

General Council
1-2 December 2005

WORK PROGRAMME ON ELECTRONIC COMMERCE

Dedicated Discussions under the auspices of the General Council
on Cross-Cutting Issues related to Electronic Commerce

Report to the 1-2 December 2005 meeting of the General Council

1. At the Fourth Session of the Ministerial Conference in Doha, Ministers agreed to continue the Work Programme on Electronic Commerce, and instructed the General Council to consider the most appropriate institutional arrangements for handling the Work Programme and to report on further progress to the Fifth Session of the Ministerial Conference.
2. At its meeting on 15 October 2002 the General Council agreed to maintain, for the duration of the work until the Fifth Ministerial Conference, the institutional arrangements then in place for handling the Work Programme, i.e. that the Councils for Trade in Services, Trade in Goods and TRIPS, and the Committee on Trade and Development would examine and report on aspects of electronic commerce relevant to their respective areas of competence, and the General Council would play a central role in the entire process, would keep the Work Programme under continuous review and would consider any trade-related issue of a cross-cutting nature. Subsequently, in its Decision of 1 August 2004 the General Council agreed that it and other relevant bodies shall report in line with their Doha mandates to the Sixth Session of the Ministerial Conference.
3. The present report covers the examination of cross-cutting issues related to electronic commerce that has been carried out since the Cancún Ministerial Conference in dedicated discussions under the auspices of the General Council. There has been one such meeting, on 7 and 21 November 2005, as well as informal consultations on 9 and 14 November.
4. The summary prepared by the Secretariat of the issues raised at this dedicated discussion is contained in document WT/GC/W/556.
5. The United States made a submission entitled "Preparations for the 2005 Ministerial Conference – Work Programme on Electronic Commerce" (WT/GC/W/551) for discussion at this dedicated discussion, and also circulated informally a communication on "Ensuring Liberalized Trade Treatment of Software in the WTO" and one on "Fostering Greater Certainty Regarding Customs Duties in the Electronic Environment".
6. The discussion focused mainly on two issues, both in terms of the various considerations arising with respect to these issues, as well as on the possible inputs to the draft text for the Ministerial Conference at Hong Kong, China: (i) extension of the moratorium on the imposition of customs duties on electronic transmissions and (ii) the trade treatment of software.
7. While the discussion focused mainly on these two issues, it was also noted that discussions on E-Commerce should take place on all the components of the Work Programme, with particular emphasis on the development aspects. It was also noted that the topic was being addressed after a long gap and that serious work on the various parts of the Work Programme was required during the next year.

8. Regarding the moratorium on the imposition of customs duties on electronic transmissions, the United States' submission suggested that it be extended, that Members consider the possibility of making it permanent and binding during the Doha Development Agenda, and that Ministers could endorse that goal as early as Hong Kong.

9. There was agreement in general on the moratorium being extended until the Session of the Ministerial Conference following the one in Hong Kong, China. One delegation was not in favour of this extension, and another was not in a position at the present time to provide a view on the matter.

10. On making the moratorium permanent and binding, it was considered that at present the time was too short to adequately examine this matter and thus any decision on this would be difficult by the time of the Hong Kong Ministerial Conference. However, there was in general a willingness to further discuss this issue under the Work Programme in 2006.

11. The United States also suggested that in order to clarify the scope of the current practice under the moratorium, the term "electronic transmissions" might be replaced with the term "products that are transmitted electronically". Delegations felt there was a need to further examine this suggestion, and this issue would also be part of the discussions under the Work Programme in 2006.

12. On software, the United States' proposal sought Ministers' recognition of the special growth, development and productivity benefits afforded by trade in software products, and also guidance from Ministers in Hong Kong for working towards achieving liberalized trade treatment of electronically delivered software.

13. Participants recognized the importance of software trade for development and economic performance. While some delegations agreed that Ministers in Hong Kong should provide guidance on the trade treatment of software, some others sought further clarity on the proposal and felt that it was too early to have Ministers provide any guidance on specific trade treatment for software. Nonetheless, the positive impact of liberalized trade in software was recognized, and there was support for initial discussions, under the Work Programme in 2006, on the issue raised by the United States, without linkage to negotiating areas and without prejudice to Members' positions. It was also stated that any approach to the liberalization of the treatment of software had to incorporate the development dimension, fully respect non-discrimination, and that any consideration of software should not prejudice any Member's position on whether electronic deliverables were a good or a service. Further, some Members stated that the discussion should cover not only software, but all IT goods and services facilitating e-commerce.

14. On the issue of recommendations for consideration by the General Council, delegations discussed the matter, but there was no consensus on the following paragraph. [Participants in the dedicated discussions are of the view that the examination of cross-cutting issues related to electronic commerce is not yet complete, that further work to clarify these issues is needed, and that discussion of such issues, including those raised at the present dedicated discussion, should be pursued under the Work Programme in 2006. Accordingly, and having regard to paragraph 34 of the Doha Ministerial Declaration and paragraph 1(h) of the General Council's July 2004 Decision on the Doha Work Programme, the General Council may wish to consider recommending reinvigorating work under the Work Programme on Electronic Commerce, including the development-related issues under the Work Programme, and discussions on the trade treatment, *inter alia*, of electronically delivered software. The General Council may also consider recommending that Members maintain their current practice of not imposing customs duties on electronic transmissions until the next Ministerial Session. The current institutional arrangements for the Work Programme remain satisfactory.]
