



Note

The WTO Work Programme on Electronic Commerce: 1998-2017

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Summary

This Note provides a summary of issues discussed in the WTO work programme on E-Commerce over two periods. First is the period from 1998 till about 2015. After the initial flurry of proposals and discussions, there was a long period of relative quiet. This changed in the second period, i.e. around the time of the 10th WTO Ministerial Conference in Nairobi in 2015. Hence, the discussion was revived and expanded in this period of 2015-2017.

Background

The Work Programme on Electronic Commerce was created in September 1998, following the Declaration on Global Electronic Commerce made in May of the same year at the second WTO Ministerial Conference. Four WTO bodies were given the task of reviewing electronic commerce's role in their respective fields of study: The Council for Trade in Services, Council for Trade in Goods, the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPs), and the Committee on Trade and Development.

In the context of the work programme, the chosen definition of electronic commerce was as follows: "the production, distribution, marketing, sale or delivery of goods and services by electronic means".¹ The moratorium on customs duties for electronic transmissions was also a part of the Declaration on Global Electronic Commerce.²

This Note provides a summary of issues discussed in the work programme in two periods. First is the period from 1998 till about 2015. After the initial flurry of proposals and discussions, there was a long period of relative quiet. This changed in the second period, i.e. around the time of the 10th WTO Ministerial Conference in Nairobi in 2015. Hence, the discussion was revived and expanded in this period of 2015-2017.³

¹ https://www.wto.org/english/tratop_e/ecom_e/ecom_e.htm

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https://www.wto.org/english/tratop_e/ecom_e/ecom_e.htm

³ It should be noted that the 11th WTO Ministerial Conference held in Buenos Aires, Argentine in December

Issues discussed in the period 1998-2015

There are reports available from the four bodies in the years 1999, 2000, 2003, and 2011-2017. During the time from 2005-2009 there are no documents available from any of the four bodies regarding their e-commerce work.

The Council for Trade in Services initially investigated issues of classification, scope, modes of supply, MFN, transparency, participation of developing countries, infrastructure for e-commerce, domestic regulations, competition, privacy protection, public moral, and fraud issues, market-access, national treatment, telecommunications access, and customs duties.⁴ As the discussions regarding the Work Programme only arose upon a Member's request, the CTS did not discuss it from 2002 to 2010, and the focus was on General Council cross-cutting issues.⁵

The Council for Trade in Goods focused their efforts on conditions of market access, customs valuation and duties, import licensing, rules of origin, standards, and classification of tariffs.⁶ After June 2003, it was decided that the technical goods discussions had progressed as far as possible and no further work could be done until the General Council clarified the issues of classification. The next discussions on the Work Programme started up again in 2011, and included issues of development, poverty reduction, and the permanence of the

2017, adopted a Joint Statement by 71 Members on e-commerce. Most of the action on e-commerce post-2017 has been in the context of this Joint Statement.

⁴ JOB/GC/73

⁵ JOB/GC/73

⁶ JOB/GC/73

moratorium on customs duties.⁷

The Council for Trade Related Aspects of Intellectual Property Rights discussed issues connected to copyright, trademarks, and “new technologies and access to technologies”.⁸ These were the main issues up until 2003, which was the last year they were brought for discussion by a Member.

The Committee on Trade and Development (CTD) actively pursued e-commerce research from 1998 to 2005, and then again after 2011. Members initially called for the examination of such issues as investment, standards, infrastructure, and S&D granting.⁹ After the 2011 Ministerial Decision on Electronic Commerce, the CTD focused on “technical assistance, capacity building, and the facilitation of access to electronic commerce by micro, small and medium-sized enterprises.”¹⁰

Cross-cutting issues were also identified in 2001 by the secretariat for discussion amongst all the bodies: classification, development issues, fiscal implications of e-commerce, “relationship between e-commerce and traditional forms of commerce,” customs duties on electronic transmissions, competition, and jurisdiction issues.¹¹ These cross-cutting issues were not considered in the conversations in the Dedicated Discussions on e-commerce after 2009, as the focus shifted to preparing ministerial texts.¹²

Issues discussed in the period 2015-2017

In 2015, the Council for Trade in Services

discussed past e-commerce issues, but Members also brought forward for discussion points regarding “information flows, localization requirements, privacy protection and cloud computing” as well as personal information protection.¹³ National experiences regarding domestic legislation and opportunities for SMEs were also discussed.¹⁴ In the meetings held in 2016, Members called for the development dimension and sharing of experiences to be included on the agenda.¹⁵ Regarding issues of facilitating electronic commerce, Members brought forward points of increasing transparency of regulations, especially regarding electronic signatures and authentication, as well as making the customs duties moratorium on electronic transmissions permanent.¹⁶ In 2017, Members drew attention to topics such as electronic payments, signatures, authentication, transparency, the customs duties moratorium, and market access. Other delegations maintained that some of these issues, especially regarding market access, were not appropriate for discussion in the framework of the Work Programme and that the issues should focus more on the development dimension of electronic commerce. Delegations that brought forward these concerns wanted the Work Programme to focus on the issues faced by LDCs and developing countries, such as infrastructure and connectivity challenges, general e-commerce readiness, workforce skills, technology transfer, and the digital divide.¹⁷

The Council for Trade in Goods placed

⁷ JOB/GC/73

⁸ JOB/GC/73

⁹ JOB/GC/73

¹⁰ JOB/GC/73

¹¹ JOB/GC/73

¹² JOB/GC/73

¹³ S/C/47

¹⁴ JOB/GC/73/Add.1

¹⁵ S/C/51

¹⁶ S/C/51

¹⁷ S/C/52

electronic commerce on their agenda after the Ministerial Conference in Nairobi, and at the meetings held in 2016, issues mentioned in discussions included “reinforcing [internet] openness,” expanding technological access and allowing for “commerce in digital products, services, and physical goods.”¹⁸ Other points of discussion were inclusivity and addressing the digital divide.¹⁹

The TRIPS council restarted its examination of issues related to intellectual property and e-commerce, specifically “IP-protected goods” and “IP protection of technology that enables e-commerce” in 2016.²⁰ Points discussed in meetings included “fighting online sales of counterfeit products,”²¹ and sharing of national experiences in IP rights enforcement. In early 2017, agenda items included discussion of submissions related to copyright and electronic signatures. Electronic commerce as related to the potential of MSMEs was highlighted in a few meetings as well.²²

In their 2016 meetings, the Committee on Trade and Development focused on discussing the Aid for e-Trade initiative from UNCTAD, the impact for SMEs, and the necessity of improving e-commerce infrastructure and regulatory frameworks. Bridging the digital divide was also the subject of one of the informal sessions held in 2016.²³

In the Work Programme as a whole, during bilateral conversations with the designated Friend of the Chair on the Work Programme on Electronic Commerce, delegations brought forward the issues of data flows and server localisation, consumer protection, privacy, internet access, e-commerce and development, and e-commerce readiness.²⁴

The following table presents the issues discussed in the four different WTO bodies from 1998 to 2015.²⁵ An ‘X’ denotes that the issue was mentioned by the committee indicated, but the reports did not go into further detail than stating its presence on the agenda as part of discussions.

Table. 1: Electronic Commerce issues discussed from 1998-2015

	Committee on Services	Committee on Goods	Committee on Trade and Development	TRIPS council
Classification	1998: The need to distinguish between cross border supply and consumption abroad ²⁶	Classification of tariffs ²⁷ Classification of electronic transmissions ²⁸	X	
Transparency	X			
Domestic Regulation	X			
Competition	1998: see whether existing GATS competition			

¹⁸ JOB/GC/73/Add.1

¹⁹ G/C/58

²⁰ JOB/GC/73/Add.1

²¹ IP/C/77

²² IP/C/77

²³ JOB/GC/73/Add.1

²⁴ WT/GC/M/721

²⁵ Based on Reports to the General Council and background notes from the secretariat

²⁶ S/C/8

²⁷ JOB/GC/73

²⁸ Ibid

	Committee on Services	Committee on Goods	Committee on Trade and Development	TRIPS council
	provisions apply to e-commerce			
Customs duties	X	X		
Interests of developing countries	1998: increase participation of developing countries; Liberalize markets for exports Problem of access to limited technology ²⁹	X		
Consumer/ privacy Protection	X			
Data Flows and localisation				
Cloud computing services				
Electronic Signatures				
SMEs and MSMEs			x	
Market access	X	X		
infrastructure	X		X	
copyright				X

Table 2: Electronic Commerce issues discussed from 2015-2017

	Committee on Services	Committee on Goods	Committee on Trade and Development	TRIPS
Transparency	X			
Information flows and localisation requirements	X			
Privacy protection	X			
Domestic regulations	X			
SMEs	X		X	X
Customs Duty Moratorium	X			
Electronic Signatures, payments, and authentication	X			X
Interests of Developing Countries and LDCs	X	X	X	
Infrastructure and Connectivity	X	X	X	
Market Access	X			
Copyright				X
Consumer Protection	X			
Digital Products		X		

²⁹ S/C/8

Comparison to Joint Statement Negotiations Issues:

Following the Joint Statements on Electronic Commerce in December 2017 and January 2019, country proposals for discussion and later negotiation of a framework for electronic commerce presented the issues that countries found most relevant for inclusion. The issues in the negotiations phase, beginning after January 2019, can be summarized in the following categories: infrastructure for electronic trade; open trading environment/trade facilitation; electronic payments, contracts, and paperless trading; customs duties; domestic regulations; intellectual property and source code; privacy and consumer protection; online security; data localization; developing countries' and LDCs' interests; inclusion of MSMEs and women; digital products; and past agreements/frameworks.

In comparison to the issues discussed under the Work Programme for Electronic Commerce between 1998 and 2015, many of the same topics remain in the current negotiations round. The original topics discussed in the period between the creation of the Work Programme and the Nairobi Decision were scope and classification, transparency, domestic regulation, competition, customs duties, interests of developing countries, consumer protection, data flows and localisation, cloud computing services, electronic signatures, and MSMEs. The only new topic that is being brought into the current negotiations is the discussion of source code, as well as increased mention of digital products.

Between the initial years of the Work Programme and the 2015-2017 period, questions became less focused on scope and classification.

The groups of issues discussed following the Nairobi Ministerial Conference and prior to the first joint statement, between 2015 and 2017, were transparency, information flows and localisation requirements, privacy protection, domestic regulations, SMEs, customs duties, electronic signatures, payments, and authentication, interests of developing countries and LDCs, infrastructure and connectivity, market access, copyright, and consumer protection. All of these types of issues correspond to categories included in the 2019 joint statement negotiations stage, with the difference being that the issue of source code is not discussed in the 2015-2017 period.

The overall observation can be that the issues being addressed under the Joint Statements are mostly the same as were discussed under the WTO Work Programme on E-commerce. However, the depth of discussion/negotiation as well as the objective are quite different.



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