

CHAPTER FIFTEEN ELECTRONIC COMMERCE

ARTICLE 15.1: 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 15.2: ELECTRONIC SUPPLY OF SERVICES

The Parties affirm that measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapters Eleven through Thirteen (Investment, Cross-Border Trade in Services, and Financial Services), which are 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. Neither Party may impose customs duties, fees, or other charges¹ on or in connection with the importation or exportation of:

- (a) if it is an originating good, a digital product fixed on a carrier medium; or
- (b) a digital product transmitted electronically.²

2. Neither Party may accord less favorable treatment to some digital products³ 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 in the territory of the other Party, or

¹ For greater certainty, paragraph 1 does not preclude a Party from imposing internal taxes or other internal charges on digital products, provided that the taxes or charges are imposed in a manner consistent with this Agreement.

² Consistent with Article 2.14.4 (Committee on Trade in Goods), the Committee on Trade in Goods shall consult on and endeavor to resolve any difference that may arise between the Parties on classification matters related to the application of paragraph 1.

³ Recognizing the Parties' objective of promoting bilateral trade, "some digital products" in paragraph 2 refers solely to those digital products created, produced, published, contracted for, or commissioned in the territory of the other Party, or digital products of which the author, performer, producer, developer, or owner is a person of the other Party.

- (ii) the author, performer, producer, developer, distributor, or owner of such digital products is a person of the other 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.
3. Neither Party may accord less favorable treatment to digital products:
- (a) created, produced, published, 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, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party; or
 - (b) whose author, performer, producer, developer, distributor, or owner is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, distributor, or owner is a person of a non-Party.
4. Paragraphs 2 and 3 do not apply to measures adopted or maintained in accordance with Article 11.12 (Non-Conforming Measures), 12.6 (Non-Conforming Measures), or 13.9 (Non-Conforming Measures).
5. Paragraph 2 does not apply to:
- (a) subsidies or grants that a Party provides to a service or service supplier, including government-supported loans, guarantees, and insurance; or
 - (b) services supplied in the exercise of governmental authority, as defined in Article 12.1.6 (Scope and Coverage).
6. This Article does not apply to measures affecting the electronic transmission of a series of text, video, images, sound recordings, and other products scheduled by a content provider for aural and/or visual reception, and for which the content consumer has no choice over the scheduling of the series.

ARTICLE 15.4: ELECTRONIC AUTHENTICATION AND ELECTRONIC SIGNATURES

1. Neither Party may adopt or maintain legislation for electronic authentication that would:
- (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction;
 - (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; or

- (c) deny a signature legal validity solely on the basis that the signature is in electronic form.

2. Notwithstanding paragraph 1, a Party may require that, for a particular category of transactions, the method of authentication meet certain performance standards or be certified by an authority accredited in accordance with the Party's law, provided the requirement:

- (a) serves a legitimate governmental objective; and
- (b) is substantially related to achieving that objective.

ARTICLE 15.5: ONLINE 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 welfare.

3. Each Party's national consumer protection enforcement agencies shall endeavor to cooperate with those of the other Party, in appropriate cases of mutual concern, in the enforcement of laws against fraudulent and deceptive commercial practices in electronic commerce.

Article 15.6: PAPERLESS TRADING

1. Each Party shall endeavor to make 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 those documents.-

ARTICLE 15.7: PRINCIPLES ON ACCESS TO AND USE OF THE INTERNET FOR ELECTRONIC COMMERCE

To support the development and growth of electronic commerce, each Party recognizes that consumers in its territory should be able to:

- (a) access and use services and digital products of their choice, unless prohibited by the Party's law;
- (b) run applications and services of their choice, subject to the needs of law enforcement;

- (c) connect their choice of devices to the Internet, provided that such devices do not harm the network and are not prohibited by the Party's law; and
- (d) have the benefit of competition among network providers, application and service providers, and content providers.

ARTICLE 15.8: CROSS-BORDER INFORMATION FLOWS

Recognizing the importance of the free flow of information in facilitating trade, and acknowledging the importance of protecting personal information, the Parties shall endeavor to refrain from imposing or maintaining unnecessary barriers to electronic information flows across borders.

ARTICLE 15.9: DEFINITIONS

For purposes of this Chapter:

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 and produced for commercial sale or distribution, regardless of whether they are fixed on a carrier medium or transmitted electronically;⁴

electronic 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;

electronic signature means data in electronic form that is in, affixed to, or logically associated with, an electronic document, and that may be used to identify the signatory in relation to the electronic document and indicate the signatory's approval of the information contained in the electronic document;

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

trade administration documents means forms 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.

⁴ The definition of digital products should not be understood to reflect a Party's view on whether trade in digital products through electronic transmission should be categorized as trade in services or trade in goods.

June 30, 2007

Mr. Jong Hoon Kim
Chief Negotiator for the KORUS FTA
Seoul, Republic of Korea

Dear Ambassador Kim:

During the course of negotiations regarding Chapter Fifteen (Electronic Commerce) of the Free Trade Agreement between our two Governments signed on this day, the delegations of the Republic of Korea and the United States of America discussed a range of issues relating to electronic commerce and the importance of open access to the Internet for electronic commerce-related activities.

Both delegations recognized that the principles on access to and use of the Internet contained in Article 15.7 (Principles on Access to and Use of the Internet for Electronic Commerce) support the Parties' shared goal of maintaining an open and competitive environment for electronic commerce-related activities. The delegations also recognized that lawful contractual arrangements between network providers, application and service providers, content providers, and Internet users may be consistent with these principles, provided that the Party's relevant authorities do not determine that the arrangements are exclusionary.

The delegations further recognized the ongoing debate in the United States and Korea concerning reasonable and appropriate cost distribution between network providers, application and service providers, content providers, and Internet users, and that this debate's outcome may affect both access to and use of the Internet and the incentives for network investment. The Parties recognized that, consistent with a report of the Organization for Economic Cooperation and Development (OECD) in 2005,¹ commercial arrangements between competitive suppliers have effectively addressed the international aspect of the cost distribution issue.

Finally, the delegation of Korea noted that, services suppliers identified in Korea as "Internet Access Providers" are "network providers" within the meaning of Article 15.7(d).

I would be grateful if you could confirm that your Government shares these views regarding the discussions relating to electronic commerce and principles on access to and use of networks.

Sincerely,

Wendy Cutler
Chief Negotiator for the KORUS FTA

¹ OECD, Internet Traffic Exchange: Market Developments and Measurement of Growth, DSTI/ICCP/TISP(2005)11/FINAL.

[TRANSLATION]

June 30, 2007

Wendy Cutler
Chief Negotiator for the KORUS FTA
Office of the United States Trade Representative
Washington, D.C.

Dear Ms. Cutler:

This letter is to acknowledge receipt of your letter of this date, which reads as follows:

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Sincerely,

[SGN/]

Jong Hoon Kim

Chief Negotiator for the KORUS FTA