

# Synopsis of WTO Members' E-Commerce, Telecommunications, Computer-Related Services Negotiating Proposals as of 7/2/01<sup>1</sup>

## Electronic Commerce

**Australia**                      **IP/C/W/233 December 7, 2000**

*Electronic Commerce Work Programme*

Addresses classification of digital products and suggests the overarching concern should be legal certainty. Suggests the TRIPS Council should focus its particular expertise in intellectual property on the classification issue.

**European Union**            **S/C/W/183 November 30, 2000**

*Electronic Commerce Work Programme*

Asserts that WTO rules and obligations are directly applicable to commerce performed electronically or otherwise. Endorses the moratorium on customs duties on electronic transmissions.

Addresses classification of digital products and suggests that the Council agreed to examine concrete examples of products delivered electronically, and consider the rationale behind not classifying them as services.

Asks how "new services" should be classified in existing nomenclature.

Asserts that the Telecoms Annex on access and use applies to internet access and internet network services as well as the GATS Reference Paper on Basic Telecommunications.

Suggests checklist negotiating approach in services negotiations to achieve market access and national treatment for e-commerce infrastructure services including telecommunications, computer related, advertising, distribution, and payment services, specifically:

**telecommunications:**

- voice services
- packet-switched data transmission services
- circuit-switched data transmission services
- private leased circuit services
- electronic mail
- voicemail
- online information and database retrieval
- electronic data interchange (EDI)
- enhanced/value added facsimile services, including store and forward, store and retrieve
- code and protocol conversion
- online information and/or data processing (including transaction processing)

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<sup>1</sup> Most Negotiating Proposals are available online at [HTTP://www.WTO.org](http://www.WTO.org)

**computer-related services:**

- consulting services related to the installation of computer hardware
- software implementation services
- data processing services
- database services

**distribution services:**

- wholesale trade services
- retailing services

**advertising services**

**banking services:**

- all payment and money transmission services
- trading for own account or for account of customers: foreign exchange

**MERCOSUR WT/GC/W/434 May 7, 2001  
(Argentina, Brazil, Paraguay, Uruguay)**

*Electronic Commerce-Horizontal and Sectoral Issues which Require Further Analysis  
Communication to the May 8, 2001 General Council Meeting*

Suggests that cross-sectoral electronic commerce issues should be treated by the General Council. Calls for the determination, of the conditions under which, contents of certain electronic transmissions should be considered services, goods or something else. Suggests that work within the subsidiary bodies (Council for Trade in Services, Council for Trade in Goods, Council for Trade Related Aspects of Intellectual Property Rights, Committee on Trade and Development) cannot be meaningful without this determination, particularly in the Council for Trade in Goods.

Notes that preoccupation with procedural issues i.e. the creation of an additional body to address horizontal electronic commerce issues, has impeded progress in the work program in the subsidiary bodies.

Identifies outstanding e-commerce issues requiring study:

Horizontal Issues

- (a) classification of contents of certain electronic transmissions
- (b) relationship and possible substitution effects of traditional forms of commerce and electronic commerce
- (c) questions relating to development including technical assistance

Services

- (a) scope of the GATS with respect to electronic delivery of services and the concept of technological neutrality
- (b) distinction between modes of supply 1 and 2
- (c) issue of likeness in terms of most favored nation and national treatment
- (d) issues relating to domestic regulation in the context of article VI.4 of the GATS
- (e) technical barriers to trade in the context of services faced by developing countries in foreign markets
- (f) access to distribution channels and information networks
- (g) clarification of specific commitments on Internet access networks and services

Goods

- (a) market access for and access to electronic commerce products
- (b) valuation issues
- (c) applicability of rules of origin in electronic trade environment
- (d) technical barriers relating to electronic commerce (standards and technical regulations)

Intellectual Property



**Singapore (Non Paper) June 15, 2001**

*Electronic Commerce: Digitized Products*

Proposes that digitized products be treated as services and subject to the disciplines of the GATS in order to provide legal certainty for the treatment of these products.

Identifies distinction between the transmission and consumption of a digital product. Suggests that the transmission stage qualifies as mode 1 of a service and that the consumption stage needs to be clarified.

Contends that under the Harmonized System (HS), a book transmitted electronically cannot be considered "like" a book delivered by airmail. Contends that the Harmonized System classifies a product by its form not by its content.

Suggests that classifying digitized products as goods would subject them to border measures such as customs duties.

Affirms that the TRIPS Agreement applies to duplication of digitized products.

Recognizes concern that classification of digitized products as services may call into question Information Technology Agreement (ITA) protection.

Suggests that Members would have to agree to accord full national treatment and market access to digitized products classified as services.

**Computer and Related Services**

**Canada S/CSS/W/5/6 March 14, 2001**

*Initial Negotiating Proposal on Computer and Related Services*

Notes that 62 WTO Members' GATS schedules contain commitments without MFN exemptions specific to the sector; although, commercial presence (Mode 3) restrictions are present.

Suggests clarification of classification of computer and related services that may overlap telecommunications services.

Urges removal of movement of natural persons restrictions (Mode 4) on computer and related services. (CSI suggests the same in its recommendations to USTR.)

Seeks broader and deeper computer and related services commitments.

**Telecommunications Services**

**Australia S/CSS/W/17 December 5, 2000**

*Negotiating Proposal for Telecommunication Services*

Seeks recognition that Internet Delivery Services (packet-switched data transmission services) are basic telecommunications services and subject to the Telecommunications Reference Paper.

Seeks clarification of certain articles of the Telecommunications Reference paper, without renegotiating the document, including the articles on competitive safeguards, interconnection, public availability of licensing criteria, independent regulators, and allocation and use of scarce resources.

Australia is seeking greater transparency in interconnection arrangements and licensing requirements by WTO Members, under the Reference Paper. Australia is also seeking nondiscriminatory access to spectrum, and that spectrum regulatory requirements should be nondiscriminatory and apply to all users of the same category of spectrum resources.

Asserts that "international termination services" are traded services and subject to dispute as Australia believes the moratorium on disputes relating to accounting rates has expired as of January 1, 2000.

In the absence of a competitive environment, Australia asserts that WTO Members must promote fair competition in international charging agreements for Internet services.

Seeks the removal of commercial presence requirements of telecommunications service providers from WTO Members' GATS schedules.

Seeks the removal of satellite operator exceptions from WTO Members' GATS schedules.

Australia is concerned that technical standards and licensing requirements may create significant trade barriers. Australia seeks to ensure that domestic regulation of telecommunications services is transparent and least trade restrictive, by strengthening GATS Article VI Domestic Regulation.

### **European Union S/CSS/W/35 December 22, 2000**

#### *GATS 2000: Telecommunications*

Characterizes WTO Members' telecommunications commitments. Notes common limitations with respect to market access: restrictions on the number of operators, type of legal entity, level of direct and indirect foreign ownership. Notes absence of commitments regarding national treatment with respect to terms of residence, ownership of property or lands, and nationality of certain categories of personnel. Notes excessive phase in periods. Recognizes adoption of the Reference Paper by 66 WTO Members.

Seeks to improve the temporary movement of natural persons (mode 4) with caveats. Seeks commitments in cross-border (mode 1), consumption abroad (mode 2), and commercial presence (mode 3) without restriction in the following subsectors:  
**telecommunications:**

- a. voice services
- b. packet-switched data transmission services
- c. circuit-switched data transmission services
- d. telex services
- e. telegraph services
- f. facsimile services
- g. private leased circuit services
- h. electronic mail
- i. voicemail
- j. online information and database retrieval
- k. electronic data interchange (EDI)
- l. enhanced/value added facsimile services, including store and forward, store and retrieve
- m. code and protocol conversion
- n. online information and/or data processing (including transaction processing)
- o. other

Seeks the elimination of MFN exemptions related to satellite services and accounting rates.

**Canada S/CSS/W/53 March 14, 2001**

*Initial Negotiating Proposal on Telecommunication Services*

Canada urges WTO members, who have not made commitments in basic and value added telecommunications or who have made limited commitments or commitments with long phase in periods, to make commitments and to accelerate liberalization.

**Japan S/CSS/W/42 December 22 2000**

*The Negotiations on Trade in Services*

Notes market access limitations on basic and value added services. Expects improvements in the following areas from negotiations:

- Exemptions of most favored nation treatment in providing services
- Restrictions on the participation of foreign capital
- Unreasonably high licensing charges
- Quantitative limitation on new entrants
- Monopoly of business by state-owned enterprises
- Nationality and residency requirements for board members and other management personnel
- Different regulations in sub-central governments
- Domestic procurement requirements

Encourages WTO Members who have not yet committed to the Reference Paper to adopt it.

**Norway S/CSS/W/59 March 21 2000**

*The Negotiations on Trade in Services*

Notes WTO Members' market access limitations on foreign investment and number of service suppliers. Notes lack of basic and value added telecommunications commitments from WTO Members. Urges adoption of agreements on value added and basic

telecommunications services (including satellite, Internet and mobile services). Urges full adoption of the Telecommunications Reference Paper.