

Council for Trade in Goods

WORK PROGRAMME ON ELECTRONIC COMMERCE

**ACTIVITIES OF INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE
WORK OF THE COUNCIL FOR TRADE IN GOODS**

Background Note by the Secretariat

Addendum

I. INTRODUCTION

At the informal meeting of the Council for Trade in Goods on Electronic Commerce of 4 October 2000, the Secretariat was requested to provide, in time for consideration at the next informal meeting, an overview of work of other intergovernmental organizations in areas that relate to e-commerce issues under discussion in the CTG¹. An initial overview of the activities of intergovernmental organizations in the area of electronic commerce was provided in document G/C/W/128. The present document updates the information given.

It appears that none of the intergovernmental organizations approached carries out regulatory work directly related to the subjects under examination in the Council for Trade in Goods. However, some of the research undertaken by these organizations provides insights that may be relevant for the work in the WTO. The note gives a broad overview of the activities of the relevant organizations.

In November 1998, the WTO Secretariat had distributed documents prepared by the OECD and UNCTAD which address the work undertaken by international organizations in the area of electronic commerce. These documents have been updated in 1999, as "Revised Report on International and Regional Bodies: Activities and Initiatives in Electronic Commerce" (SG/EC(99)5)² and "Legal Dimensions of Electronic Commerce," respectively.³

¹ The issues set out in paragraph 3.1 of the Work Programme on Electronic Commerce (WT/L/274) are: (i) market access for and access to products related to electronic commerce; (ii) valuation issues arising from the application of the Agreement on Implementation of Article VII of the GATT 1994; (iii) issues arising from the application of the Agreement on Import Licensing Procedures; (iv) customs duties and other duties and charges as defined under Article II of GATT 1994; (v) standards in relation to electronic commerce; (vi) rules of origin issues; (vii) classification issues.

² Copies are available in the Market Access Division of the WTO Secretariat.

³ The UNCTAD report is available on the internet at <http://www.unctad.org/en/docs/c3em8d2.pdf>.

II. ORGANIZATIONS COVERED BY THIS NOTE

1. OECD

The OECD has carried out research in various areas relating to electronic commerce.

Work in the Trade Directorate has tended to focus on services issues, with papers in preparation on: "Electronic Commerce: Existing GATS commitments for Online Supply of Services" (TD/TC/WP(99)/37/REV2 - currently before members for approval), and on the possibility of taking a "cluster" approach to input services for e-commerce.

However, work has also considered the supply of "products" on line, without prejudice to the issue of whether these "products" are considered to be goods, services, or something else. "Trade Policy Aspects of Electronic Commerce: Online Product Customisation" (TD/TC/WP(98)65/FINAL) provides an overview of the role played by customisation in various e-commerce activities, together with a set of case studies of products that are customised and delivered online⁴. Following from this, a paper on "Electronic Commerce: Case Studies on the "Downloadable" Digital Products" (TD/TC/WP(99)60, currently being revised) provides a set of case studies of the online delivery processes for that group of digital information "products" that can be delivered in both "packaged" form (attached to physical carrier media) and over electronic networks. The aim of the paper is to provide an empirical basis for assessment of the main characteristics of online delivery compared to "packaged" delivery of digital information.

Additionally, work has explored unilateral liberalisation and facilitation measures undertaken by governments to promote e-commerce - see "Electronic Commerce: Initial Survey of Unilateral Liberalisation and Facilitation Measures" (TD/TC/WP(99)38/FINAL).⁵ Initial work has also been undertaken on existing legal approaches to jurisdictional issues for the international sale of goods and services - see "Jurisdictional Issues in International Commercial Transactions and Approaches to Regulatory Jurisdiction"(TD/TC/WP(98)55).

The OECD Directorate for Science, Technology and Industry (DSTI) has prepared several studies over the last two years.

A study on "Trade in Software" attempts to measure the extent to which international transactions are, or could become, "digital" and raises policy issues related to international trade in electronic markets.⁶ The paper argues that across-the-border electronic commerce involving goods will continue to face custom duties and value added tax. The main challenge to fiscal and custom authorities will come from supplies of on-line activities. Tariffs on computer software do not seem to constitute a significant trade barrier. The crucial issue for international trade in on-line activities is the elimination of international differences in regulatory barriers affecting access to electronic markets. The paper further states that the implications of electronic commerce for collecting conventional income and sales taxes are also significant, but the possibility of raising substantial revenues by taxing international internet transactions is very low owing to the geographical mobility of the potential "Internet tax payer". Moreover, electronic transactions are difficult to monitor, and international electronic transactions might be technically impossible to trace, although it may be possible to develop technology for auditing international transactions of some digital products.

⁴ The document is available at [http://appli1.oecd.org/olis/1999doc.nsf/LinkTo/td-tc-wp\(99\)38-final](http://appli1.oecd.org/olis/1999doc.nsf/LinkTo/td-tc-wp(99)38-final)

⁵ The document is available at [http://appli1.oecd.org/olis/1998doc.nsf/LinkTo/td-tc-wp\(98\)65-final](http://appli1.oecd.org/olis/1998doc.nsf/LinkTo/td-tc-wp(98)65-final)

⁶ The document is available at <http://www.oecd.org/dsti/sti/it/ec/prod/sw-trade.htm>

A study on “Local Access Pricing and E-Commerce” examines the performance of different OECD countries, in the development and usage of the Internet, in relation to the pricing of access.⁷ The price of access to the Internet, and the structure of this pricing, is one of the key factors in explaining the relative development of electronic commerce across the OECD area. The available evidence suggests that there is a growing ‘international digital divide’ emerging between OECD countries. This conclusion is contrary to a widespread view that the gaps between countries in the development of electronic commerce are narrowing.

The OECD has also prepared a review on market openness and trade in telecommunications.⁸ The review evaluates developments in telecommunication market openness following the liberalisation in 1998 in the context of the WTO agreement and the liberalisation in the European Union. Second, it is aimed at stimulating reflection on the issues that may need to be examined to enhance market liberalisation and market openness.

The publication “Measuring the ICT Sector” is a statistical publication covering, among other variables, trade in information and communication technology goods using official data.⁹

In addition, the “Science and Technology Outlook 2000” describes the rapid growth in the supply and demand for information technology goods and services and their role in the expanding Internet economy. The report also looks at emerging uses of information technology and reflects the spread and diversity of a technology that is underpinning economic and social transformation. *Inter alia*, it contains a section on trade in information and communication technology products.¹⁰

2. United Nations Commission on International Trade Law (UNCITRAL)

The UNCITRAL Working Group on Electronic Commerce developed a “Model Law on Electronic Commerce,” (1996) which aims at enhancing the role of paperless communication through provision of rules by which the legal value of electronic messages can be assessed, and legal obstacles to the communication of legally significant data can be removed. The Model Law addresses questions of requirements of data messages for contracts of terms such as “writing,” “signature,” or “original.” Copies of the Model Law on Electronic Commerce were made available to delegations through the WTO Secretariat in November 1998.¹¹ Presently, the Working Group on Electronic Commerce is preparing draft uniform rules on electronic signatures and a corresponding draft guide to enactment. Possible future work in the area of electronic commerce may include “electronic contracting,” “dispute settlement,” and “documents of title.”

3. UNCTAD

The UNCTAD Secretariat has prepared the following documents on Electronic Commerce:

- **BUILDING CONFIDENCE: ELECTRONIC COMMERCE AND DEVELOPMENT**, February 2000¹²

⁷ The document is available at <http://www.oecd.org/dsti/sti/it/cm/prod/localaccess.htm>

⁸ The document is available at <http://www.oecd.org/dsti/sti/it/cm/prod/tisp99-5e.htm>

⁹ The document is available at http://www.oecd.org/dsti/sti/it/prod/measuring_ict.htm

¹⁰ More information on this publication is available on the internet at <http://www.oecd.org/dsti/sti/it/prod/it-out2000-e.htm>

¹¹ The Model Law, including a 1998 amendment on “incorporation by reference” (Article 5 *bis*) is available at <http://www.uncitral.org/english/texts/electcom/ml-ec.htm>.

¹² The document is available at <http://www.unctad.org/ecommerce/building.pdf>

- ELECTRONIC COMMERCE AND TOURISM. NEW PERSPECTIVES AND CHALLENGES FOR DEVELOPING COUNTRIES, July 2000 (TD/B/COM.3/EM.9/2)¹³
- REPORT OF THE EXPERT MEETING ON CAPACITY-BUILDING IN THE AREA OF ELECTRONIC COMMERCE: LEGAL AND REGULATORY DIMENSIONS, August 1999 (TD/B/COM.3/28 and TD/B/COM.3/EM.8/3)¹⁴
- LEGAL DIMENSIONS OF ELECTRONIC COMMERCE, May 1999, (TD/B/COM.3/EM.8/2)¹⁵
- ELECTRONIC COMMERCE: LEGAL CONSIDERATIONS, May 1998 (UNCTAD/SDTE/BFB/1)¹⁶
- POLICY ISSUES RELATING TO ACCESS TO PARTICIPATION IN ELECTRONIC COMMERCE, (TD/B/COM.3/16)¹⁷
- IMPLICATIONS FOR TRADE AND DEVELOPMENT OF RECENT PROPOSALS TO SET UP A GLOBAL FRAMEWORK FOR ELECTRONIC COMMERCE (TD/B/COM.3/17)¹⁸
- TRAINING IN THE AREA OF ELECTRONIC COMMERCE: NEEDS AND POSSIBILITIES, (TD/B/COM.3/EM.6/2)¹⁹
- CAN ELECTRONIC COMMERCE BE AN ENGINE FOR GLOBAL GROWTH? ELECTRONIC COMMERCE AND THE INTEGRATION OF DEVELOPING COUNTRIES AND COUNTRIES WITH ECONOMIES IN TRANSITION IN INTERNATIONAL TRADE, (TD/B/COM.3/23)²⁰
- E-COMMERCE IN AFRICA. AN ASSESSMENT OF STATUS AND STRATEGIES, October 1999²¹

4. World Bank

In the World Bank, work related to or influenced by electronic commerce is carried out in various departments. One research paper which addresses issues of the WTO work programme was published as Policy Research Working Paper No. 2380 (June 2000): "Trade Policies for Electronic Commerce" (Mattoo and Schuknecht).²² The paper argues that even if all delivery of digitizable media products moved online, the revenue loss for most countries would be small. The paper points

¹³ The document is available at <http://www.unctad.org/ecommerce/conferences/expert/index.htm>

¹⁴ The document is available at <http://www.unctad.org/en/special/c3em8do.htm>

¹⁵ The document is available at <http://www.unctad.org/en/special/c3em8do.htm>

¹⁶ The document is available at <http://www.unctad.org/en/special/c3em8do.htm>

¹⁷ The document is available at <http://www.unctad.org/en/special/c3d16.htm>

¹⁸ The document is available at <http://www.unctad.org/en/special/c3d17.htm>

¹⁹ The document is available at <http://www.unctad.org/en/special/c3em6d2.htm>

²⁰ The document is available at <http://www.unctad.org/en/special/c3dos4.htm>

²¹ The document is available at <http://www.unctad.org/ecommerce/nairobi/index-eng.htm>

²² The document is available at:

[http://wbln0018.worldbank.org/research/workpapers.nsf/0/7ba84d39a5a5bddb8525690b0057c1d0/\\$FILE/wps2380.pdf](http://wbln0018.worldbank.org/research/workpapers.nsf/0/7ba84d39a5a5bddb8525690b0057c1d0/$FILE/wps2380.pdf)

out that a moratorium on customs duties in the WTO does by itself not ensure continued open access for electronically delivered products and may even prompt recourse to other instruments of protection. Barrier-free electronic commerce would be more effectively secured by deepening and widening the limited cross-border trade commitments under the General Agreement on Trade in Services (GATS) and by clarifying and strengthening certain GATS disciplines.

5. World Customs Organization (WCO)

There have been no further discussions concerning questions relating to electronic commerce either in the HS Committee or in the Technical Committee on Customs Valuation. According to the WCO Secretariat, WCO members preferred to leave relevant electronic commerce related issues to the WTO. Already in 1996, the WCO Secretariat prepared a note on “Electronic Commerce for Customs,” which discusses technology-related challenges for customs administrations.²³

²³ The document is available at <http://www.wcoomd.org/procedures/TC39686E.pdf>