

**MIKTA Workshop
on Electronic Commerce**

Geneva, 5 July 2016

E-commerce and the WTO

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The Work Program

Launched by Geneva Ministerial Session 1998

- **Called for a comprehensive work programme on trade-related aspects of global e-commerce**
- **Moratorium:** Members agreed to continue the current practice of not imposing customs duties on electronic transmissions

Evolving Internet Landscape

- Information highway – Information super highway
- Information society
- Information economy
- Digital Economy
 - Robotics: manufacturing, but also medicine & design
 - Machine-to-Machine / Internet of Things
Delivery & logistics, maritime transport, monitoring
 - IT in business & government operations
 - IT in value chains: At all levels

Internet activities

- E-commerce..on-line trade..digital trade..e-trade
– *is there a difference?*

... and also

- E-business – IT integrated into operations
- E-procurement – corporate or government
- E-government – on-line government functions

What are we talking about

E-commerce - work program definition

For the purposes of the work programme...

"electronic commerce" is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means.

WT/L/274, 30 September 1998

Adopted by the General Council on 25 September 1998

Goods and Services

	Domestic		International/Cross-border	
	Goods	Services	Goods	Services
Traditional commerce	A consumer buys a product from a domestic retail store	A consumer receives a service offline from a domestic supplier, e.g. a haircut in a local salon	Bulk import and export of goods by international trading companies	Four modes of supply defined by GATS, ⁷ not involving online transactions, e.g. international shipping, international tourists, companies that have foreign investments, supplying a service to local customers, and temporary movement of a service supplier to another country to supply a service
E-commerce	A consumer buys a product from a domestic online store	A service is supplied from a domestic supplier via Internet, e.g. e-banking services provided by domestic banks	A consumer orders a product from an online store and the product is shipped from the producer/retailer in another country directly to the consumer	Mainly mode 1 and 2 of GATS, involving cross-border supply of services, which could include: <ul style="list-style-type: none"> - Digital products: music, video, apps and games downloaded and paid for online - Services transactions completed online between a consumer and a supplier located in different countries

Work Programme: Goods



- market access for and access to products related to e-commerce
- customs valuation issues
- import licensing issues
- customs duties and other duties and charges
- standards-related issues
- rules of origin issues
- classification issues

Work Programme: Services



- **scope (incl. modes of supply)**
- **most favoured nation treatment**
- **transparency**
- **increasing participation of developing countries**
- **domestic regulation**
- **competition issues**
- **protection of privacy and public morals and the prevention of fraud**
- **market-access commitments**
- **national treatment**
- **Annex on Telecommunications**
- **customs duties**
- **classification issues**

Work Programme: TRIPS



- **protection and enforcement of copyright and related rights**
- **protection and enforcement of trademarks**
- **new technologies and access to technology**

Work Programme: Trade & Development



- **effects on trade and economic prospects of developing countries, notably on small- and medium-sized firms**
- **ways to enhance the participation of developing countries**
- **use of information technology to integrate developing countries into the multilateral trading system**
- **the possible impact on traditional means of distribution of physical goods**
- **financial implications**

Dedicated Discussions of the General Council

- “Classification” issue
 - Downloadable or “digital” products
- Fiscal implications: Customs duties & the moratorium
- Development
- Other “cross-cutting” issues

“Classification”

Digital Products

- In WTO context – Referred only to products once traded in physical form, that can be downloaded. The vast majority of online transmissions not in question.
- Debate on their status was remanded to the General Council, who assigned it to “Dedicated Discussions”
- GATT or GATS? Considered potentially relevant to defining coverage of the Moratorium
- How relevant is the question today?

GATS & E-commerce

Interim views

From S/L/74, adopted by the Council for Trade in Services, July 1999

- The electronic delivery of services falls within the scope of the GATS, since the Agreement applies to all services regardless of the means by which they are delivered, and that electronic delivery can take place under any of the four modes of supply.
- Measures affecting the electronic delivery of services are measures affecting trade in services in the sense of Article I of the GATS and are therefore covered by GATS obligations.
- The GATS is technologically neutral in the sense that it contains no provisions that distinguish between the different technological means through which a service may be supplied.

... GATS & E-commerce

- All general GATS provisions, including MFN, are applicable to the supply of services through electronic means.
- Article III on transparency applies to all laws and regulations affecting the supply of a service through electronic means.
- The participation of developing countries in electronic commerce should be enhanced *inter alia* by the implementation of Article IV of the GATS through the liberalization of market access in areas of export interest to them and through better access to technology ...
- The expansion of electronic commerce could help reduce the extent of restrictive business practices (Art. XIX), *inter alia*, by facilitating market entry for smaller service suppliers.

... *GATS & E-commerce*

- Article VI of the GATS applies to the supply of services through electronic means. In domestic regulation it is crucial to maintain a balance between the right to regulate and the need to ensure that domestic regulatory measures do not constitute unnecessary barriers
- Article XIV (General Exceptions) applies, *inter alia*, to the protection of privacy and public morals and the prevention of fraud. Measures must not be more trade restrictive than necessary to fulfil such objectives and must not constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade in services. ...
- Members also recognized the distinction between the disciplines of Article XIV (General Exceptions) and any possible disciplines to be developed under Article VI:4 of the GATS.

... *GATS & E-commerce*

- Market access: Without prejudice to questions concerning likeness of services, the means of delivery does not alter specific commitments; they permit the electronic supply of the scheduled service unless otherwise specified.
- National treatment commitments cover the supply of services through electronic means unless otherwise specified.
- The Annex on Telecommunications applies to access to and use of the Internet network when it is defined in a Member's regulatory system as a public telecommunications transport service and/or network in terms of that Annex.

Differences – *where they existed, mainly concerned a need for further work and clarifications on a very few issues*

GATS Jurisprudence

- Some of GATS dispute settlement cases involved on-line or networked services.
 - Case brought by Antigua and Barbuda about on-line gambling services
 - Part of a China case related to on-line music downloads
 - A telecom case and a financial services case dealt with networked service.
- Panel findings confirm that GATS disciplines & commitments apply to on-line services

Example 1

- On U.S. *Gambling*, the panel said "we conclude that mode 1 includes all means of delivery.
- We are of the view that when a Member inscribes the word 'None' in the market access column of its schedule for mode 1, it commits itself not to maintain measures which prohibit the use of one, several or all means of delivery under mode 1 in a committed sector or sub-sector.
- *This is especially so in sectors and sub-sectors where cross-border supply is effected essentially if not exclusively through the Internet."*

Example 2

- In *China — Publications and Audiovisual Products*, the Panel found that the scope of China's commitment in its GATS Schedule on "Sound recording distribution services" extends to sound recordings distributed in non-physical form, through technologies such as the Internet.

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Commercial developments

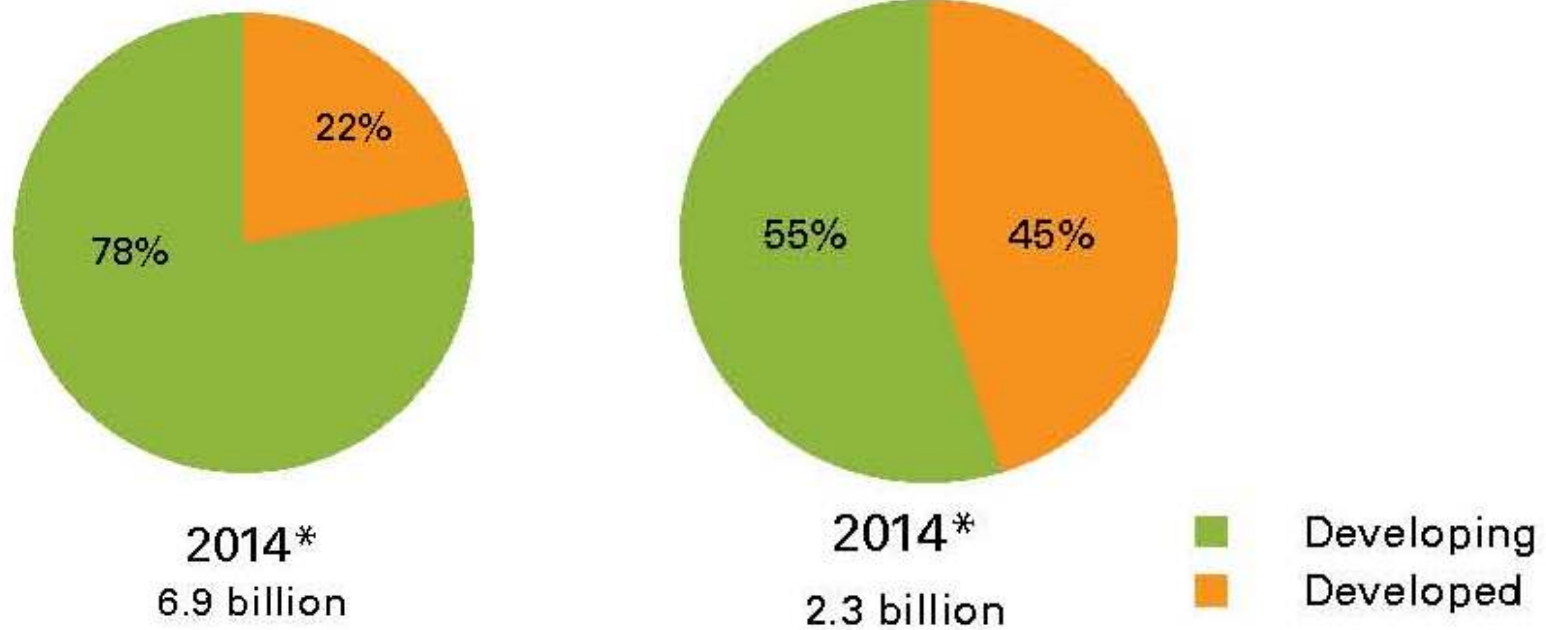
Technologies

- Broadband
- Mobile services

Business models

- Cloud (storage, processing & delivery)
- Big Data – Data analytics
- Internet of Things – connected physical objects
- 3D printing – printing of physical objects

Access in hand



Source: ITU World Telecommunications/ICT Indicators

Problem solving in Nigeria



Resurgent Policy Concerns

Cybercrime

Cyber security

Individual Privacy

Data protection

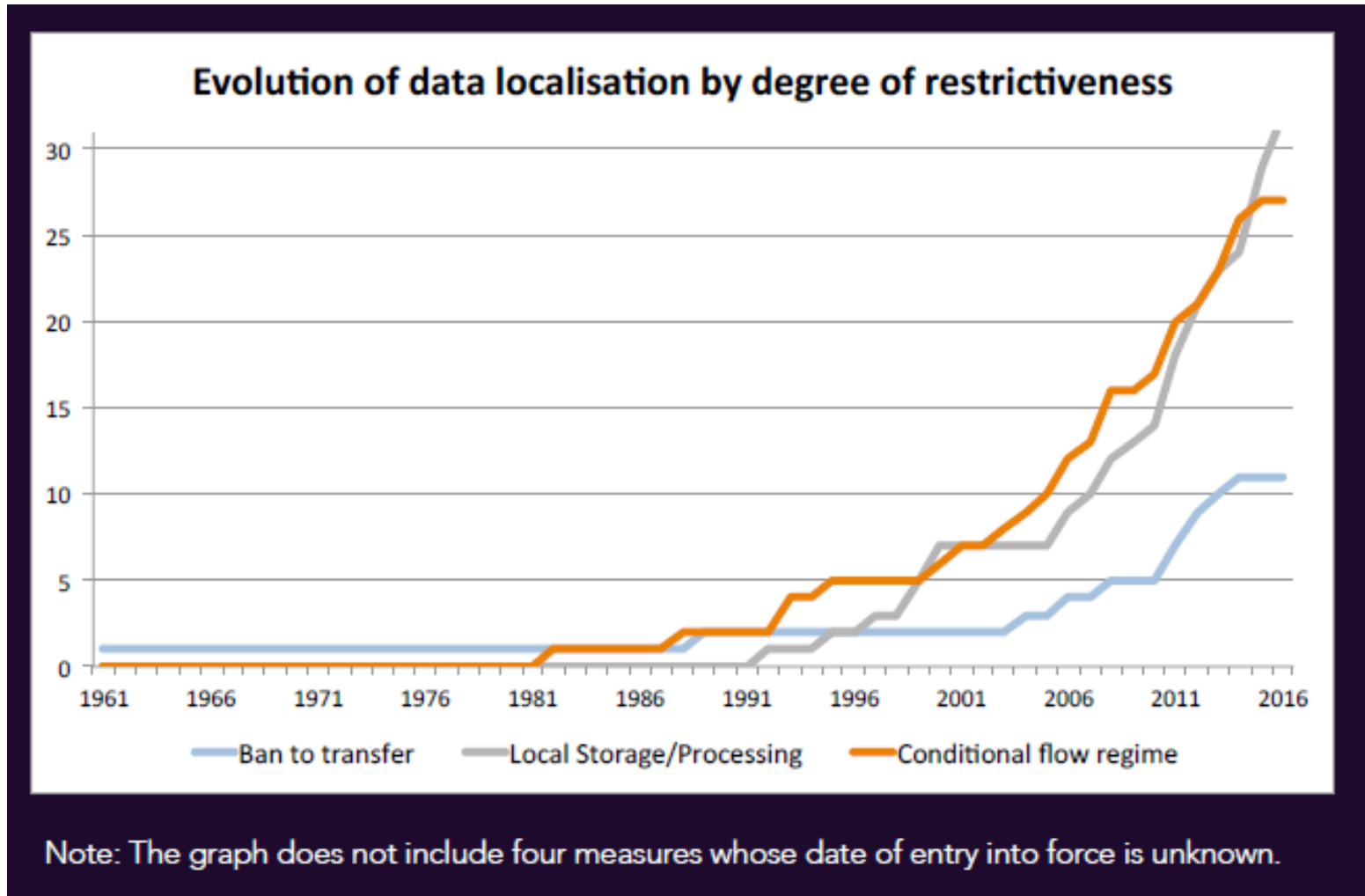
Consumer protection

IPR protection

Emerging Regulation

- Off-line rules apply
 - On-line world not exempt
- Internet regulation
 - Net neutrality – non-discrimination while monetizing the Internet
 - Data transfer regulation and data localization

A recent phenomenon



Source: ECIPE, Digital Trade Estimates Database

Data centre geography



Role for WTO?

- Facilitating environment – transparency, predictability, non-discrimination
- Value added – Governing trade component of digital economy
- SMEs – economic development – promoting access & capacity
- Resolving problems as they arise – by various means available to the WTO

What's at stake?
Who will benefit?

