

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY AND CONSISTENCY
MARCH 1, 2004

CHAPTER SIXTEEN
ELECTRONIC COMMERCE

ARTICLE 16.1 : GENERAL

The Parties recognise the economic growth and opportunity that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of WTO rules to electronic commerce.

ARTICLE 16.2 : ELECTRONIC SUPPLY OF SERVICES

For greater certainty, the Parties affirm that measures related to the supply of a service employing computer processing fall within the scope of the obligations contained in the relevant provisions of Chapters Ten (Cross-Border Trade in Services), Eleven (Investment), and Thirteen (Financial Services), subject to any exceptions applicable to such obligations and to the non-conforming measures described in Articles 10.6 (Non-Conforming Measures), 11.13 (Non-Conforming Measures) or 13.9 (Non-Conforming Measures).

ARTICLE 16.3 : CUSTOMS DUTIES

A Party shall not impose customs duties or other duties, fees or charges¹⁶⁻¹ on or in connection with the importation or exportation of digital products, regardless of whether they are fixed on a carrier medium or transmitted electronically.

ARTICLE 16.4 : NON-DISCRIMINATORY TREATMENT OF DIGITAL PRODUCTS

1. A Party shall not accord less favourable treatment to some digital products than it accords to other like digital products:

- (a) on the basis that the digital products receiving less favourable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory;
- (b) on the basis that the author, performer, producer, developer, or distributor of such digital products is a person of the other Party or a non-Party; or
- (c) so as to otherwise 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.

2. A Party shall not accord less favourable treatment to digital products¹⁶⁻²

¹⁶⁻¹Article 16.3 does not preclude a Party from imposing internal taxes or other internal charges on digital products, provided that such taxes or charges are imposed in a manner consistent with this Agreement.

¹⁶⁻² Nothing in this Article shall be construed as affecting the application of Article 4 of the TRIPS Agreement.

- (a) 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, or
 - (b) 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.
3. Paragraphs 1 and 2 do not apply to:
- (a) non-conforming measures adopted or maintained in accordance with Article 10.6 , Article 11.13, and Article 13.9;
 - (b) the extent that they are inconsistent with the provisions of Chapter Seventeen (Intellectual Property Rights), in which case the provisions of Chapter Seventeen shall prevail;
 - (c) subsidies or grants provided to a service or service supplier by a Party, including government-supported loans, guarantees, and insurance; and
 - (d) services supplied in the exercise of governmental authority within the territory of each respective Party.
4. For greater certainty, paragraphs 1 and 2 do not prevent a Party from adopting or maintaining measures in the audio-visual and broadcasting sectors, in accordance with its reservations to Chapters Ten and Eleven.

ARTICLE 16.5 : AUTHENTICATION AND DIGITAL CERTIFICATES

1. Each Party shall maintain domestic legislation for electronic authentication that:
- (a) permits parties to an electronic transaction to determine the appropriate authentication solutions and implementation models for their electronic transaction, without limiting the recognition of technologies and implementation models; and
 - (b) permits such parties to have the opportunity to prove in court that their electronic transaction complies with any legal requirements with respect to authentication.³
2. Each Party shall work towards recognition at the central level of government of the digital certificates of the other Party.

¹⁶⁻³For greater certainty, nothing in paragraph 1 shall be construed as requiring a Party to create or maintain an authentication regime for electronic transactions.

ARTICLE 16.6 : ONLINE CONSUMER PROTECTION

The Parties recognise that consumers who participate in electronic commerce should be afforded transparent and effective consumer protection under their respective laws.

ARTICLE 16.7 : PAPERLESS TRADING

1. Each Party shall endeavour to make available to the public, in electronic form, all existing trade administration documents.
2. Each Party shall endeavour to accept trade administration documents transmitted electronically as the legal equivalent of paper documents.

ARTICLE 16.8 : DEFINITIONS

For the purposes of this Chapter:

1. **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, and includes optical medium, floppy disk, and magnetic tape;
2. **digital products** means the digitized form, or encoding of, computer programs, text, video, images, sound recordings, and other products,¹⁶⁻⁴ regardless of whether they are fixed on a carrier medium or transmitted electronically;¹⁶⁻⁵
3. **electronic transmission** or **transmitted electronically** means the transfer of digital products using any electromagnetic or photonic means; and
4. **trade administration documents** means forms issued or controlled by a Party which must be completed by or for an importer or exporter in relation to the import or export of goods.

¹⁶⁻⁴For greater certainty, digital products can be a component of a good, be used in the supply of a service, or exist separately, but do not include digitized representations of financial instruments that are settled or transmitted through a central bank-sponsored payment or settlement system.

¹⁶⁻⁵The definition of digital products is without prejudice to the on-going discussions at the WTO on whether trade in digital products transmitted electronically is trade in goods or trade in services.