

**DEDICATED DISCUSSION ON ELECTRONIC COMMERCE
UNDER THE AUSPICES OF THE
GENERAL COUNCIL ON 15 JUNE 2001**

Summary by the Secretariat of the Issues Raised

At the General Council meeting on 8 May 2001, Members agreed to have a dedicated discussion on e-commerce to address cross-cutting issues. This dedicated discussion took place on 15 June 2001 under the auspices of the General Council, and was Chaired by Mr. Andrew Stoler, Deputy Director-General.

The attached list of cross-cutting issues identified by delegations at the General Council meeting in May and in subsequent consultations served as the agenda for the dedicated discussion. Members also had before them written contributions submitted by MERCOSUR¹, Singapore², Japan³, and the European Communities.⁴

At the end of the dedicated discussion, it was agreed that the Secretariat would prepare a factual report on the discussion under its own responsibility, which would be presented for information to the General Council at its next meeting on 18 July 2001. The main views expressed by delegations in the course of the discussion under each of the cross-cutting issues identified are summarized below.

1. Classification of the content of certain electronic transmissions

Although it was listed as a sub-issue on the compilation of cross-cutting issues identified by delegations (see attachment), Members accepted at the outset of the dedicated discussion that the question of the definition of e-commerce did not need to be addressed in the meeting. This was due to the fact that paragraph 1.3 of WT/L/274 (the Adopted Work Programme on Electronic Commerce) defines the term for purposes of the work programme as "the production, distribution, marketing sale or delivery of goods and services by electronic means". Since it is clear that both goods and services are sold through e-commerce means, whether a particular transaction involves trade in goods or services must depend on the product being sold.

- Most delegations highlighted the importance of classification as a cross-cutting issue.
- A number of delegations agreed that a majority of electronically transmitted products were indeed services. However, there was still a lack of clarity with regard to the classification under GATT or GATS of certain products which can be delivered both in electronic form and on a physical carrier.

¹ WT/GC/W/434.

² JOB(01)/55 (26 April 2001) and Suppl. 1 (14 June 2001).

³ JOB(01)/90 (15 June 2001).

⁴ JOB(01)/85 (14 June 2001).

- A number of delegations were of the view that digitized products should all be treated as services, and thus be subject to the disciplines of the GATS. One of the main rationales mentioned for this approach was the legal certainty it would provide in the treatment of digitized products. Some of the proponents of the "GATS approach" asked other delegations that did not share their view to provide them with concrete examples of digitized products that should not be considered as services.
- It was suggested that certain products now categorized as goods and enjoying national treatment and duty-free access under the ITA and GATT should continue to be given similar treatment if it were agreed that they should be classified as services. However, other delegations expressed concern about the consistency of such an approach with the principles on which commitments are scheduled under the GATS. It was also suggested that it would be pointless to reclassify certain products as services if GATT disciplines such as unconditional MFN and national treatment and the prohibition of quantitative restrictions were to continue to apply to them.
- Other delegations noted that a premature determination of the application of GATT or GATS to the content of certain electronic transmissions, or the adoption of rigid rules on the matter could create uncertainty and unnecessarily restrict trade. It was also noted in this respect that the market for e-commerce was new and still evolving. It was also suggested that the most favourable approach to classification should be the least trade restrictive one. Another delegation pointed out that there was currently no obligation to apply a "least restrictive" standard.
- A number of delegations indicated that they had not reached a clear position on the question of classification, and were still studying the matter in capitals. It was noted in this respect that the implications of classification should be fully considered before a decision could be taken on this matter.
- With regard to the issues of "likeness" and technological neutrality, it was suggested by some delegations that the issue of classification should be resolved before these issues were further considered. On the issue of "likeness" in particular, a number of delegations recalled the wide jurisprudence establishing that a determination of "likeness" should be done on a case-by-case basis. With regard to technological neutrality, one delegation mentioned the need to clarify this concept and its possible application in the context of the GATT.
- One delegation mentioned that the issue of classification had to be addressed before the issue of rules of origin could be tackled.
- Most delegations generally agreed that no unnecessary obstacles should be created that would impede the development of e-commerce.

2. Development-related issues

- All delegations agreed that development was a fundamental issue in the discussion on e-commerce. Many delegations recalled the great potential of e-commerce as a tool for economic growth in developing countries.
- Some delegations made presentations on the use of information technology in their technical assistance programmes.

- A number of delegations expressed the view that it could not be assumed that the benefits of e-commerce would flow automatically to developing countries, and that a comprehensive approach would be necessary to ensure that developing countries could benefit from e-commerce. In this respect, technical assistance would not be sufficient, and measures would have to be taken regarding access to basic infrastructures and technology, investment, market access, human resources and education. It was also noted that governments had a key role to play in helping to create an environment favourable to the development of e-commerce through the elaboration of national strategies and a regulatory/policy framework.
- A delegation recalled that there were a number of negotiating proposals on issues relating to access to infrastructure and technology before the Council for Trade and Services.
- Many delegations expressed support for the work of the Committee on Trade and Development (CTD) on e-commerce, and urged the CTD to continue its role of channelling information on countries' experiences and best practices in relation to e-commerce, through the organisation of seminars open to national experts. It was also stressed that the WTO, through the CTD, should participate in broader efforts to narrow the digital divide, building upon the work in other organizations.
- Some delegations were of the view that all the issues identified in the reports of the CTD as requiring further work should be fully addressed.
- It was mentioned by one delegation that developing countries should be fully integrated in the development of standards on e-commerce in order to ensure that such standards would not create barriers to entry for developing countries' firms.
- Some delegations expressed concern at the non-availability of certain technologies for a number of developing countries, including in relation to encryption and the security of transactions. In this respect, one delegation mentioned that Article IV of the GATS had not been fully operationalized.

3. Fiscal implications of e-commerce, Relationship (and possible substitution effects between e-commerce and traditional forms of commerce and the Imposition of customs duties on electronic transmissions

- It was noted that some of the questions arising under these items had been partly subsumed in the previous discussion on classification and development.
- *Fiscal implications:* Some delegations were interested in finding out more about the application by certain Members of internal taxes or other charges to e-commerce. Different views were expressed on the actual impact of e-commerce with regard to revenue losses for developing countries. It was noted that the issue of the fiscal implications of e-commerce warranted further discussion.
- *Relationship (and possible substitution effects) between e-commerce and traditional forms of commerce:* It was noted that the relationship between e-commerce and traditional forms of commerce should be carefully monitored so as to avoid any short term disadvantages for developing countries.

- *Imposition of customs duties on electronic transmissions:* It was noted that a deeper examination of the long-term impact of the moratorium was called for. One delegation mentioned that the cost of collecting tariffs on electronic transmissions could be prohibitively high. Some delegations also mentioned that the term "electronic transmissions" used in the Declaration on Global Electronic Commerce (20 May 1998) should be clarified.

4. Competition

- No discussion took place under this heading.

5. Jurisdiction and applicable law/ other legal issues

- One delegation referred to the fact that as a general rule, existing WTO rules should apply to e-commerce, and that any gap should be considered on a case-by-case basis.
- Another delegation expressed the view that this subject exceeded the scope of the WTO work and was already being considered in other fora.
- It was also noted that not enough information was available on this subject (as well as on competition) and that there was a lack of understanding on the various aspects involved.

ATTACHMENT

Electronic Commerce: Cross-Cutting Issues Identified by Delegations

The list below containing cross-cutting issues relevant to electronic commerce has been prepared on the basis of the discussions at the General Council meeting on 8 May 2001 and at an informal consultation held on 6 June 2001.

This list is not exhaustive and is intended to serve as a basis for further discussion. It includes issues which were raised by numerous delegations, and should not be interpreted as indicating a consensus amongst Members on them.

1. Classification of the content of certain electronic transmissions

Including:

- definition of "e-commerce";
- concept of technological neutrality;
- issue of "likeness".

2. Development-related issues

Including:

- participation of developing countries in e-commerce;
- access to infrastructure and technology;
- transfer of technology;
- capacity-building;
- technical assistance;
- access to developed and developing countries' markets for developing countries' producers and suppliers;
- promoting the use of information technology;
- how to ensure that e-commerce benefits developed and developing countries;
- movement of natural persons.

3. Fiscal implications of e-commerce

4. Relationship (and possible substitution effects) between e-commerce and traditional forms of commerce

5. Imposition of custom duties on electronic transmissions

6. Competition

Including:

- constraints on development of e-commerce due to the concentration of market power;
- competition and domestic regulations;
- competition and intellectual property rights.

7. Jurisdiction and applicable law/ other legal issues
