



Note

E-commerce in the WTO Council for Trade in Services Regular Work

Taking forward the Issues of Interest to Developing and Least-Developed Countries

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Summary

The regular work of the WTO is an important aspect of the multilateral trading system (MTS). Smaller developing and least-developed countries can derive benefits from the MTS by improving their participation in the regular work of the WTO. This Note gives a summarised account of the discussions in the WTO Council for Trade in Services (CTS) on issue related to the electronic commerce, in the last year from Aug 2017 to Sep 2018. It then outlines the tentative agenda of the WTO, including the CTS for 2019 on e-commerce, and the important activities where smaller developing and least-developed countries should participate actively.

The Work Programme on Electronic Commerce: What has been discussed in 2017-18?

At the Second Ministerial Conference in May 1998, ministers, recognizing that global electronic commerce was growing and creating new opportunities for trade, adopted the Declaration on Global Electronic Commerce.¹ This called for the establishment of a work programme on e-commerce, which was adopted in September 1998.² Periodic reviews of the programme are conducted by the General Council based on reports from the WTO bodies responsible for implementing the programme. Ministers also regularly consider the programme at the WTO's ministerial conferences.³

A- Meeting on 30th January 2017 (S/C/M/129) (17-0597)

The Chairman indicated that there were several elements to be addressed under this agenda item. First, he recalled that, at the October meeting, a group of Members had proposed that the Council hold a thematic seminar on e-commerce (document [RD/SERV/133/Rev.2](#)).

The representative of Ukraine indicated that his delegation supported the convening of a thematic seminar on e-commerce as it would be a good opportunity to reduce the knowledge gap on the subject. Ukraine considered that the seminar would be more comprehensive if it covered topics such as cross-border e-commerce, harmonization of legislation, regulatory aspects, main challenges for

businesses and governments, as well as online trade dispute resolution systems, including relevant legal and technical aspects.

The representative of South Africa made some proposals to the draft agendas. His delegation viewed e-commerce from a development perspective and wished the agenda to reflect that viewpoint. His delegation considered that the proposed agenda was too broad. Firstly, references to TPP and other agreements that were not in force, and might not come into force, should not find their way into the seminar. Secondly, discussions should focus on policies Members used to build capacity in the area of e-commerce. Thirdly, on session III, "Evolving regulatory responses", his delegation recognized the serious challenges that new technologies posed on regulatory authorities. In that vein, the seminar should examine recent case law reported in some jurisdictions, which could provide insights on the implications of new technologies, platforms and business practices in areas such as tax avoidance, anti-competitive practices and labour conditions. Finally, he reiterated that the outcomes of both seminars should be seen as an exchange of views and should in no way determine steps towards negotiating rules in the WTO.

The representative of China said that given that e-commerce was a multi-dimensional issue, Members should not limit their discussion to a specific framework. Therefore, seminars and workshops could be organized under the Council for Trade in Goods and the Committee on Trade and Development, to help Members achieve a better understanding of e-commerce from all relevant perspectives.

¹ Electronic Commerce. WTO. Retrieved from. https://www.wto.org/english/tratop_e/ecom_e/ecom_e.htm

² Ibid.

³ Ibid.

The representative of Mexico said that discussions on e-commerce should not imply negotiations on market access in goods. Mexico viewed e-commerce as a tool that could be used to take advantage of existing market access.

The representative of the Plurinational State of Bolivia said that e-commerce should facilitate trade, discussions should focus on promoting trade in developing countries so as to enable them to participate more effectively in international trade and achieve substantive growth and development.

B- Meeting on 6th June 2017 (S/C/M/130) (17-2988)

Brazil identified electronic signatures in the meeting as a relevant issue for e-commerce discussions and they constituted one way of ascertaining a digital identity. Digital certificates, produced by authorized and registered providers, enabled third parties to ascertain the authenticity of a signature and detect any fraud associated with it. As in the case of regular analogical identity, digital certificates enhanced the security of electronic transactions in general. They were a powerful enabler of e-commerce in different formats.

Members like European Union, China, Chile, Australia supported the issue of electronic signatures as one of the topics on which progress could be made at the WTO. The Australian delegation considered that the WTO could contribute to trade-related aspects of e-commerce to the benefit of the entire Membership. Australia encouraged Members to consider what progress on e-commerce could be made in the short term, including at MC11.

Members like India, Ukraine, Canada, New Zealand, Cuba, Singapore and Paraguay provided constructive feedbacks and proposals through

which the digital experience of information sharing and trade development can be enhanced at the WTO.

C- Meeting on 28th August 2017 (S/C/M/132) (17-4552)

The representative of China said that the exchange of information and experiences not only facilitated a better understanding of the submissions on the table, but also enriched Members' comprehension of e-commerce and its role in inclusive economic development in general, which was why her delegation supported such an exchange.

At the meeting of the Committee on Trade in Financial Services (CTFS) held on 13 June, China had presented its domestic developments in e-payment services, including relevant regulatory practices. E-payment services were not only an indispensable link in the e-commerce ecosystem of cross-border trade in goods enabled by the Internet, but also an efficiency enabler of payment services at large, a cost reducer for social transactions, and a contributor to financial inclusion and sustainable economic growth.

At the CTFS meeting that had been held in March, China had encouraged Members to share information on the development and regulation of payment services related to e-commerce. China encouraged other Members to share their own experiences regarding e-payment services.

Members like Switzerland, Nigeria and European Union made some considerations regarding China's proposal.

D- Meeting on 6th November 2017 (S/C/M/133) (17- 6033)

The representative of China stated that his delegation had tabled a joint e-commerce proposal with Pakistan in the General Council, the Council for Trade in Goods, the Council for Trade in Services and the Committee on Trade and Development. China had proposed that discussions at that stage focus on the promotion and facilitation of cross-border trade in goods enabled by the Internet, together with services directly supporting such trade in goods, such as payment and logistics services.

Members like Australia, Ukraine and Switzerland acknowledged the importance and the need to intensify work in the field of e-commerce as a means to facilitate trade.

In the digital trade scenario, MSMEs would be the businesses benefiting most, as this provided their only opportunity to reach international markets. MSMEs could be the main beneficiary of digital trade as the digital world could give them the opportunity to enter new markets, and thus provide more trade and domestic employment opportunities as well as access to innovation.

E- Meeting on 5th April 2018 (S/C/M/134) (18-2071)

The representative of India welcomed the Ministerial Decision on the Work Programme adopted at MC11 as e-commerce was one of the very few areas where Ministers had provided clear guidance.

The representative of China said that, before MC11, Members had submitted more than 30 communications on e-commerce and had held extensive discussion on the matter. The Friends of E-commerce for Development (FED) and the MIKTA group had organized a number of seminars in Geneva to enhance Members' understanding of e-

commerce, especially on its development dimension. China commended the efforts made by Members, which had contributed to the adoption of the Ministerial Decision in Buenos Aires to continue the work under the Work Programme.

China valued multilateral discussions on e-commerce, which contributed to the WTO staying relevant and helped MSMEs, women and young people from developing Members to participate in trade and benefit from the inclusiveness of the multilateral trading system. It was important to maintain the momentum created in Buenos Aires and discuss the trade aspects of e-commerce, including by reflecting innovatively on effective approaches to move forward multilateral discussions, considering Members' different stages of development and the needs of developing Members, particularly LDCs.

The Chairman indicated that two new communications had been submitted under the Work Programme by Chinese Taipei. They were contained in documents *JOB/SERV/277* and *JOB/SERV/278*, and addressed, respectively, "Removing cyberspace trade barriers: Towards a digital trade environment with reciprocally equal access" and "How cyberspace intrudes on the physical space – Case Studies: 3D printing and the sharing economy".

Most traditional trade barriers, such as customs duties or import restrictions, applied to "atoms" as they crossed borders. But for "bits" there were various other trade barriers, which his delegation's paper referred to as "cyberspace trade barriers" (CTB). These were not necessarily discussed in the traditional WTO arena.

F- Meeting on 11th July 2018 (S/C/M/135) (18-4350)

The representative of China wished to brief the Council on the "Workshop on E-commerce for Development under the Multilateral Trading System" that her delegation had sponsored in China from 8 to 21 May. 25 participants, including Vice Ministers and DGs from capitals as well as Ambassadors and senior diplomats from the Geneva Missions of 15 developing Members had attended.

As a developing Member and one of the FEDs, China was willing to continue providing capacity-building within its capabilities to the vast number of developing Members in the WTO. With 30 million people yet to get out of poverty, China still faced a tangible development divide between its urban and rural areas. In spite of this, China had embraced the opportunities provided by e-commerce and since 1998, the country saw the development of e-commerce.

At the same time, China believed that every Member had its own situation and, therefore, there was no "one size fits all" solution. It was essential for Members to fully respect and accommodate each other's concerns. It would be worthwhile for Members to consider how to maintain and reinforce the momentum of multilateral discussions on trade-related aspects of e-commerce in the CTS and other relevant WTO bodies.

The representative of Pakistan said that Pakistan was one of the Members that had benefitted from the two-week workshop organized by China earlier that month.

G- Meeting on 26th November 2018 (S/C/M/136) (18- 7439)

The Chairman invited any delegation wishing to share information under the sub-item on 'exchange of information and experiences based on

submissions by Members' to do so at that juncture.

The representative of the United States provided its response regarding the work carried out by it in this field.

The Indian delegation welcomed the MC11 Decision reaffirming the 1998 Work Programme on Electronic Commerce, which had an exploratory and non-negotiating mandate. While e-commerce had created new and exciting trade and investment opportunities, it had also posed several new infrastructure and regulatory challenges, which needed to be addressed first. These included: classification issues such as whether e-commerce should be treated as trade in goods or services; to what extent existing WTO rules applied to the digital economy; fiscal and other implications of e-commerce, including the Moratorium and the scope of "electronic transmissions"; the impact of e-commerce on competition and market structures; and, most importantly, the need to bridge the digital divide.

Against that backdrop, India had introduced its proposal "Moratorium on customs duties on electronic transmissions: Need for a re-think", contained in document *WT/GC/W/747*, at the meeting of the General Council held in July 2018.

Expected Work Plan for 2019 and Issues of Interest to Smaller Developing and Least- Developed Countries

A- Expected Work Plan for 2019

This will remain a standing agenda item for the CTS

and hence further discussions can be expected in each CTS meeting in 2019. Holding a dedicated meeting of the CTS to review the Buenos Aires Decision at a specific date in the second quarter of 2019, possibly between April and May can also be expected.

B- Possible Important Issues for Participation by Smaller Developing and Least-Developed Countries in 2019

Related to the Work Programme on Electronic Commerce, onus will be on the smaller developing and least-developed countries to bring for discussion the particular opportunities and challenges faced by them as they seek to integrate into the new digital economy. Particular attention may also be given to the challenges and opportunities faced by MSMEs in these countries in becoming the main beneficiary of digital trade and how they could be given the opportunity to enter new markets. Members might also discuss strategies of incorporating the rising demand of digital economy with the present resources available at a national level and how this resource capacity can be increased to facilitate greater digital inclusion in economic development work. Private-public method of partnerships can be a greater facilitating tool in this regard as was pointed in the 26th November 2018 meeting.

Accordingly, it is proposed that smaller developing and least-developed countries carefully plan their active participation on this agenda item in the CTS meetings in 2019. This can encompass the

following:

1. Identifying the most important issues at the interface of e-commerce and trade in services from the below non-exhaustive list and making submissions on these to advance the discussions from the perspective of smaller developing and least-developed countries:

- a) classification issues such as whether e-commerce should be treated as trade in goods or services and what could be the implications on the existing services classification list
- b) regulatory challenges for specific services sectors in the age of e-commerce
- c) application of current GATS framework to e-commerce to identify if there are any gaps to be addressed
- d) improving the participation of MSMEs and women-owned enterprises in trade in services through e-commerce
- e) improving the inclusiveness of e-payment services on fair terms for smaller developed and least-developed countries

2. Contributing to the organisation of a seminar in 2019 on improving the coherence between trade in services and digital economy for the development of developing and least-developed countries (in part to be based on the discussions regarding the seminar held in the CTS in 2017).



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