any other relevant provisions, exceptions, or nonconforming measures set forth in other Chapters or Annexes of this Agreement.

NO CORRESPONDING PARAGRAPH

[*Article 15.2: Electronic Supply of Services*](#)

[*Article 14.2: Electronic Supply of Services*](#)

The Parties recognize that the supply of a service using electronic means falls within the scope of the obligations contained in the relevant provisions of Chapter Eleven (Cross- Border Trade in Services) and Chapter Twelve (Financial Services), subject to any nonconforming measures or exceptions applicable to such obligations.¹

For greater certainty, the Parties affirm that measures affecting the supply of a service using electronic means falls 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 nonconforming measures or exceptions applicable to such obligations.

¹ For greater certainty, nothing in this Chapter imposes obligations to allow the electronic supply of a service nor the electronic transmission of content associated with those services except in accordance with the provisions of Chapter Eleven (Cross-Border Trade in Services) or Chapter Twelve (Financial Services), including their Annexes (Non-Conforming Measures).

Article 15.3: Customs Duties on Digital Products

Neither Party may apply customs duties on digital products of the other Party.

NO CORRESPONDING PARAGRAPH

Article 14.3: Digital Products

1. No Party may impose customs duties, fees, or other charges on or in connection with the importation or exportation of digital products by electronic transmission.

2. For purposes of determining applicable customs duties, each Party shall determine the customs value of an imported carrier medium bearing a digital product 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.

Article 15.4: Non-Discrimination for Digital Products

1. A Party shall not accord less favorable treatment to a digital product than it accords to other like digital products, on the basis that:

(a) 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

(b) the author, performer, producer, developer, or distributor of such digital products is a person of the other Party.²

² For greater certainty, if one or more of the criteria of paragraph 1(a) or (b) is satisfied, the obligation to accord no less favorable treatment to that digital product applies even if one or more of the activities listed in paragraph 1(a) occurs outside of the territory of the other Party, or one or more persons listed in paragraph 1(b) are persons of the other Party or a non-Party.

Article 14.3: Digital Products

3. No Party may accord less favorable treatment to some digital products than it accords to other like digital products:

(a) on the basis that

i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory or

(ii) the author, performer, producer, developer, or distributor of such digital products is a person of another Party or non-Party; or

2.

(a) A Party shall not accord less favorable treatment to a digital product 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 a like digital product created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party.

(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.¹

¹ For greater certainty, this paragraph does not provide any right to a non-Party or a person 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.

4. No Party may accord less favorable treatment to digital products transmitted electronically:

(a) that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of another 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;
or

3. A Party may maintain an existing measure that does not conform with paragraph 1 or 2 for one year after the date of entry into force of this Agreement. A Party may maintain the measure thereafter, if the treatment the Party accords under the measure is no less favorable than the treatment the Party accorded under the measure on the date of entry into force of this Agreement, and the Party has set out the measure in its Schedule to Annex 15.4. A Party may amend such a measure only to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment,

(b) whose author, performer, producer, developer, or distributor is a person of another Party than it accords to like digital products whose author, performer, producer, developer, or distributor is a person of a non-Party.

with paragraphs 1 and 2.

5. Paragraphs 3 and 4 do not apply to any non-conforming measure described in Articles 10.13 (Non-Conforming Measures), 11.6 (Non-Conforming Measures), or 12.9 (Non-Conforming Measures).

Article 14.4: Transparency

NO CORRESPONDING PARAGRAPH

Each Party shall publish or otherwise make available to the public its laws, regulations, and measures of general application which pertain to electronic commerce.

Article 15.5: Cooperation

Article 14.5: Cooperation

Having in mind the global nature of electronic commerce, the Parties recognize the importance of:

Recognizing the global nature of electronic commerce, the Parties affirm the importance of:

(a) working together to overcome obstacles encountered by small and medium enterprises in the use of electronic commerce;

(a) working together to overcome obstacles encountered by small and medium enterprises in using electronic commerce;

(b) sharing information and experiences on regulations, laws, and programs in the sphere of electronic commerce, including those related to data privacy, consumer confidence, cyber-security, electronic signatures, intellectual property rights, and electronic government;

(b) sharing information and experiences on regulations, laws, and programs in the sphere of electronic commerce, including those related to data privacy, consumer confidence, cyber-security, electronic signatures, intellectual property rights, and electronic government;

(c) working to maintain cross-border flows of information as an essential element for a vibrant electronic commerce environment;

(c) working to maintain cross-border flows of information as an essential element for a vibrant electronic commerce environment;

<p>(d) encouraging the development by the private sector of methods of selfregulation, including codes of conduct, model contracts, guidelines, and enforcement mechanisms that foster electronic commerce; and</p>	<p>(d) encouraging the private sector to adopt selfregulation, including through codes of conduct, model contracts, guidelines, and enforcement mechanisms that foster electronic commerce; and</p>
<p>(e) actively participating in international fora, at both a hemispheric and multilateral level, with the purpose of promoting the development of electronic commerce.</p>	<p>(e) actively participating in hemispheric and multilateral fora to promote the development of electronic commerce.</p>

<u>Article 15.6: Definitions</u>	<u>Article 14.6: Definitions:</u>
<p>For purposes of this Chapter:</p>	<p>For the purposes of this Chapter:</p>
<p><i>NO CORRESPONDING DEFINITION</i></p>	<p>carrier medium means any physical object capable of storing the digital codes that form 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 an optical medium, a floppy disk, and a magnetic tape;</p>
<p>digital products means computer programs, text, video, ../images, sound recordings, and other products that are digitally encoded and transmitted electronically, regardless of whether a Party treats such products as a good or a service under its domestic law;³</p>	<p>digital products means computer programs, text, video, ../images, sound recordings, and other products that are digitally encoded.²</p>
<p>³ For greater certainty, digital products do not include digitized representations of financial instruments, including money. The definition of digital products is without prejudice to the on-going WTO discussions on whether trade in digital products transmitted electronically is a good or a service.</p>	<p>² For greater certainty, digital products do not include digitized representations of financial instruments.</p>
<p>electronic means means employing computer processing; and</p>	<p>electronic means means employing computer processing; and</p>
<p>electronic transmission or transmitted electronically means the transfer of digital products using any electromagnetic or photonic means.</p>	<p>electronic transmission or transmitted electronically means the transfer of digital products using any electromagnetic or photonic means.</p>

[Annex 15.4](#)

Non-Discrimination for Digital Products

The Schedule of a Party sets out the non-conforming measures maintained by that Party pursuant to Article 15.4(3).

NO CORRESPONDING PARAGRAPH