

Date	Entity	Position
1998	Meeting minutes	‘Several delegations said that it was important to affirm the technological neutrality of the GATS but some delegations wished to see more discussion of this notion.’
1998	General Council	‘In the context of the negotiations on Basic Telecommunications , the Chairman proposed in January 1997 an interpretative note, which was adopted by the Group on Basic Telecommunications and attached to its report to the Services Council and which confirmed the principle that commitments undertaken were technology-neutral: in the absence of an indication to the contrary, any commitment would be assumed to cover local, long distance and international services for public and non-public use, on a facilities or resale basis, and using any technological means of supply (cable, radio, satellite, Internet, etc.).’ ¹
1999	Council for Trade in Services, Report Of The Meeting Held On 14 And 15 December 1998, Note by the Secretariat	‘On the basis of the informal meeting the Chairman provided the following summary under his own responsibility: . . . Members agreed that the GATS applied to all services regardless of the means of technology by which they were delivered. This was further reinforced by the fact that in no area of the WTO were there different rules for different techniques of delivery. It was noted that the principle of technological neutrality also applied to scheduled commitments, unless the schedule specified otherwise: it was therefore possible for Members to schedule commitments in a non-technologically neutral manner. It was suggested that consideration should be given to how technological neutrality in electronic commerce would apply to existing commitments and to certain new services.’ ²
1999	Council for Trade in Services, - D R A F T -, Interim Report on Electronic Commerce including for meeting on 9/2/1999	‘Members generally agreed that the principle of technological neutrality applied to GATS commitments, meaning that market-access commitments cover the supply of the committed service by all technological means, including electronic means. . . . It was the general view that the principle of technological neutrality applied to all specific commitments, including all market access and national treatment aspects.’ ³
1999	Council for Trade in Services, Report Of The Meeting Held On 9 And 15 February 1999 , Note by the Secretariat	‘The discussion was held in informal mode. Subsequently, the Chairman provided the following summary on his own responsibility: . . . Members agreed that the principle of technological neutrality applied to GATS commitments, meaning that market-access commitments cover the supply of the committed service by all technological means, including electronic means. . . . It was the general view that the principle of technological neutrality applied to all GATS specific commitments, including all market access and national treatment aspects.’ ⁴
1999	Council for Trade in Services, Report Of The	Chairman: ‘It was the general view that the principle of technological neutrality applied to MFN and to all GATS

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	Meeting Held On 18 May 1999, Note by the Secretariat	specific commitments and therefore the likeness of products should not be affected by the technological means of delivery.’ ⁵
1999	Work Programme On Electronic Commerce, Progress Report to the General Council, Adopted by the Council for Trade in Services on 19 July 1999	‘It was also the general view that the GATS is technologically neutral in the sense that it does not contain any provisions that distinguish between the different technological means through which a service may be supplied. Some delegations expressed a view that these issues were complex and needed further examination ’ ⁶ This S/L/74 was quoted by the Panel in US-Gambling: which noted ‘that this is in line with the principle of "technological neutrality", which seems to be largely shared among WTO Members’ ⁷
1999	India	‘it could not be presumed that the principle of technological neutrality applied automatically to all specific commitments of Members, as this would have legal and political consequences arising out of negotiations in the Uruguay Round and resulting commitments. According to India a full consideration of the negotiating history of the GATS would be useful in this respect’
1999	Council for Trade in Services, Work Programme On Electronic Commerce, Interim Report to the General Council	‘Issues on which a common understanding appeared to be emerging include . . . The technological neutrality of the Agreement would also mean that electronic supply of services is permitted by specific commitments unless the schedule states otherwise.’ ⁸
1999	Council for Trade in Services report of meeting	‘In summarising the outcome of previous discussions, the Chairman recalled that delegations generally agreed that the principle of technological neutrality applied to specific commitments and underlined that it was important not to undermine existing commitments by suggesting that electronic delivery of services was not covered by the GATS. However it had been pointed out that it was necessary to discuss how restrictions on the technical means of delivery should be treated. The emergence of electronic commerce should not provide a reason to schedule new restrictions. Rather, the specification of some modes in the schedules as unbound due to lack of technical unfeasibility may need to be reviewed in the light of technological developments.’ ⁹
2000	India	‘She did not agree with everything that had been said on that occasion: in particular, she had heard it stated that the GATS guaranteed the right to do business electronically, that this was neither accidental nor incidental, and that this had been in the mind of some negotiators involved in the GATS. She had also heard it said that technological neutrality was fundamentally important and that this was an issue which had emerged from the work programme. She said that she had revisited the reports made by the subsidiary bodies to the General Council, and could not find any agreement by Members that these were conclusions that had been collectively reached.’ ¹⁰

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2001	MERCOSUR (Argentina, Brazil, Paraguay, Uruguay)	Horizontal and Sectoral Issues which Require Further Analysis: 'Scope of the GATS with respect to the electronic delivery of services, in particular the issues relating to the so-called concept of technological neutrality of the Agreement and the distinction between modes of supply 1 and 2 (paragraphs 4 and 5 of document S/L/74);' ¹¹
2001	India	'its capital was in the process of examining the issue of technological neutrality vis-à-vis financial services, India's preliminary view was that given the bottom-up approach of the GATS, the commitments for new services delivered through new technologies would have to be taken afresh and existing commitments would not apply to them. He reserved his delegations position until the next meeting.' ¹²
2001	Venezuela, also on behalf of Chile, Costa Rica, Colombia, Ecuador, and Peru	'In the Council for Trade in Services, the issues of the GATS and services delivered electronically; technological neutrality; domestic regulations; national security and protection of privacy; and classification should be further considered.' ¹³
2001	Thailand	'expressed reservations on Australia's proposals regarding technical neutrality and classification of delivery services, adding that her delegation was reflecting further on this.' ¹⁴
2001	Saint Lucia	'Saint Lucia challenged the notion of technological neutrality, as it could have far-reaching impact on future commitments, including across-the-board adoption of commitments in terms of the removal of barriers, the extension of commitments in one sector to a complimentary sector, or the adoption of regulatory principles without regard to the discretion built into the GATS.' ¹⁵
2001	Cuba	'the definition of technological neutrality was not included in the GATS, as it had been introduced in the negotiation on basic telecom in a very specific context. Developing countries could consider when that concept would affect their flexibility and their right to condition entry to their markets depending on the technology to be used, and perhaps transferred.' ¹⁶
2003	Switzerland	'Even though there was no precise reference to technological neutrality in the GATS, that was assumed by the Agreement.'
2003	Uruguay	'the concept of "technological neutrality" was not in the GATS. That was a legal interpretation by the Swiss delegation, but there was no agreement among Members on that issue.' ¹⁷
2003	Philippines	'The representative from the Philippines echoed the statements made by Argentina and Uruguay on technological neutrality. There was no reference to technological neutrality in the GATS, and such a concept

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		had not really been assumed by the GATS. In any case, that was only Switzerland's interpretation. ¹⁸
2003	Malaysia	‘supported the points raised by Argentina, Philippines and Uruguay on technological neutrality. There was no agreement among Members on the actual meaning of technological neutrality. The Malaysian delegation did not share Switzerland's views on that issue.’ ¹⁹
2003	Philippines	‘as indicated by several Members in previous meetings of the Committee, technological neutrality was not a basic assumption of the GATS. It was not provided for, either explicitly or implicitly, in the GATS.’ ²⁰
2009	China	<p>‘The principle of "technological neutrality", on which the US claim is actually based, has no textual basis in the WTO legal framework and is far from being a principle generally agreed upon among WTO Members. . . Unduly extending the scope of this contentious principle would be against the principle of progressive liberalization as reflected in the Preamble to the GATS and would preclude Members, especially developing Members, from making further commitments.</p> <p>4.160 A distinct service, such as network music services, which have not been offered for liberalization at the time of the negotiation of the Schedules for the simple reason that they hardly existed at that time, cannot be committed post hoc through the dispute settlement process. This is all the more true in view of the fact that new services appeared following the development of information technologies are currently subject to ongoing discussions within the WTO which are far from creating consensus among Members.’²¹</p>
2014	Secretariat	‘Referring to a Services Council document on e-commerce in 1990s, he noted that the principle of technological neutrality had been established for quite some time.’
2015	Secretariat	<p>‘a report of the Services Council, contained in document S/L/74 dated 27 July 1999, which examined how different GATS provisions would apply to e-commerce. It was there that Members had agreed to the concept of technological neutrality.’²²</p> <p>But: S/L/74 only says ‘It was also the general view that the GATS is technologically neutral in the sense that it does not contain any provisions that distinguish between the different technological means through which a service may be supplied.’</p>

¹ WT/GC/W/90

² S/C/M/32

³ S/C/W/100

⁴ S/C/M/33

⁵ S/C/M/36

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- ⁶ S/L/74 and S/C/W/115/Rev.1
 - ⁷ WT/DS285/R
 - ⁸ S/C/8
 - ⁹ S/C/M/37
 - ¹⁰ WT/COMTD/M/31
 - ¹¹ WT/GC/W/434
 - ¹² S/FIN/M/31
 - ¹³ WT/GC/M/65
 - ¹⁴ S/CSS/M/9
 - ¹⁵ S/CSS/M/10
 - ¹⁶ S/CSS/M/12
 - ¹⁷ S/FIN/M/40
 - ¹⁸ S/FIN/M/40
 - ¹⁹ S/FIN/M/40
 - ²⁰ S/FIN/M/42
 - ²¹ WT/DS363/R
 - ²² S/CSC/M/74 and in S/WPDR/M/58