

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
June 28, 2004

CHAPTER THIRTEEN
ELECTRONIC COMMERCE

ARTICLE 13.1: 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 13.2: ELECTRONIC SUPPLY OF SERVICES

For greater certainty, the Parties affirm that measures related to the supply of a service using electronic means are subject to the obligations contained in the relevant provisions of Chapters Ten (Cross-Border Trade in Services) and Eleven (Financial Services) subject to any exceptions applicable to such obligations and to the non-conforming measures described in Articles 10.6 (Non-conforming Measures) and 11.9 (Non-conforming Measures).

ARTICLE 13.3: CUSTOMS DUTIES

1. Neither Party may impose customs duties, fees, or other charges¹ 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.
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.

ARTICLE 13.4: NON-DISCRIMINATORY TREATMENT OF DIGITAL PRODUCTS

1. Neither 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

¹ For greater certainty, Article 13.3 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.

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- (ii) the author, performer, producer, developer, or distributor of such digital products is a person of the other 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.

2. Neither Party may 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 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 any non-conforming measure described in, Articles 10.6 (Non-conforming Measures) and 11.9 (Non-conforming Measures).

ARTICLE 13.5: DEFINITIONS

For the purposes of this Chapter:

carrier medium means any physical object capable of storing a digital product, by any existing method or method 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,² regardless of whether they are fixed on a carrier medium or transmitted electronically;

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

using electronic means means employing computer processing.

² For greater certainty, digital products do not include digitized representations of financial instruments