

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

- Neither Party may impose customs duties, fees, or other charges¹ on or in connection with the importation or exportation of:
 - if it is an originating good, a digital product fixed on a carrier medium; or
 - a digital product transmitted electronically.²
- Neither Party may accord less favorable treatment to some digital products³ than it accords to other like digital products
 - on the basis that:
 - 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.

第十五章 电子商务

第十五条第一款：一般规定

各方承认电子商务提供的经济增长和机遇，避免其使用和发展障碍的重要性，以及世界贸易组织协定对影响电子商务的措施的适用性。

第十五条第二款：电子提供服务

各方确认，影响电子交付或执行的服务供应的措施，受第十一章至第十三章（投资、跨境服务贸易和金融服务）相关规定的义务约束，这些义务受本协定中适用于此类义务的任何例外或不符合规定的措施的约束。

第十五条第三款：数字产品

- 任何一方不得对进口或出口的下列货物征收关税、费用或其他费用¹：
 - 如果它是原产货物，固定在载体上的数字产品；或
 - 电子传输的数字产品²。
- 任何一方不得对某些数字产品³ 给予比同类数字产品不利的待遇
 - 基于以下理由：
 - 接受较不优惠待遇的数字产品是在另一方的领土内以商业条件创建、生产、发布、存储、传输、订购、委托或首次提供的，或

¹ 为明确起见，第1段不妨碍一方对数字产品征收内部税或其他内部费用，前提是所征收的税或费用与本协定一致²。根据第2.14.4条（货物贸易委员会），货物贸易委员会应就第1段相关的分类事项可能产生的任何分歧进行磋商并努力解决³。认识到双方促进双边贸易的目标，“某些数字产品”在第2段中仅指在另一方领土内创建、生产、发布、订购或委托的数字产品，或其作者、表演者、生产者、开发者或所有者为另一方人士的数字产品。

- (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

- (ii) 该作者、表演者、生产者、开发者、发行商或所有者数字产品是另一方的个人；或
 - (b) 以便在其他同类数字产品被创造、生产、出版、存储、传输、订购、委托，或在其领土内以商业条件首次提供时提供保护。
3. 任何一方不得给予数字产品不利待遇：
- (a) 在另一方领土内以商业条件被创造、生产、出版、订购、委托，或首次提供，而不是给予在非一方领土内以商业条件被创造、生产、出版、订购、委托，或首次提供的同类数字产品所给予的待遇；或 (b) 其作者、表演者、生产者、开发者、发行商或所有者是另一方的个人，而不是给予在非一方领土内以商业条件被创造、生产、出版、订购、委托，或首次提供的同类数字产品所给予的待遇。
4. 第2段和第3段不适用于根据第11.12条（非一致措施）、12.6条（非一致措施）或13.9条（非一致措施）采取或维持的措施。
5. 第2段不适用于：
- (a) 一方提供给服务或服务供应商的补贴或拨款，包括政府支持贷款、担保和保险；或(b) 根据第12.1.6条（范围和覆盖）定义的行使政府权力提供的服务。
6. 本条不适用于影响内容提供者按计划为听觉和/或视觉接收而安排的文本、视频、图像、声音录音和其他产品系列的电子传输的措施，且内容消费者对系列安排没有选择权。

ARTICLE 15.4: ELECTRONIC AUTHENTICATION 和ELECTRONIC SIGNATURES

1. 任何一方均不得制定或维持电子认证的立法，该立法将：
- (a) 禁止电子交易的当事人相互确定该交易的适当认证方法； (b) 防止当事人有机会在司法或行政机关证明其电子交易符合任何关于认证的法律要求；或

(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) 仅因签名是电子形式而否认签名的法律效力。

2. 不论第1段如何规定，一方可以要求 对于特定类别的交易，认证方法需满足一定的性能标准或由根据一方法律获得认证的机构认证， 前提是该要求：

- (a) 服务于合法的政府目标；并且 (b) 与实现该目标实质上相关。

第15.5条：在线消费者保护

- 1. 各方承认在参与电子商务时， 维持和采纳透明有效的措施以保护消费者免受欺诈和误导性商业行为的重要性。
- 2. 各方承认在跨境电子商务相关活动中， 其各自国家消费者保护机构之间合作的重要性， 以增进消费者福利。
- 3. 各方国家消费者保护执法机构应在适当情况下， 为共同关心的案件， 在打击电子商务中的欺诈和误导性商业行为方面加强合作， 执行法律。

第十五条第六条：无纸化交易

- 1. 各一方应努力以电子形式向公众提供贸易管理文件。
- 2. 各一方应努力将提交的电子贸易管理文件视为该文件纸质版本的合法等效文件。

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

为支持电子商务的发展和成长， 每一方承认其领土内的消费者 应当能够：

- (a)访问和使用其选择的服务和数字产品， 除非被党的法律禁止； (b)运行其选择的应用程序和服务， 根据执法需求；

- (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.

(c)将其选择的外设连接到互联网，前提是这些外设不会损害网络且未被党的法律禁止；以及 (d)享受网络提供商、应用程序和服务提供商以及内容提供商之间的竞争带来的好处。

第十五条 跨境信息流

认识到信息的自由流动对促进贸易的重要性，并承认保护个人信息的重要性，缔约各方应努力避免实施或维持不必要的跨境电子信息流障碍。

第十五条第九条 定义

本章规定中：

载体是指主要为通过任何已知或以后开发的方法存储数字产品而设计的任何物理对象，并且可以从其中感知、复制或传达数字产品，直接或间接地，包括但不限于光学媒介、软盘或磁带；

数字产品是指计算机程序、文本、视频、图像、声音录音和其他为商业销售或分发而数字编码和生产的产品的总称，无论它们是否固定在载体上或电子传输；⁴

电子认证是指为电子通信或交易的一方建立身份的过程或行为，或确保电子通信的完整性；

电子签名是指以电子形式存在、附加于或逻辑关联于电子文档的数据，并且可用于识别与电子文档相关的签署人，并表明签署人对电子文档中包含的信息的批准；

电子传输或电子传输是指使用任何电磁或光子手段转移数字产品；和

贸易管理文件是指一方签发或控制的，进口商或出口商在进出口商品时必须填写或提交的表格。

⁴ 数字产品的定义不应被理解为反映一方对通过电子传输进行的数字产品贸易是否应归类为服务贸易或商品贸易的观点。

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.

6月30日，2007年

金钟勋先生 KORUS自由贸易协定
首席谈判代表 韩国首尔

尊敬的金大使：

在我们两国政府于今日签署的自由贸易协定中，关于第十五章（电子商务）的谈判过程中，韩国和美国代表团就电子商务及相关活动互联网开放访问的重要性进行了一系列讨论。

双方代表团均认识到，《第15.7条（互联网访问和使用原则（适用于电子商务））》中包含的互联网访问和使用原则支持各方在电子商务相关活动中维持开放和竞争性环境的共同目标。代表团还认识到，网络提供商、应用程序和服务提供商、内容提供者和互联网用户之间的合法合同安排 可能与这些原则一致，前提是相关当局未认定该安排具有排他性。

代表团进一步认识到美国 and 韩国之间关于网络提供商、应用程序和服务提供商、内容提供者和互联网用户之间合理和适当成本分配的持续争论，以及这一争论的结果可能影响互联网的访问和使用以及网络投资的激励。各方认识到，根据经济合作与发展组织（OECD）在2005,¹ 的一份报告，竞争性供应商之间的商业安排已有效解决了成本分配问题的国际方面。

最后，韩国代表团指出，在韩国被认定为“互联网接入提供商”的服务供应商，根据第15.7(d)条的规定，属于“网络提供商”。

如果您能确认贵国政府就电子商务和网络访问和使用原则的讨论持相同观点， 我将不胜感激。

此致，

温迪·卡特勒
韩美自由贸易协定首席谈判代表

¹ 经济合作与发展组织， 互联网流量交换：市场发展与增长测量， 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:

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

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

[翻译]

6月30日，2007年

温迪·卡特勒 美国贸易代表办公室的
KORUS自由贸易协定首席谈判代表 华盛顿
特区

尊敬的库勒女士：

这封信 旨在确认您本日的来信， 内容如下：

在我们两国政府于当日签署的自由贸易协定中， 关于第十五部分（电子商务）的谈判过程中， 韩国和美国代表团讨论了一系列与电子商务相关的问题， 以及开放互联网访问对电子商务相关活动的重要性。

双方代表团均承认， 第15.7条（互联网访问和使用原则（适用于电子商务））中包含的互联网访问和使用原则支持各方在电子商务相关活动中维持开放和竞争性环境的共同目标。代表团还承认， 网络提供商、应用程序和服务提供商、内容提供者和互联网用户之间的合法合同安排可以与这些原则一致， 前提是相关当局不认定这些安排是排他性的。 只要相关当局不认定这些安排是排他性的， 这些安排可能与这些原则一致。

代表团进一步承认， 美国和韩国在网络提供商、应用程序和服务提供商、内容提供者和互联网用户之间关于合理和适当成本分配的持续辩论， 以及这一辩论的结果可能影响互联网的访问和使用以及网络投资的激励。各方承认， 这与经济合作与发展组织（OECD）在2005,¹报告中指出的相一致， 即竞争性供应商之间的商业安排已经有效解决了成本分配问题的国际方面。

最后， 韩国代表团指出， 在韩国被确定为“互联网接入提供商”的服务供应商， 根据第15.7(d)条的规定， 属于“网络提供商”。

如果您的政府认同这些观点， 我将不胜感激

¹ 经济合作与发展组织， 互联网流量交换：市场发展与增长测量， DSTI/ICCP/TISP(2005)11/FINAL。

regarding the discussions relating to electronic commerce and principles on access to and use of networks.

I confirm that my Government shares these views regarding the discussions relating to electronic commerce and principles on access to and use of networks.

Sincerely,

[SGN/]
Jong Hoon Kim
Chief Negotiator for the KORUS FTA

特别是在电子商务和网络访问和使用原则的相关讨论方面。

我确认我的政府就电子商务相关讨论和网络访问和使用原则问题分享这些观点。

此致，[SGN/]金钟薰 韩美自由贸易
协定首席谈判代表