

**Subject to Legal Review for Accuracy, Clarity, and Consistency**  
**Subject to Authentication of English and Spanish Versions**  
**Draft 8 May 2006**

**Chapter Fifteen**

**Electronic Commerce**

**Article 15.1: General**

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 Agreement to measures affecting electronic commerce.
2. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from imposing internal taxes or other internal charges on the domestic sale of digital products, provided that such taxes or charges are imposed in a manner consistent with this Agreement.

**Article 15.2: Electronic Supply of Services**

For greater certainty, the Parties affirm that measures affecting the supply of a service delivered or performed electronically 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 exceptions or non-conforming measures set out in this Agreement that are applicable to such obligations.

**Article 15.3: Digital Products**

1. No 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. For purposes of determining applicable customs duties, each Party shall determine the customs value of an imported carrier medium bearing a digital product 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. 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

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- (ii) the author, performer, producer, developer, or distributor of such digital products is a person of another Party or a non-Party, or
  - (b) so as otherwise to afford protection to 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) No 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 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.
  - (b) No Party may accord less favorable treatment to digital products 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.
- 5. Paragraphs 3 and 4 do not apply to measures adopted or maintained in accordance with Articles 10.13 (Non-Conforming Measures), 11.6 (Non-Conforming Measures), and 12.9 (Non-Conforming Measures).

**Article 15.4: Transparency**

Each Party shall publish or otherwise make publicly available its laws, regulations, and other measures of general application that pertain to electronic commerce.

**Article 15.5: Consumer Protection**

- 1. 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.
- 2. The Parties recognize the importance of cooperation between their respective national consumer protection agencies on activities related to cross-border electronic commerce in order to enhance consumer protection.

**Article 15.6: Authentication**

No Party may adopt or maintain legislation for electronic authentication that would:

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- (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or
- (b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to authentication.

**Article 15.7: Paperless Trade Administration**

1. Each Party shall endeavor to make all trade administration documents available to the public in electronic form.
2. Each Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such documents.

**Article 15.8: Definitions**

For purposes of this Chapter:

**authentication** means the process or act of establishing the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication;

**carrier medium** means any physical object designed principally for use in 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, but is not limited to, an optical medium, a floppy disk, or 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;<sup>1</sup>

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

**trade administration documents** means forms that a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods.

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<sup>1</sup> For greater certainty, digital products do not include digitized representations of financial instruments, including money.