

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 using electronic means 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.¹
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. (a) Neither Party may 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.

¹ For greater certainty, paragraph 1 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.

- (b) Neither Party may 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. Neither Party may 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 Party;²

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. Paragraphs 3 and 4 do not apply to measures adopted or maintained in accordance with Articles 10.12 (Non-Conforming Measures), 11.6 (Non-Conforming Measures), and 12.9 (Non-Conforming Measures).

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) occur in the territory of the other Party, or one or more persons listed in paragraph 4(a)(ii) is a person of the other Party.

ARTICLE 14.4: DEFINITIONS

For purposes of this Chapter:

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, regardless of whether they are fixed on a carrier medium or transmitted electronically;³

electronic means means employing computer processing;

electronic commerce means the production, distribution, marketing, sales, or delivery of products or services through electronic means; and

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

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