



International Chamber of Commerce

The world business organization

Policy statement

Trade-related aspects of electronic commerce and telecommunications

Commission on Telecommunications and Information Technologies, 6 June 2001

French version

ICC shares a common interest in working with the World Trade Organization (WTO) and its members to determine how the WTO can support the development of e-commerce in a manner that ensures participation by all countries in the online global economy. To begin this work, ICC would like to set forth the following negotiating objectives:

1. to promote the development of the infrastructure that is necessary to conduct e-commerce;
2. to promote the development of trade in goods and services via e-commerce; and
3. to prevent the establishment of new barriers to e-commerce during and after the GATS* 2000 negotiations.

Given that e-commerce is a new and dynamic medium to deliver goods and services, it needs comprehensive consideration to ensure its true potential. In that regard, ICC members view the following comments and negotiating objectives as part of an ongoing dialogue among business, governments, and other stakeholders that will take place formally and informally during the GATS 2000 negotiations and any potential new round. Interim progress on the objectives set forth would be most welcome.

While important progress has been achieved, a significant number of barriers remain, barriers which could and should be reduced in WTO GATS 2000 negotiations. Liberalization, complemented by transparency, competition, and regulatory reform are critical to economic growth and stability. Moreover, providers, users, and consumers stand to benefit from greater competition, choice, and convenience.

The success of WTO negotiations will depend on the active participation of developing countries. The elimination of obstacles to trade in goods and services and the effective and timely implementation of the Trade Related Aspects of Intellectual Property (TRIPS) agreements will play a critical role in the economic development of developing countries and in the seizing of digital opportunities through improved infrastructure, greater choice at lower costs, and improved efficiency. Therefore, ICC strongly believes that liberalization should occur at the earliest opportunity and underlines the need for the GATS 2000 negotiations to extend effective market access on a mutually-beneficial reciprocal basis, while recognizing the particular circumstances of developing countries.

1. To promote the development of e-commerce infrastructure, ICC urges WTO members to:

- work to increase membership in the Information Technology Agreement (ITA) and redouble their efforts to conclude the ITA II agreement. These agreements are important to ensure that all countries have access to the hardware and software necessary to deploy and access the e-commerce infrastructure;

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- ensure that there are the necessary market access and national treatment commitments across sectors that are associated with the infrastructure needed for business-to-business and business-to-consumer e-commerce; and
- refrain from imposing new barriers to the development of the e-commerce infrastructure

Basic telecommunications and value-added services and certain financial services (i.e. payment systems) particularly are critical components of an e-commerce infrastructure. In both sectors, WTO members have made significant sector-specific commitments, which serve as a basic and necessary foundation for all e-commerce activity around the world. In the current GATS 2000 negotiations, all WTO members should strive for broader and deeper commitments in all subsectors of telecommunications and financial services in order to promote the development of the infrastructure needed for e-commerce specifically and global trade generally.

2. To promote the development of trade via e-commerce, ICC urges WTO members to:

- continue to pursue formal recognition in the WTO that current commitments under WTO Agreements including the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS) and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), apply to electronic commerce;
- agree that the existing GATS classifications should be flexible enough to accommodate technological progress in the delivery of services. As technology evolves, the interpretation of existing classification of services based on this technology should also evolve to capture these advances. Through classification flexibility, WTO member countries can ensure that they benefit from the tremendous productivity increases and cost savings associated with the information technology revolutions;⁽¹⁾
- ensure that electronically delivered products (i.e. good or service) receive market access and national treatment benefits that are no less favorable than those currently available for such products delivered physically;
- make meaningful market opening commitments in all service sectors, especially those services that can be delivered via e-commerce whether on a cross-border or consumption abroad basis; and
- ensure the effective and timely implementation of TRIPS by all existing and acceding WTO member states. With the rapid development of digital technologies and electronic services, the need for strong protection and enforcement of intellectual property rights is imperative. The TRIPS Agreement plays a very important role insofar as it provides minimum standards for such protection and enforcement.

3. To prevent the development of new barriers to e-commerce pending the completion of negotiations and beyond, ICC urges WTO members to:

- pursue a standstill commitment not to impose new restrictions that could adversely affect e-commerce during the course of the negotiations;
- pursue adoption of the recommendations made in the WTO 1998-99 work programme on e-commerce which include the need to avoid unnecessary barriers to e-commerce;



- agree that when legitimate policy objectives require domestic regulations, that those regulations will be, to the greatest extent possible, least trade restrictive, transparent and promote an open market environment;
- make permanent the practice of not imposing customs duties on electronic transmissions; and
- pursue the continuation of the work programme on electronic commerce within the WTO.

The traditional role of the WTO - and its predecessor, the GATT - has been to reduce and eliminate barriers to trade. This is a role that the WTO can play for e-commerce by providing a forum in which WTO members can negotiate new commitments to reduce existing barriers to e-commerce and enforce existing commitments that protect e-commerce through the WTO Dispute Settlement Mechanism.

It is equally important that the WTO play a role in preventing the development of barriers to e-commerce. It is important that this approach underpin the GATS 2000 negotiations and the launch of a new round of negotiations.

Basic telecommunications, value-added services and computer and related services provide the infrastructure for electronic commerce. If countries have not already done so, they should fully liberalize these sectors during the GATS 2000 negotiations. Given ICC's deep involvement in representing business during the development of the "GATS Telecommunications Annex" and the "Basic Telecoms Agreement", specific suggestions relating to these sectors are set forth below.

ICC believes that existing telecommunications regulatory frameworks are ill suited for the Internet. Since, historically, telecommunication services have been provided by government-owned or government-sanctioned monopolies, encouraging the movement to competitive telecommunications markets has required the development of a pro-competitive regulatory framework that relies, to some extent, on sector-specific, ex-ante rules. In contrast, electronic commerce has been markedly different. Since its inception, electronic commerce has been driven by highly competitive firms operating in an open and dynamic market. Therefore, ICC members agree that the "Reference Paper" on basic telecommunications services does not apply and should not be applied to value added services, including Internet services. However, a fundamental aspect of a competitive Internet market, is the ability of value-added service providers, including Internet Service Providers, to have access to and use of the underlying public telecommunications networks as provided for in the GATS Telecommunications Annex. As the existing basic telecommunications regulatory framework is designed for a specific purpose addressing a special situation (traditionally regulated monopoly telecommunications services), ICC does not support extending the provisions in the GATS "Reference Paper" on basic telecommunications services on interconnection to the Internet, but trusts in the appropriate application of competition law when needed.

Telecommunications

ICC members believe that liberalization of telecommunications services and facilities must continue to be a top priority of governments for the services negotiating objectives because of the dual role that telecommunications plays as a distinct sector and as the necessary infrastructure for the delivery or transport of other goods and services, including via the Internet and e-commerce. Opening markets for telecommunications also benefits consumers worldwide by bringing increased choices and lower prices.



Basic telecommunications

ICC continues to be concerned that several countries are not implementing their existing commitments and that some countries have not yet accepted the Fourth Protocol. During the WTO GATS 2000 negotiations, consideration should be given to the extent to which countries have met their current obligations with respect to their market access and national treatment commitments and implementation of the "Reference Paper" on basic telecommunications services.

For the GATS 2000 negotiations, ICC would like to see improvements in existing basic telecoms commitments as well as first-time commitments from WTO members that have not made basic telecoms commitments in the past.

ICC proposes the following general negotiating objectives:

Broader market access commitments

Several countries have committed to a narrow opening of their markets. Countries must commit to full-service market access. This is particularly important in light of the convergence of services made possible by advanced digital technology.

Timelier implementation dates

Countries with commitments for market access that are not effective until post-2001 should advance their implementation dates. While some countries have opened their markets prior to the dates in their schedules, a number of key markets have not scheduled commitments until after 2002.

Commitments to the "Reference Paper" on basic telecommunications services

For companies to compete effectively, countries should commit to the "Reference Paper" on regulatory principles for basic telecommunications services in its entirety.

Reduction or elimination of restrictions on foreign ownership

Significant progress in reducing foreign ownership restrictions was obtained during the basic telecommunications negotiations, but in many countries foreign ownership restrictions continue to apply.

Commitments from additional countries

Of the 140 WTO members, 80 governments have made some telecommunications market access commitments covering either basic or value-added services. ICC encourages all governments to make meaningful market-opening commitments, which at a minimum include:

- full liberalization by a date certain;
- progressive removal of foreign ownership restrictions; and
- adoption of the "Reference Paper" in its entirety.

Value-added services

A number of countries made commitments as part of the Uruguay Round to open their markets for the provision of value-added telecommunications. These commitments facilitate on-line information and data-processing services, as well as electronic mail and voice mail. ICC seeks and advocates further liberalization in the provision of value-added services in the GATS 2000 negotiations, namely:

- broader market-access commitments that cover the full range of value-added services;
- timelier implementation dates;



- reduction or elimination of foreign ownership restrictions; and
- commitments from additional countries.

Moreover, as stated above, ICC members agree that the "Reference Paper" on basic telecommunications services does not apply and should not be applied to value-added services, including Internet services. However, WTO members should take the necessary steps to prevent anti-competitive practices by public telecommunications network operators and service providers that discriminate against unaffiliated value-added service providers and Internet Service Providers in contravention of the "GATS Telecommunications Annex". Adherence to the Annex will ensure that all value-added service suppliers, including Internet Service Providers, have non-discriminatory access to and use of the traditional underlying public telecommunications infrastructure necessary for the provision of these services.

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FOOTNOTES

* General Agreement on Trade in Services (GATS)

(1) Classification flexibility is limited to existing GATS classification schemes and does not refer to the classification of a product delivered electronically as either a good or a service.