



WORK PROGRAMME ON ELECTRONIC COMMERCE

NON-PAPER FROM BRAZIL

The following non-paper, dated 20 July 2016, is being circulated at the request of the delegation of Brazil.

1 INTRODUCTION

1.1. In the last few years, the digital economy, and e-commerce in particular, evolved dramatically, posing challenges both to international and domestic trade rules. It is timely and appropriate that the WTO engage in a structured exchange of views on the trade-related aspects of the issue.

2 ORGANIZATIONAL ISSUES

2.1. In order to facilitate the exchange of views and assess interests and concerns of the Membership, an integrated approach seems to be the most conducive to a thorough and yet nimble review of those aspects. Given the cross-cutting nature of the subject, the General Council seems well placed to host the discussions.

2.2. To avoid protracted and potentially unproductive discussions on procedural matters, a good and simple option could be to hold joint sessions of the four Councils (CTS, CTG, Council for TRIPS and CTD) under the General Council's Dedicated Discussion on e-commerce.

2.3. Timewise, two or three meetings could be conveyed in the second half of the year. As part of those meetings (or back-to-back to the meetings), workshops could be held to address specific technical issues.

3 SCOPING AND METHODOLOGY

3.1. The key task ahead of us is a scoping exercise able to identify the elements Members believe must be part of our exchange of views and possible future WTO disciplines on e-commerce.

3.2. Brazil believes that the "mapping" of elements contained in document JOB/GC/97 could be taken as the basis for further work, with possible adjustments by Members to contemplate all elements of their interest. Like the co-sponsors of JOB/GC/97, Brazil also believes Members should use the definition of e-commerce as found in the 1998 Work Programme. Brazil understands that discussions would not cover disciplines on goods, although it would cover the commercialization of goods by electronic means. It would not cover, for instance, the Information Technology Agreement.

3.3. As Members examine each element mapped out, they should: (a) seek to identify the key needs, interests and concerns that would have to be addressed; and (b) the extent to which they are addressed within the existing WTO framework. This simple but effective methodology is essential for a clear and precise understanding of whether new rules should be adopted. As part of this methodology, Members could be guided by the following questions:

- What are the key needs, interests and concerns that would have to be addressed in each element?
- Does the existing WTO framework address such needs, interest and concerns? To what degree?
- If the WTO framework does not properly address such needs, interests and concerns, do Members favour their treatment in the WTO? In which way?

4 TOPIC CONTRIBUTIONS

4.1. As an initial substantive contribution to the exchange of views, Brazil stresses the importance of key concepts/policy choices related to e-commerce. Internet should remain free and open for all legitimate commercial and development purposes, including by allowing increased access to information, knowledge and new technologies. As a general rule, rights and obligations should be the same and apply equally offline and online. At the same time, it would also be necessary to discuss guarantees to the right of governments to adopt public policies with legitimate objectives, if necessary through exceptions to eventual new rules.

4.2. In addition, Brazil presents the following considerations on some of the elements mapped out in document JOB/GC/97, without prejudice to its final position on these or any other elements.

A. REGULATORY FRAMEWORKS

Consumer confidence enhancing measures

4.3. Regulatory framework for consumer protection: International rules on consumer protection must go beyond best efforts and ensure cooperation commitments and the enforcement of an adequate level of protection for users of cross-border e-commerce, including by means of mechanisms for the treatment of complaints and dispute resolution. A robust consumer protection framework ensures that customers will feel safe to shop online, being therefore essential for the development of e-commerce.

4.4. Regulatory framework for protection of privacy / personal data: International disciplines and cooperation on protection of privacy, and more specifically on protection of personal data, shall pursue robust cooperation commitments that ensure enforceable protections for users of cross-border e-commerce, including by means of mechanisms for the treatment of complaints and dispute resolution.

Trade facilitating measures

4.5. Network neutrality: In order to ensure an open and free environment for the development of e-commerce, telecom operators should not be allowed to discriminate data packages by its content, origin and destination, service, terminal or application, through public networks, except for emergency communications and for technical requirements indispensable to the adequate provision of services and applications.

4.6. Trade-related aspects of Intellectual Property Rights: The protection of copyright and authors' rights, in conformity with the Berne Convention for the Protection of Literary and Artistic Works and the TRIPS Agreement, must be addressed in light of new technologies provided by the digital environment such as streaming and cloud uploading.

B. OPEN MARKETS

Liberalization commitments

4.7. Services: Liberalization of services that may be delivered online should be made within the existing GATS framework. Members should consider the convenience of adopting the general understanding that e-commerce issues will be covered exclusively by Mode 1.

4.8. Technology transfer: An inclusive and truly global e-commerce market requires unimpeded access to digital technology, for which a serious discussion is needed on preventing unwarranted limitations to the transfer of such technologies.

Measures ensuring openness

4.9. Measures ensuring cross-border data flows: Since GATS commitments on mode 1 already entail data flows, any new rule on data flows would only be necessary if the issue cannot be addressed within the existing framework.
