



## WORK PROGRAMME ON ELECTRONIC COMMERCE

### TRADE POLICY, THE WTO, AND THE DIGITAL ECONOMY

*Communication from Canada, Chile, Colombia, Côte d'Ivoire, the European Union, the Republic of Korea, Mexico, Paraguay and Singapore*

*Revision<sup>1</sup>*

The following communication, dated 13 July 2016, is being circulated at the request of the delegations of Canada, Chile, Colombia, Côte d'Ivoire, the European Union, the Republic of Korea, Mexico, Paraguay and Singapore.

#### 1 DIGITAL ECONOMY

1.1. Digital technology is transforming the global economy. This transformation presents new opportunities to promote inclusive economic growth, including by connecting rural to urban economies; opening new channels of trade for landlocked countries; facilitating the participation of women and micro enterprises in the formal economy; providing micro, small and medium-sized enterprises (MSMEs) access to a global consumer base; and facilitating cross-border trade in services previously considered not technically feasible.

1.2. However, a number of challenges are impeding the full realization of the full benefits of the digital economy. These obstacles include the increasing prevalence of restrictive measures in the digital space; inadequate infrastructure and connectivity; and insufficient access to technology. This paper aims to inform Members' efforts to address these challenges under the Work Programme on Electronic Commerce.

#### 2 ROLE OF THE WTO

2.1. The digital transformation of the economy has impacted all spheres of public policy. Consequentially, virtually every international organization has been prompted to consider the interface between their work and the digital economy. Each has a role to play to help leverage the digital economy for inclusive economic growth. For example, the International Telecommunications Union (ITU) plays a key role, including in standardisation and allocation of radio spectrum and satellite orbits; the World Intellectual Property Organization (WIPO) addresses intellectual property rights; the World Bank provides financial and technical assistance; and UNCTAD and other organisations provide policy analysis, research and a forum for discussions on trade and development as it pertains to e-commerce related issues.

2.2. The WTO can contribute to these broader efforts within its core functions, particularly transparency and sharing national policy experiences to inform and enrich Members' policy development; trade liberalization, greater market access and the establishment of trade disciplines; and the delivery of technical assistance and capacity building.

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<sup>1</sup> This revision is to add Paraguay as a co-sponsor and the bullet point "Technical Standards" in the first box on page 3.

### 3 TERMINOLOGY

3.1. As their understanding of trade in the digital economy has evolved, policy advocates have used various terms to define aspects of this trade – e-trade, e-commerce, digital trade etc. The General Council decision establishing the Work Programme on Electronic Commerce (WT/L/274) defined the term "electronic commerce" broadly enough to cover all of these concepts – "the production, distribution, marketing, sale or delivery of goods and services by electronic means". For the remainder of this paper, we will use the term e-commerce as so defined. The original decision also mandated the work programme to consider "issues related to the development of the infrastructure for electronic commerce". The breadth of this mandate convinced Members that the General Council should oversee the work programme, and that four WTO Committees would contribute to the programme – the Council for Trade in Services, the TRIPS Council, the Council for Trade in Goods and the Committee on Trade and Development.

### 4 MAPPING

4.1. Eighteen years later, the original work programme remains relevant. The tenth WTO Ministerial Conference (MC10) Ministerial Decision of 19 December 2015 committed to continuing the Work Programme "based on the existing mandate and guidelines and on the basis of proposals submitted by Members in the relevant WTO bodies" (WT/MIN(15)/42). It is worth considering the elements of trade policy that relate to e-commerce, taking into account policy developments over the past two decades. Against this backdrop, the present paper offers to Members a starting point for discussion in the form of a tentative list of all trade-related elements that are relevant for e-commerce (Figure 1 proposes an overview of all elements discussed in this communication). This list is not a proposal for negotiations, and is presented without prejudice to which elements the co-sponsors would seek to pursue.

4.2. Elements have been grouped around clusters pertaining to: (a) regulatory frameworks; (b) open markets; (c) initiatives facilitating the development of e-commerce; and (d) transparency of the multilateral trading system.

## MAPPING OUT E-COMMERCE ISSUES AT THE WTO

### Regulatory Frameworks

- **Enhanced transparency**
- **Consumer confidence enhancing measures**
  - Regulatory framework for consumer protection
  - Regulatory framework for privacy protection
  - Regulatory framework for cyber security
  - Regulation of unsolicited communications
- **Trade facilitating measures**
  - Open networks / access to and use of the internet
  - Addressing licensing and authorisation procedures
  - Addressing electronic payments
  - Access to and use of communications networks
  - WTO Telecommunication Reference Paper
  - Trade aspects of intellectual property rights
  - Recognition of e-signatures / authentication
  - Addressing e-procurement/ e-auctions
  - Technical standards

### Open Markets

- **Liberalisation commitments**
  - Services
    - Commitments in e-commerce-relevant sectors  
e.g. (Telecom; computer; Mode 1 delivery; business services; professional services, etc.)
    - Classification, e.g. adhering to the Understanding on Computer and Related Services
  - Goods
    - Tariff elimination, e.g. ITA
  - Prohibition against custom duties on electronic transmissions
- **Measures ensuring openness**
  - Disciplines ensuring cross-border data flows
  - Disciplines with respect to localisation (local presence – including of computer servers, local content)
  - Addressing the transfer of and/or access to source code

### Initiatives facilitating the development of e-commerce

- Trade Facilitation Agreement / further custom facilitations measures / paperless trading
- Aid for Trade / Technical assistance
- Regulatory cooperation among Members and their regulatory authorities

### Enhanced transparency of the multilateral trading system

- Greater focus on e-commerce at the occasion of Trade Policy Reviews
- DG Monitoring Report on protectionism could include a digital focus
- Exchange of information through e-commerce agenda items of the regular WTO Committees

The elements included in the figure above and described below fall within the WTO's competence, and could be addressed under the work programme, should Members wish to pursue them.

## **A. REGULATORY FRAMEWORKS**

Sound regulatory frameworks for e-commerce are transparent and include measures to enhance consumer confidence and to enhance trade. While consumer confidence is not a primary trade policy concern, broad commitments at the multilateral level to have such regulatory frameworks in place can contribute to an environment that is conducive to the development of e-commerce.

### 1. Enhanced transparency

Publication of measures and of draft measures relating to e-commerce; opportunity to comment on those measures.

### **Consumer confidence enhancing measures**

### 2. Regulatory framework for consumer protection

Measures protecting consumers from fraudulent and deceptive commercial practices when they engage in e-commerce; international cooperation between consumer protection agencies.

### 3. Regulatory framework for privacy

Measures protecting the personal information of the users of e-commerce.

### 4. Regulatory framework for cyber security

Measures taken against cyber crime, including criminal prohibitions and sanctions.

### 5. Regulation of unsolicited communications

Rules such as those requiring suppliers to facilitate the ability of recipients to prevent ongoing reception of unsolicited communications, or requiring the consent of the recipients.

### **Trade facilitating measures**

### 6. Open networks / access to and use of the internet

Rules ensuring the ability of consumers and operators to access and use services and applications of their choice on the Internet; and to connect their choice of end user devices to the Internet.

### 7. Addressing licensing and authorisation procedures

A broad range of related issues, including disciplines on licensing requirements and procedures; the absence of specific prior authorisation for supplying services on-line; and making licensing valid at the same time for off-line and on-line activities.

### 8. Addressing electronic payments

Electronic payments, covering payments made via the Internet as well as mobile banking, can be addressed through both regulatory measures (i.e. setting out the necessary regulatory framework supporting payments operations) and through liberalisation measures (i.e. ensuring a competitive market for payments services).

### 9. Access to and use of communications networks

The GATS Annex on telecommunication services provides for essential provisions on access to and use of telecommunication services and networks, and therefore comprises a cornerstone of Members' regulatory framework for e-commerce.

#### 10. WTO Telecommunication Reference Paper

The Telecommunication reference paper contains disciplines that address essential aspects of the regulation of the telecommunications market, such as the independence of the regulator, interconnection and anticompetitive practices.

#### 11. Trade-related aspects of intellectual property rights

Intellectual property rights protection and enforcement issues are an important component of e-commerce and digital economy discussions, and are addressed in a number of international fora, including the World Intellectual Property Organization (WIPO) and at the WTO TRIPS Council.

#### 12. Recognition of e-signatures / authentication

Measures ensuring that the legal validity of a signature is not denied on the sole basis that the signature is in electronic form; and that it is not prohibited for parties to an electronic transaction to mutually determine the appropriate authentication methods for that transaction subject to possible performance standards or accreditation requirements.

#### 13. Addressing e-procurement/ e-auctions

Measures organizing the participation in government procurement procedures through the Internet, allowing notably for non-established companies to participate in such procedures.

#### 14. Technical standards

Measures addressing digital standards for both goods and services, including issues such as interoperability and recognition.

### **B. OPEN MARKETS**

Open markets for e-commerce can be supported by multilateral commitments for liberalisation, in both goods and services, as well as by a series of measures that ensure a given level of openness.

#### **Liberalisation commitments**

##### 15. Commitments on services

Commitments on services trade, particularly in cross-border trade in services (Mode 1) and in e-commerce-relevant sectors, such as telecommunication services, computer services, and delivery services.

##### 16. Services classification issues

Endorsement of classification tools, such as the Understanding on Computer and Related Services (S/CSC/W/51), which clarify sectoral coverage of services commitments.

##### 17. Tariffs elimination for goods

Tariff elimination, such as through the Information Technology Agreement (ITA).

##### 18. Prohibition against custom duties on electronic transmissions

Legally binding prohibition against imposing custom duties on electronic transmissions.

#### **Measures ensuring openness**

##### 19. Disciplines ensuring cross-border data flows

Building on existing WTO obligations, commitment to ensure that cross-border data flows is permitted, subject to appropriate public policy exceptions.

#### 20. Disciplines with respect to localisation

Building on existing WTO obligations, disciplines addressing all forms of localisation, including local presence; localisation of computer servers; and local content requirements, subject to appropriate public policy exceptions.

#### 21. Addressing the transfer and/or access to source code

Measures to refrain from requirements on the transfer of or access to, source code of software, as a condition of market access.

### **C. INITIATIVES FACILITATING THE DEVELOPMENT OF E-COMMERCE**

Further to regulatory disciplines and liberalisation measures and commitments, a series of initiatives have contributed and will continue to contribute to the development of e-commerce across the WTO membership.

#### 22. Trade Facilitation Agreement / further custom facilitations measures / paperless trading

Implementation of the Trade Facilitation Agreement will contribute to enhancing trade in goods, including that generated by e-commerce. Additional initiatives could include establishing regulatory frameworks to mandate advanced electronic data to enable facilitation measures and paperless trading.

#### 23. Aid for Trade / technical assistance

With a focus on connectivity in the 2016-17 work programme, Aid for Trade can play a critical role in the development of e-commerce. Technical assistance projects by Members and international organizations can also increase capacity in this area.

#### 24. Regulatory cooperation among Members and/or regulatory authorities

Regulatory cooperation, whether in the form of structured dialogue or *ad hoc* conversations, can allow Members to address the cross-border nature of e-commerce and can contribute to the exchange of good practices.

### **D. ENHANCED TRANSPARENCY OF THE MULTILATERAL TRADING SYSTEM**

The WTO can continue to play an important role in contributing to enhanced transparency of all Members policies that relate to e-commerce.

#### 25. Greater focus on e-commerce at the occasion of Trade Policy Reviews

Trade Policy Reviews could address e-commerce-related policies in a systematic manner, for example through a dedicated section on e-commerce in each Secretariat report.

#### 26. DG Monitoring Report on protectionism could include a digital focus

Reports on protectionism could include a focus on e-commerce-related policies.

#### 27. Exchange of information through e-commerce agenda items of the regular WTO Committees

Members continue and possibly intensify the exchange of information under the e-commerce agenda items of the WTO regular bodies, and explore cross-cutting issues in dedicated sessions under the horizontal work programme.

## **5 NEXT STEPS**

5.1. Members should make more effective use of the e-commerce work programme in order to demonstrate the continued relevance of the WTO in the modern economy.

5.2. Are there additional e-commerce-related elements of trade-policy, which should be included in the above mapping?

5.3. On what elements would Members wish to have focused technical discussions?

5.4. Are there elements that could be pursued as outcomes for the 11<sup>th</sup> Ministerial Conference (MC11)?

5.5. How and where should Members discuss these elements?

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