



Global Business Dialogue on Electronic Commerce

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INTRODUCTION

The Trade/WTO Working Group's primary task during 2002 was to advocate the principles and recommendations arrived at the annual conference in Tokyo 2001. The Working Group did so in many private and public ways, within other business coalitions and with government officials and trade negotiators. Highlights include:

- Trade Facilitation Letter – Following the fall 2001 publication of the final text on “Services and Electronic Commerce” of the WTO Ministerial Declaration, of the new round of global trade negotiations, the Group helped prepare a letter sent by the GBDe to the trade ministers of over 100 countries. It urged attention to the importance of e-commerce to today's trade community and to economic growth, stressed the importance of existing trade agreement disciplines applying to e-commerce and called for governments not to create new and discriminatory barriers to e-commerce. Trade Commissioner Pascal Lamy, Europe's chief trade negotiator, and US Secretary of Commerce Donald Evans were among those that responded with thoughtful support for GBDe e-trade principles and recommendations.
- Berlin (November 2001) and Manila (March 2002) Sherpa Meetings – Private dialogue with government officials of Europe, Asia, and the Americas.
- Tokyo (January 2002) – Discussions with the Trade Policy Bureau, Multilateral Trade System Department of the Ministry of Economy, Trade and Industry (METI) regarding electronic commerce in the coming WTO service negotiations.
- GBDe – EU Expert-level Meeting European Parliament – At the end of May 2002, a delegation of the Trade Working Group, led by Mediaset, spoke at an “expert-level” meeting between GBDe and members of European Parliament and the Trade and Information Society DGs of the European Commission. Speaking on “Electronic Delivery of Digitized Products”, Mediaset's representative stated that; “The current classification of goods for international trade purposes falls short in its ability to ensure non-discriminatory treatment of electronically tradable, digitized products” and the ambiguity creates business uncertainty for e-content providers. In the case of software, for example, it was stressed “that the existing classification system has to be revised in order

to ensure adequate and non-discriminatory treatment of tradable, non physical data for electronic distribution purposes.” Further the GBDe urges governments to refrain from extending arbitrarily the scope of the audio-visual services sub-sector to new services. Extending audio-visual regulations to non-audio-visual works might seriously impede trade in digital content.

In the ensuing dialogue the EU officials expressed the wish for more guidance from the GBDe on the classification issue, but in recognising the political dimensions of the discussion, they challenged the group to identify specific country trade barriers to e-commerce to help guide negotiators in the WTO.

- DC Sherpa Meeting (July 2002) – A similar trade presentation was given by a representative of The Chubb Corporation on behalf of GBDe’s Trade WG before officials of the US, Japanese and European governments, who were in Washington DC for government-to-government trade discussions.

STATUS OF WORK PLAN AGENDA

- **Classification**

The Working Group made a commitment at a GBDe meeting in Manila during March 2002 to try to deal with the ambiguity and uncertainty surrounding the classification issue, particularly the classification of digital goods such as software. It was discovered that “classification” depends on typology and that a case-by-case approach, as desired by government officials, does not provide predictable rules. There are advantages and disadvantages to categorising digital products one way or another in trade – in terms of GATT or GATS treatment and with implications for tariff and tax assessments in each country GBDe members favour different approaches depending on how their businesses might be effected by policy choices. Of particular concern, is the implication of classifying some software as audio-visual services, which potentially leads one down a path of new barriers, which many would want to avoid.

Leaving the details to the negotiators and the bargaining that is part of any trade negotiation, the GBDe reminds negotiators of the power of e-commerce in global trade terms and its potential for stimulating growth particularly in disadvantaged societies. Reiterating its support for the principles and recommendations articulated in Tokyo, the GBDe continues to believe that domestic regulations and trade regimes negotiated should be

“least trade restrictive, non-discriminatory, transparent and promote an open market environment”.

- **Trade Barriers**

As a result of requests by various government officials, the Trade/WTO Working Group undertook to examine particular “trade barriers” to e-commerce. The GBDe has sampled several countries to see if helpful patterns emerged to guide its research for the remainder of the 2003 work program. The GBDe has left aside comments on barriers to foreign direct investment in basic telecommunications sectors and cultural content restrictions except to say that these are well-known public-policy issues that will be dealt with in due course by trade negotiators and governments. Most of the categories highlighted below do not relate to e-commerce *per se*, but rather to barriers that present particular problems or dilemmas for e-providers or become potential barriers if extended to new media. The information was drawn from more detailed country studies undertaken by GBDe members, government reports and from associated business groups such as the US Coalition of Service Industries. Few patterns or “ideal types” have emerged from the GBDe’s limited study. However, here are a number of preliminary conclusions and observations:

1. **Unique Customs Valuation**

The GBDe urges governments to maintain the moratorium on applying customs duties to e-commerce. Imposing such duties amounts to a trade barrier, potentially slowing e-commerce development, trimming margins and disadvantaging some providers. If duties were to be applied at some future date, another troubling issue, which would likely emerge, would be customs valuation procedures which vary from country to country (from valuing “transaction value” to “value of media” to mixed system methodologies being used). The inconsistency would be discriminatory and all countries should instead adopt the approach consistent with GATT Administrative Decision 4.1. to make customs valuation determinations for all digital products on the basis of the value of the carrier medium and not on the basis of projected revenues or royalties for the digital content.

2. **Advertising**

The GBDe notes no unique rules applying to advertising on the Internet, but local advertising laws may present Internet advertisers unusual hurdles and uncertainty, particularly if some are extended explicitly to the Internet. For example, Brazil limits foreign participation in the advertising production and requires that Portuguese be spoken in the ad film. Does this mean that Brazilians must be “screened-out” from viewing e-ads if the ads

don't meet the criteria? Other examples: Canada discourages advertising placed in foreign print and broadcast media through tax advantages. France restricts media properties from advertising web sites on TV. Ideally, the GBDe would urge "no restrictions" on advertising on the Internet as is the case with the majority of countries studied.

3. Distribution

Distribution regulations such as commercial presence and capital requirements, form and rate rules or foreign investment restrictions can present unique problems for certain sectors such as financial service providers who are seeking to use the Internet to lower costs to consumers and achieve economies of scale. Regulation may be necessary for public policy reasons, but mutual recognition and reciprocity agreements could overcome these barriers. For some sectors such as software distribution, there appear to be no restrictions. Other sectors have unique problems as described in the audio-visual section below. Ideally, the GBDe would urge that all restrictions be eliminated or significantly limited and governed by mutual recognition and reciprocity.

4. IPR

The GBDe urges governments to implement and enforce TRIPS and WIPO agreements. As for specific country issues, the US permits "business method" patents, which theoretically could impact e-resolution providers, should the method involve the Internet. While many differences still exist in copyright and patent related areas between countries, no others appear to present barriers to e-commerce.

5. Audio-Visual

AV content providers over the Internet are uncertain as to whether local broadcasting laws apply, to what could be considered "broadcasts" of a different transmission form. There are numerous examples from the countries studied, but rather than single out any one, the GBDe highlights the EU and Canada as having dealt with the issue explicitly. The EU's 1998 "TV without Frontier Directive" excludes a whole range of Information Society Services, i.e. on line services are excluded from broadcasting regulations. The Canadian "New Media" regulation affirmatively says that the Broadcasting Act does not extend to alphanumeric (e.g. text) services on the Internet nor to audio or video services where users "have an individual, or one-on-one experience, and where they create their uniquely tailored content". The Act did extend to some new media such as streaming audio and audiovisual signals, however it declined to regulate them, issuing an order exempting new media broadcasting undertakings ("delivered or accessed over the Internet"), from licensing or other regulatory requirements. One can take from these

decisions, the objective of encouraging innovation through reducing or eliminating the uncertainty for providers, by dealing with the issue in law or regulation affirmatively, as well as the impracticality of regulating Internet "broadcasts".

6. VAT and other direct and indirect tax barriers

This is a complex topic dealt with elsewhere in GBDe papers and recommendations. VAT harmonization is important for example. As a general principle, delivery of goods and services through or over the Internet would benefit from reduced tax rates and harmonized tax collection regimes.

7. Standards, Labeling, Licensing, Certification

Generally it can be said that each jurisdiction has a complex set of technical product or service regulations and professional licensing requirements, which can be artificial, arbitrary and discriminatory barriers to entry for Internet and non-Internet providers alike. The lists are exhaustive. Ideally, the GBDe wants to see countries commit to implementing legislation and regulation using "internationally accepted" standards and participating in their creation. In addition, mutual recognition and reciprocity would also help bring down barriers.

8. Infrastructure development

Many of the barriers discussed above inhibit the development of the infrastructure necessary to support e-businesses. One could add "movement of temporary persons" restrictions and other sensitive but well-known limitations to the list. Some countries more than others are particularly hard hit because e-commerce is a "leveler" of sorts, not requiring huge capital outlays. When infrastructure development is frustrated by barriers to entry, e.g. capital goods, intellectual capital, then some countries tend to suffer disproportionately because home markets may not support the e-businesses. The magic of e-business is the ready access to wider markets, which makes businesses viable.