



Global Business Dialogue on Electronic Commerce

Trade/WTO

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INTRODUCTION

Three powerful and related trends are fundamentally reshaping the global economy:

1. The exponential growth in Internet connectivity;
2. The convergence of technologies, which allows for interoperability and interactivity across communications platforms and devices; and
3. The increasing use of electronic commerce as a channel for conducting international business.

Today, there are more than 400 million people online. By the year 2005, it is projected that this number will grow to one billion, with three quarters of these Internet users living outside of

the U.S. (Computer Industry Almanac) Global electronic commerce, which reached nearly \$400 billion in 2000, is expected to expand to \$7 trillion by 2004. (Gartner Group) As impressive as these statistics are, we are only in the early stages of the transformation to a networked global economy that holds great potential for expanding international trade.

E-commerce can include all aspects of international trade: sales of goods and services to consumers, governments and businesses, including the operation of integrated international supply chains. E-commerce enables transactions to be conducted easily and efficiently. In some e-commerce transactions, a good or a service may be delivered physically. But when a product can be ordered, delivered and stored in digital form, the entire transaction can be conducted and fulfilled online. Electronic delivery can be more efficient, convenient and

environmentally friendly than physical delivery, and it provides easy access to global markets, especially for small and medium enterprises that might not otherwise be able to reach these markets.

PRINCIPLES FOR TRADE IN E-COMMERCE

To ensure that trade agreements promote the benefits of e-commerce – increased productivity, competition, consumer choice and value – the GBDe urges governments to follow certain basic principles:

1. Governments should recognize that existing World Trade Organization (WTO) agreements - namely the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) - apply to e-commerce.
2. Governments should ensure that electronically delivered products, at a minimum, receive trade treatment no less favorable than like products delivered in physical form.
3. Governments should refrain from creating new or discriminatory trade barriers to e-commerce.
4. When legitimate policy objectives require domestic regulations that affect e-commerce, governments should ensure that such regulations are least trade restrictive, nondiscriminatory, transparent and promote an open market environment.

In addition to adopting these basic principles, the GBDe proposes that governments pursue the following agenda priorities for an e-commerce trade initiative that could form the basis for early commitments by WTO members before a comprehensive round is concluded.

SERVICE LIBERALIZATION

Services negotiations are currently underway as part of the built-in agenda in the WTO. The GBDe urges governments to seize this opportunity to expand the benefits of e-commerce in international trade. The GBDe encourages member states to broaden and deepen their commitments in the GATS to improve market access and national treatment for all services. Since liberalization across a broad range of services is important for enabling trade through e-commerce, the GBDe encourages countries to consider negotiating approaches for trade in services that will facilitate liberalization. For example, a “top-down” or “negative list” approach assumes that services are to be accorded full market access and national treatment commitments unless specific exceptions are taken. During services negotiations, the GBDe also encourages WTO members to refrain from raising new barriers to e-commerce.

There are two key ways in which services liberalization promotes e-commerce:

1. By opening markets for services that can be delivered electronically; and
2. By enabling transactions for both goods and services through the e-commerce “value chain.”

Electronic Delivery of Services

First, it is important for WTO members to recognize that all GATS commitments apply to services that are delivered electronically. The Internet is just another means of delivery that in some cases can substitute for delivery of services via telephone, fax, post or in person. Although a service does not change just because it is delivered online, it can be delivered more efficiently and conveniently through the Internet. For example, online banking services are conveniently available 24 hours a day without having to visit a bank office. In addition, with the development of Internet-based computing services, businesses can access remote computer

processing power, data storage capacity, and applications, allowing them to meet their information technology needs more cost-effectively and flexibly than before.

Countries should not discriminate against services that are delivered via the Internet. On the contrary, the GBDe believes that countries should exploit these technological advances for their own economic advantage by further liberalizing services that can be delivered electronically. In addition, trade negotiators should avoid any confusion over which GATS mode of delivery should apply to e-commerce by increasing and making consistent commitments in Mode 1 (cross-border delivery) and Mode 2 (consumption abroad).

E-Commerce Value Chain

Some electronically delivered services can also play an important role in enabling other e-commerce transactions for both goods and services. These services, when combined with certain off-line services, form the e-commerce "value chain," including all forms of commercial communications (advertising, sales promotion, direct marketing etc); business services; computer, data processing and software services; content related services; communication services; financial services; distribution services; and express delivery services.

The e-commerce value chain is critical to initiating and completing an e-commerce transaction for both business-to-business and business-to-consumer e-commerce, whether the final product is delivered electronically or physically. Furthermore, these services enable the creation of integrated international supply chains that facilitate the operation of competitive e-businesses. Creating a truly global environment that facilitates the growth of e-commerce requires the removal of barriers to trade across every aspect of the e-commerce value chain. The GBDe supports an initiative in the current WTO services negotiations to adopt improved market access and national treatment commitments for these services.

WTO WORK PROGRAM ON E-COMMERCE

To facilitate the progressive liberalization of global electronic trade and increase the effectiveness of the WTO Work Program on E-Commerce, the GBDe supports the formation of a cross-cutting, horizontal working group to consider e-commerce issues in each of the WTO's three principal agreements on goods (GATT), services (GATS), and intellectual property (TRIPS).

Not only do all WTO agreements apply to e-commerce, they may all apply simultaneously to the same e-commerce transaction. A horizontal approach will enable the WTO to articulate a coherent vision of e-commerce that avoids fragmentation. The GATT, GATS, and TRIPS Councils are responsible for agreements that serve different trade purposes and priorities, making it uncertain how each would treat e-commerce transactions. To establish a clear, predictable, and effective framework for progressive trade liberalization in e-commerce, the WTO must identify certain basic principles that should apply across all disciplines.

The horizontal working group should be prepared to address a broad range of issues. It should address such e-commerce-related issues as extending the moratorium on customs duties for online sales and how to ensure that domestic regulations are least trade restrictive, nondiscriminatory, transparent and promote an open market environment. WTO intervention would be necessary where and when such domestic regulations pose market access barriers. The working group will provide a good forum to consider new issues that may arise as e-commerce trade grows.

TARIFFS ON INFORMATION TECHNOLOGY PRODUCTS

Tariffs assessed against information technology (IT) products create a barrier to trade, but more importantly, they raise the cost of the technology that is needed to be competitive in the digital

economy. IT tariffs increase the cost of building networks over which e-commerce is conducted and raises the cost of devices needed by consumers and other users to access these networks.

Numerous studies have shown that investment in information technology plays an important role in raising productivity and promoting economic growth. It would therefore be counterproductive for countries to raise the cost of information technology investment through tariffs. Any short-term loss in government revenue by eliminating these fees should be more than offset by the long-term increase in productivity and economic performance as information technology products become more affordable and are more widely deployed.

While many countries have participated in the Information Technology Agreement (ITA) to eliminate tariffs on IT products, many others have not. The GBDe urges all countries to participate in and ratify the ITA and move rapidly to eliminate their IT tariffs. This is especially true for ITA II, which has not yet been adopted. In addition, governments and business should continually update the definition of what constitutes an "IT product" to keep pace with technological developments.

ELECTRONIC DELIVERY OF DIGITIZED PRODUCTS

Another way that the Internet can facilitate trade is by enabling the electronic delivery of digitized products. Electronic distribution is more efficient, convenient and environmentally friendly than physical delivery. For example, because computer software is stored as electronic bits, it is possible to deliver software over the Internet in addition to more traditional forms of delivery via truck, ship, or airplane. From a user's perspective, there is no significant difference whether software is delivered over the Internet or delivered physically on a CD-ROM. The code is exactly the same, providing the same functionality and user interface. The same is true for music, videos, or other content: a consumer can purchase the same product from a retailer for

delivery over the Internet or for delivery in physical form. Despite the fact that a digitized product can be a direct substitute for a product delivered via traditional means, some approaches to the classification of digitized content could lead to different, and in some cases impaired, trade treatment for the same content based solely on its method of delivery to the customer.

Currently under the GATT, software, music, news publications, and films or videos delivered as physical goods receive national treatment and are subject to lower tariffs, and thereby enjoy favorable market access. Yet if a like product, when delivered electronically, were to be classified as a service under the GATS, its market access and national treatment commitments would be unclear or non-existent in some cases. In the case of software, in particular, the fact that there are no clearly defined GATS commitments for electronically delivered software creates tremendous uncertainty for software suppliers and favors less-efficient physical delivery over electronic delivery. In all cases, suppliers of digitized content could face the prospect of years of trade negotiations just to obtain the market access and national treatment assurances under the GATS that they already enjoy under the GATT.

Rather than create such barriers to the networked economy, governments should encourage electronic product delivery. The GBDe urges governments to carefully consider the classification issues and undertake obligations requiring them, at a minimum, to treat digitized content traded by means of electronic transmission no less favorably than content imported on a physical medium. Quantitative restrictions or other barriers to the electronic delivery of products and services would have a detrimental effect on the potential growth of electronic commerce.

THE IMPORTANCE OF COMPETITION

A competitive marketplace gives consumers lower prices, greater innovation, and better quality goods and services. Expanded trade can increase competition and enhance these benefits.

Governments should view trade liberalization and the promotion of e-commerce as important policy tools for bringing the benefits of a competitive marketplace to their citizens.

Governments should generally rely upon the competitive marketplace, rather than regulation, to meet public policy goals. To the extent that legitimate policy objectives require domestic regulations that affect e-commerce, governments should ensure that such regulations are transparent, nondiscriminatory, and employ the least-trade-restrictive means available. This approach will minimize any negative impact on the marketplace and the free flow of trade and will contribute to creating a framework to foster investment.

One area in which government regulation is important is enabling the transition to a competitive market for basic telecommunications services. These services provide the network infrastructure that is a fundamental prerequisite for e-commerce. Where basic telecommunications services have historically been provided by monopoly network operators, it is essential that countries fully implement the agreement on basic telecommunications, including the associated Reference Paper, to foster competition. Competition among network providers, using a variety of communication platforms (e.g., wireline, cable, terrestrial wireless, and satellite), is the most effective way to increase access to narrowband networks, speed deployment of broadband networks, make these services affordable and encourage innovation.

Regulation of access to basic telecommunications services should also take into account the need to foster investment in network infrastructure. Access to network infrastructure should be based on commercial negotiations among market players, limiting government regulation to cases where the market is not yet fully competitive.

In contrast to the basic telecommunications market, the market for value-added services has historically been relatively competitive and less

regulated. The continued health of this market is dependent upon enhancing a pro-competitive environment that ensures access to basic telecommunications services for Internet service providers (ISPs) and other value-added services providers. It also relies on pro-active and vigilant regulators. To ensure that these providers can operate competitively, countries must comply with the GATS Annex on Telecommunications.

Member countries should ensure such a pro-competitive environment to eliminate unfair business practices and non-tariff barriers, which restrain competition and could thereby restrict the level of trade in digitized products and services among participating countries.

The global nature of e-commerce has also prompted some to raise the issue of how national competition policy authorities should meet this challenge. First, it is important to note that the global nature of the economy is not unique to e-commerce. It is common for companies to have operations around the world, and trade continues to grow as a share of the world's economy, but this was true before the emergence of e-commerce. Recognizing these facts, the GBDe believes that it is appropriate for national competition policy authorities to conduct a dialogue and share best practices on how to deal with the reality of the global economy. There have been some excellent recent examples of cooperation between US and EU competition policy authorities during merger reviews. The GBDe encourages the continuation of these bilaterally focused efforts and supports cooperation and dialogue among competition policy authorities.

PROMOTION OF CULTURAL DIVERSITY

The GBDe recognizes the sensitivity of certain countries regarding the delivery of digitized content of a cultural nature. However, rather than viewing the Internet as a threat to their unique cultural identity, the GBDe believes that countries should view this new medium as an opportunity to promote cultural diversity and encourage individual expression.

The Internet provides a fast, low-cost way to develop and deliver local content. It empowers individuals to become producers and publishers of art, entertainment and news to an extent never before possible. It facilitates the connection and exchange of cultural products among geographically separated cultural communities. Increasing Internet penetration worldwide and the proliferation of low-cost access devices will expand these online virtual communities. The Internet can thus help to strengthen and preserve linguistic and cultural affinities both locally and beyond traditional boundaries. As Internet usage continues to grow rapidly around the world, this diverse, international audience will not be satisfied with a limited selection of standardized and regulated products and content. Successful companies participating in e-commerce trade are, and will continue to be, those that best understand and meet individuals' needs and local preferences. GBDe members will strive to respect and meet the demands of markets around the world.

INTELLECTUAL PROPERTY PROTECTION

Intellectual property rights in goods and services traded on the Internet must be afforded adequate levels of protection and enforcement in accordance with the WTO TRIPS Agreement and the WIPO Treaties. These obligations apply to all intellectual property, whether it is delivered in physical form or made available over a digital network. Without such protection, content creators, service providers, and users will be less likely to realize the tremendous benefits of e-commerce trade. In addition, all WTO member countries should implement and enforce TRIPS fully, faithfully and promptly. WTO members should also be urged to add to their level of protection through commitments consistent with the WIPO copyright treaties and should cooperate to develop and enforce appropriate legal frameworks to prevent unlawful circumvention of technical protection measures. Countries seeking accession to the WTO should be encouraged to bring their enforcement regimes into compliance with TRIPS standards.

CAPACITY BUILDING FOR DEVELOPING COUNTRIES

Developing countries have had few opportunities to participate in the information society, and they have not yet benefited fully from e-commerce. The GBDe believes that WTO members should pursue ways to assist developing countries in establishing an appropriate policy and regulatory environment to enable e-commerce and digital trade. This assistance must consider the diverse conditions and needs of developing countries, in areas such as developing technical expertise and appropriate legal framework, among others. As the G-8 Leaders observed in the declaration at the conclusion of their July 2001 Summit, there is a clear link between increased trade and investment and stronger economic growth. Expanded trade enhances growth and welfare and contributes to poverty reduction. However, the Leaders recognized that if developing countries are to obtain these benefits, they will need help. Accordingly, the Leaders stated that multilateral trade negotiations should seek to address the needs of developing countries and especially least developed countries in terms of improved market access, capacity building and implementation issues. Through its Digital Bridges effort, the GBDe is working with governments to help developing countries realize the benefits of e-commerce and expanded trade.

CONCLUSION

The GBDe believes that a new global initiative on e-commerce and digital trade should be a critical issue of a new round in the WTO. The GBDe, therefore, strongly supports the launch of the new round in Doha, Qatar, at the 4th WTO Ministerial conference in November 2001, and urges that the positive e-commerce agenda set forth above be incorporated into such round. It is also hoped that this approach would be considered and incorporated in any and all other international initiatives in which e-commerce should be included. E-commerce holds the potential to bring the benefits of increased productivity, opportunity and economic growth

to all countries that are prepared to open markets and harness this new means of conducting international trade. The GBDe represents a broad consensus among international businesses about appropriate policies for e-commerce. The GBDe stands ready to work with government and international organizations, especially the WTO, to advance, refine and implement these trade policies around the world.