

**DRAFT**  
**Subject to Legal Review for Accuracy, Clarity, and Consistency**  
**January 28, 2004**

**Chapter Fourteen**

**Electronic Commerce**

**Article 14.1: General**

1. The Parties recognize the economic growth and opportunity provided by electronic commerce, the importance of avoiding barriers to its use and development, and the applicability of WTO rules to 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.
3. This Chapter is subject to any relevant provisions, exceptions, or non-conforming measures set forth in other Chapters or Annexes of this Agreement.

**Article 14.2: Electronic Supply of Services**

For greater certainty, 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 Chapters Ten (Investment), Eleven (Cross Border Trade in Services), and Twelve (Financial Services), subject to any non-conforming measures or exceptions applicable to such obligations.

**Article 14.3: Digital Products<sup>1</sup>**

1. A Party shall not impose customs duties or other duties, fees, or 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.
3. A Party shall not accord less favorable treatment to some digital products than it accords to other like digital products:

(a) on the basis that

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<sup>1</sup> For greater certainty, this Article does not provide any dispute settlement rights to governments of a non-Party to this Agreement, or to nationals or enterprises controlled by nationals of a non-Party to this Agreement.

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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 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

- (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. A Party shall not accord less favorable treatment to digital products:

- (a) 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
- (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.

**Article 14.4: Transparency**

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 14.5: Cooperation**

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

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

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- (c) working to maintain cross-border flows of information as an essential element for a vibrant electronic commerce environment;
- (d) encouraging the development by the private sector of methods of self-regulation, including codes of conduct, model contracts, guidelines, and enforcement mechanisms that foster electronic commerce; and
- (e) actively participating in international fora, at both the hemispheric and multilateral level, with the purpose of promoting the development of electronic commerce.

**Article 14.6: Definitions**

For purposes of this Chapter:

**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;

**digital products** means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and transmitted electronically;<sup>2</sup>

**electronic means** means employing computer processing; and

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

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<sup>2</sup> For greater certainty, digital products do not include digitized representations of financial instruments.