

Electronic transmissions – History and discussions in the Council for Trade in Services (CTS)

***Work Programme on Electronic Commerce
Structured discussion
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Structure of the presentation

- Work Programme
- CTS mandate and discussions
 1. Phase 1 (1998-1999) – Intense activity
(Secretariat Background Note, subsequent discussion, adoption of CTS Progress Report to the GC)
 2. Phase 2 (2000-2010) – Slowdown and hiatus
 3. Phase 3 (2011 onwards) – Resumption

Work Programme (September 1998, [WT/L/274](#))

- Established as per the May 1998 Declaration on Global Electronic Commerce ([WT/MIN\(98\)/DEC/2](#))
- **Definition** of “electronic commerce”
- **General Council** to consider, inter alia, issues of a cross-cutting nature, and examine all aspects *“concerning the imposition of customs duties on electronic transmission”*
- Four bodies (CTS; CTG; Council for TRIPs; CTD) instructed to explore the **relationship** between existing **WTO Agreements and e-commerce**

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CTS mandate and discussions

- The WP mandated the CTS to “*examine and report on the treatment of electronic commerce in the GATS legal framework*”
- Non-exhaustive **list of issues to be examined**, including:
 - **Customs duties**
 - **Classification issues**
- Three **phases** to the discussion:
 1. Intense activity (1998-1999)
 2. Slowdown and hiatus in discussions (2000-2010)
 3. Resumption of discussions (2011 onwards)

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Phase 1 – Secretariat Background Note (Nov. 1998)

“Customs duties” ([S/C/W/68](#) - paras 34-35)

- Very **uncommonly** applied to services, but no reason in principle why they should not be applied to services, however supplied
- Measures **affecting trade in services**, relevant to **modes 1 and 2**
- Moratorium does **not cover internal taxation**
- Under the GATS “*what really matters is whether or not a Member has made a **National Treatment commitment** ruling out recourse to discriminatory taxes*”



YES

All **discriminatory taxes**
(incl. customs duties) are
in any case **prohibited**



NO

Freedom to impose discriminatory
internal taxes →
Moratorium would **not preclude**
recourse to discriminatory measures
with **effect identical** to customs duties

Phase 1 – Secretariat Background Note (Nov. 1998)



“Classification issues” ([S/C/W/68](#) - paras 36-38)

- **All services** are covered by the **GATS**, irrespective of means of delivery
- However, there were **classification questions** regarding certain products that can be delivered **both** in electronic and physical form
- Classification issue **cannot** be decided by reference to:
 - **Definition** – no comprehensive definition of services/goods
 - **Classification** – no classification would allow to conclude that all electronically delivered products are services
- In WTO system, legal regime applying to transactions is determined by the **nature of the product** being traded, not the means of delivery

November 1998 to July 1999

Members' submissions, numerous meetings, Interim Report to the GC
([S/C/8](#), March 1999), further meetings

→ July 1999 - CTS adopted a Progress Report to the General Council₈

Phase 1 – CTS Progress Report (July 1999)

“Customs duties” ([S/L/74](#) - paras 22-23)

- Members’ various views on customs duties:
 - Customs duties **could affect** e-commerce and the electronic supply of services
 - Concept alien to the GATS and **relevant only if** it were accepted that a category of electronically delivered **goods** exists
 - Could apply to services, but **implications** of applying customs duties to electronic transactions needed to be **clarified**
- Various positions on the Moratorium:
 - **Permanent and binding**
 - Permanent and binding, but without prejudice to **position on classification**
 - Extension only on **current basis**
 - Unless **classification** issue was solved, could not consider extension
 - **Not convinced** of the case for extension

Phase 1 – CTS Progress Report

“Classification issues” ([S/L/74](#) - paras 24-25)

- *“Members endorsed the view that **all services**, whether supplied electronically or otherwise, are **covered by the GATS**, and that the GATS makes **not distinction** between services provided electronically or by any other means. It was also observed that the **vast majority** of all products **delivered electronically are services.**”*
- Various views on classification:
 - **All** electronic deliveries are **services**
 - Still to be **clarified whether** a number of electronically delivered products should be classified as **goods** (→ GATT).
Question also raised if these products, even if classified as services, should be subject to full MFN, NT and prohibition of quantitative restrictions.
 - In some cases, a downloaded product may be regarded as **neither a good nor a service**. However, **no** suggestion was made that any product would fall **outside the scope of WTO agreements**
- + It was **agreed** that **further consideration** should be given **to the classification issue**, including the consideration of concrete examples

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Phase 2 (2000-2010) -

Slowdown and hiatus in the discussions



2000-2001

- In response to GC invitation to pick up work and identify possible cross-sectoral issues, CTS:
 - **Progress Report** was still accurate
 - Different views of whether customs duties and classification were **cross-cutting issues**
 - One call for examples of electronic deliveries that may not be classified as services

2002-2010

- No discussion

Phase 3 (2011 onwards) – Resumption of discussions

- Numerous **issues** discussed in the CTS under the Work Programme, but issues pertinent to electronic transmissions include:
 - Calls to **define the terms** used, including “electronic transmissions”, and the scope of the Moratorium
 - Calls to clarify the **classification** of e-commerce transactions (i.e. services vs. goods)
 - Requests to discuss the fiscal and other **implications of the Moratorium**
 - Calls for the **Moratorium** to be re-examined/extended/made permanent
- Locus of the discussion
- Calls to update the 1998 Secretariat Background Note ([S/C/W/68](#))

THANK YOU

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