

## **Chapter Fourteen**

### **Electronic Commerce**

#### **Article 14.1: 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 WTO rules to measures affecting electronic commerce.
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.

#### **Article 14.2: Electronic Supply of Services**

For greater certainty, the Parties affirm that 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 exceptions or non-conforming measures set out in this Agreement, which are applicable to such obligations.

#### **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 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 transmitted electronically than it accords to other like digital products transmitted electronically:
  - (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

- (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.<sup>1</sup>

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 transmitted electronically that are 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 transmitted electronically whose author, performer, producer, developer, or distributor is a person of a non-Party.

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**

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

#### **Article 14.5: Cooperation**

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 using electronic commerce;
- (b) sharing information and experiences on laws, regulations, and programs in the sphere of electronic commerce, including those related to data privacy, consumer confidence in electronic commerce, cyber-security, electronic signatures, intellectual property rights, and electronic government;
- (c) working to maintain cross-border flows of information as an essential element in fostering a vibrant environment for electronic commerce;

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

- (d) encouraging the private sector to adopt self-regulation, including through codes of conduct, model contracts, guidelines, and enforcement mechanisms that foster electronic commerce; and
- (e) actively participating in hemispheric and multilateral fora to promote 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;<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.