

The High Stakes in MC11 for Developing Countries' Future Development Prospects

30 October 2017

Contents

I.	Context: The emerging Digital Economy	2
II.	All Countries Use Strategic Trade Policies – As Reflected in WTO Rules and Schedules.....	2
III.	The Digital Economy and WTO's rules	3
IV.	The Corporate Digital Agenda.....	3
V.	Digital Industrialisation and the Clash over Access to Markets	6
VI.	Domestic Regulation (DR) in Services in the Digital Economy	6
VII.	Trade Facilitation in Services	7
VIII.	Investment Facilitation (IF)	7
IX.	Agriculture.....	7
X.	Critical Decisions at the Ministerial	8
	1.Roll-Over of Existing Mandates Will be a Success for MC11.....	8
	2. PSH for E-Commerce is a Bad Exchange	9
	3. What Happened to the DDA Balance?.....	9
XI.	Process Issues and Final Outcome Document	9
XII.	Have Developing Countries Come Of Age?	9
	Annex 1: 1998 E-Commerce Work Programme	11
	Annex 2: US WTO Submission on E-Commerce (2016).....	13
	Annex 3: MSMEs and E-Commerce by the International Chamber of Commerce.....	16
	Annex 4: Japan's Latest Submission on the E-Commerce Decision.....	22
	Annex 5: Costa Rica's Submission on the E-Commerce Decision	23
	Annex 6: Summary of the E-Commerce Negotiations.....	25
	Annex 7: More detailed analysis of the latest Japan, Russia and Costa Rica Proposals.....	26
	Annex 8: Areas in the GATS where Members had Agreed would Require Further Discussions in the 1998 Work Programme	30
	Annex 9: Micro and Small and Medium Sized Enterprises (MSMEs)	35
	Annex 10: Domestic Regulation and How Member's Digital Industrialisation Strategies can be Challenged ..	36
	Annex 11: Short Analysis of the Trade Facilitation in Services (TFS) Proposal of India.....	37
	Annex 12: Short brief on the Investment Facilitation (IF) Issue	38
	Annex 13: Brief on the Agriculture Domestic Supports Issue	39
	Annex 14: Domestic Supports Provided by US, EU, China and India; and How Much Supports are Provided on a Per Farmer Basis	41
	Annex 15: Losses for Developing countries if we have no DDA Reaffirmation in MC11	44

The High Stakes in MC11 for Developing Countries' Future Development Prospects

30 October 2017

I. Context: The emerging Digital Economy

1. The digital economy is about to expand rapidly. This will bring further transformations across all sectors. Already we have seen glimpses of this revolution: Uber, Amazon and the 2 hour delivery of groceries (Amazon is now exploring how to deliver groceries into your refrigerators); whatsapp; wechat. This is only the beginning.

- Nature of goods and services are changing e.g. clothes and shoes become 'wearables' collecting data and communicating with customers. Adidas talks about how 'Data Is The Fuel And Analytics Is The Engine To Engage Customers'.¹ The value in digitalised cars will be the software, not the hardware. Goods are becoming services. Consumers want content and services (e.g. data from 'wearables' - shoes as a health service)
- How we do manufacturing is changing - smart factories; automation; centrality of technology and data
- How we deliver goods and services - delivery is not only digitalised, but interconnected eg. Car insurance goes down automatically because the data from your car tells your insurance company that you have been driving safely
- How we advertise and reach out to consumers- mass production to individual customerisation
- Platform economies changing entire sectors, challenging incumbents e.g. peer-to-peer financial lending on financial platforms. Some incumbents will be able to transform, many will not. Citibank says that 30% of bank jobs will be lost in the next 10 years. Others predict this to be 50%.² Associated sectors supporting banks will also be impacted as the financial sector transforms eg. Legal services, restaurants etc. The new digital players will create jobs, but these will be much fewer in number, and with a very different profile.

2. At the heart of this digital economy are data and technology. The new business model is data based. All sectors need to have a data strategy. You need to be collecting data, processing data, feeding this data to Artificial Intelligence (AI). Machine learning (the base of AI) depends on reams of data upon which products can be improved. With increasing digitalisation of all aspects of life, in theory, developing countries could even have the comparative advantage. But do we have the technology and skills? [Clearly similar parallels can be drawn with raw materials].

II. All Countries Use Strategic Trade Policies - As Reflected in WTO Rules and Schedules

1. Every economy attempting to catch up to the industrialisation process of the day has had to take some kind of strategic protectionist policies. Trade policy must be closely tied to our industrialisation policies.

- For all successful economies that have or had a large rural populations, agriculture has been critical because we need broad-based development to ignite and fuel the growth of domestic industries
- The growth of domestic industries require strategic tariff, trade and investment policies - with mixes of liberalisation and protectionism at different stages to nurture infant industries.

This is the case up until today. Even developed countries protect themselves. The GATT and GATS schedules are about strategic market opening.

¹ <https://www.digitalistmag.com/industries/retail/2015/01/15/adidas-data-fuel-analytics-engine-to-engage-customers-02083150>

² 2016, How FinTech is Shaping the Future of Banking by Henri Arslanian, TedTalk, <https://www.youtube.com/watch?v=pPkNtN8G7q8>

III. The Digital Economy and WTO's rules

The digital economy throws several of the known elements about trade into question.

1. Our Schedules

- Tariffs are no longer relevant. An e-dress whose design and size we customise online and 3D print locally will not be subjected to GATT tariffs (at this point). [Quite aside from the customs moratorium on digital transmissions, there is nothing yet on digital transmissions in our HS codes. We do not know if an e-dress is a good or service].
- Our GATS schedules and limitations will be difficult to implement. GATS Art XVI (market access) allows members to open a sector but limits that opening based on the number service suppliers; the value of service transactions; the quantity of service output; the type of legal entity or joint venture; participation of foreign capital etc. How to implement these when our own consumers can directly consume internet based services is a question.

So in fact, the digital economy de facto results in our markets being more open - unless governments step in to regulate. The good news is that until now, by and large, they can in fact step in to regulate.

2. We are also still constrained by TRIMS. It has been a difficult Agreement for many developing countries to digest. However, TRIMS does not cover services.

3. TRIPS is another difficult area for developing countries. However, TRIPS does not forbid regulations that mandate the use of local technologies.

4. We are confronted by some key questions:

i. How open or closed do we want our trade route to be? More or less, we have been able to determine our level of market opening or closing. Has this worked well enough? If we want this present system to continue - where we can open some sectors and close others, we understand the logic and wisdom in the 1998 E-Commerce Work Programme (contained in Annex 1).

The 1998 E-Commerce Work Programme talks about examining the treatment of electronic commerce in the GATS and GATT legal frameworks i.e. how can the GATS and GATT rules also apply to E-Commerce? GATS is based on 'progressive liberalisation' - i.e. liberalisation when Members are ready for it. The GATT liberalisation has also been undertaken gradually.

ii. How do we build domestic / regional markets? When tariffs are no longer relevant because digitalised goods are being bought by consumers without passing through customs, what does this mean for the domestic / regional markets that we are attempting to build? Domestic and regional markets are extremely important for industrial transformation. Most of Africa's value added production is absorbed by the African market. This explains Africa's emphasis on the building of the Continental Free Trade Area (CFTA) today. How can regional markets still be protected in the digital economy?

IV. The Corporate Digital Agenda

What is the corporate agenda driving the E-Commerce agenda in the trade negotiations? The corporations do not want a progressive liberalisation approach to accessing markets, but want to consolidate their ability to sell anything to any market cross border. I.e. forget about the existing Schedules but open digital markets completely. They also want TRIMS and TRIPS-plus elements.

These elements have been captured in the US WTO submission in 2016 (Annex 2), which is also reflected in the International Chamber of Commerce's position on Report on 'MSMEs and E-Commerce' (Annex 3). US' positions are also reflected in the EU and Japans' submissions. See the latest submission of Japan on the MC11 E-Commerce Ministerial Decision (Annex 4).

In particular, the US digital corporations have not attempted to hide their disapproval of the digital industrialisation strategies taken by some WTO Members.

The following documents provide valuable insights.

- USTR 'Key Barriers to Digital Trade', <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2017/march/key-barriers-digital-trade>
- USTR '2017 National Trade Estimate Report – Major Developments' <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2017/march/2017-national-trade-estimate-report-%E2%80%93>
- USTR '2015 Section 1377 Review on Compliance with Telecommunications Trade Agreements', https://ustr.gov/sites/default/files/2015-Section-1377-Report_FINAL.pdf
- Information Technology Industry Council (ITI) 'USTR Request for Public Comments to Compile the National Trade Estimate Report (NTE) on Foreign Trade Barriers' <https://www.itic.org/dotAsset/de95d136-0d4a-475b-bfac-80c6168bb21c.pdf>

Some highlights are pasted in the box below.

USTR Complaints About Countries' Digital Barriers include:

China

Web Filtering and Blocking in China: Eleven of the 25 most popular websites globally are currently blocked in China

Restrictions on Cloud Computing and Data Flows: China does not allow foreign-invested enterprises to directly offer cloud computing services within China, which is of enormous concern to US companies – both those that supply cloud computing services and those that need to source such services... **Elements of China's new Cybersecurity Law, authorize Chinese agencies to further restrict market access for cloud computing and other internet-related services through data and facilities localization requirements** that apply to services that the government deems critical.

Cybersecurity Regime: U.S. and global concerns have heightened over a series of Chinese cybersecurity measures that would impose severe restrictions on a wide range of U.S. and other foreign information and communications technology (ICT) products and services with an apparent long-term goal of replacing foreign ICT products and services with Chinese-made ICT products and services in China's market. **Concerns center on requirements in sectors that China deems "critical" that ICT equipment and other ICT products and services be "secure and controllable" and that certain cross-border flows would be restricted.**

Forced Technology Transfer: China also reportedly **conditions foreign investment approvals on technology transfers to Chinese entities; mandates adverse licensing terms on foreign IP licensors;** uses the anti-monopoly laws to extract technology on unreasonable terms; and subsidizes acquisitions of foreign high-technology firms to bring technology to the Chinese parent companies.

Electronic Payment Services: U.S. suppliers of electronic payment services (EPS) remain blocked from operating in China's market. Even though the United States won a WTO dispute in 2012 confirming China's obligation to permit foreign suppliers to provide EPS for domestic currency payment card transactions, **no foreign supplier has obtained a license to enable them to commence these operations in China.**

Voice over Internet Protocol (VoIP): China imposes unreasonably strict limitations on companies that wish to offer VoIP services in China. **China requires a supplier to have a value-added service (VAS) license to provide VoIP service, and a basic telecommunications service license in order to interconnect VoIP services with the public switched telecommunications network.** Foreign companies may obtain a VAS license only through a joint-venture company, and capitalization requirements for a basic telecommunications license exceed \$100 million. **China's requirements for a basic telecommunications service license make little sense for a service that requires no investment in or control of transmission facilities.**

Vietnam

Electronic Payment Services: In 2016, to promote the development of a local electronic payments industry, the Vietnamese Government issued Circular 19, **mandating all credit and debit transactions**

be processed through a national switch starting in 2018, which will hinder competitiveness of foreign payment suppliers.

India

Localized Safety Testing Requirements: For certain ICT products, the Indian government mandates that manufacturers register their products with laboratories affiliated or certified by the Bureau of Indian Standards (BIS), even if the products are already certified by internationally recognized laboratories. India has expanded the list of ICT products subject to testing. The ICT industry is facing significant delays in product registration due to lack of Indian government testing capacity, a cumbersome registration process, and tens of millions of dollars in additional compliance costs, which includes factory-level as well as component-level testing.

Indonesia

Restrictions on Imports of Mobile Technology: Indonesia imposes burdensome import licensing requirements for cell phones, handheld computers, and tablets. In 2016, Indonesia adopted regulations that require importers of devices with 4G technology to provide evidence of contributions to the development of the domestic device industry or cooperation with domestic manufacturing, design, or research firms in order to obtain an import permit.

Barriers to Internet Services: Indonesia's e-commerce roadmap – the package includes proposed requirements to establish a local business entity to do business with Indonesian citizens, to use a national payment gateway, to use local IP numbers, and to store data within Indonesia.

Korea

Restrictions on Location-Based Data: In 2016, the Korean government again rejected an application for a license to export from Korea location-based data necessary for the cross-border supply of services, such as traffic updates and turn-by-turn directions. Korea has never approved such a license, and has rejected 10 applications to date. This effective restriction on the transfer of location-based data, which is almost unique to Korea, disadvantages foreign suppliers that utilize globally distributed data centers, compared to local competitors that rely on local data processing centers.

Turkey

Data Localisation Barriers: In 2016, the Turkish Parliament passed the “Law on the Protection of Personal Data,” which limits transfers of personal data out of Turkey and in many cases requires firms to store data on Turkish citizens within Turkey. A separate law requires suppliers of Internet-based payment services to maintain key information systems within Turkey. This requirement has caused at least one foreign supplier to leave the market, since the economies of scale involved in operating global payment platforms often preclude investing in facilities in every market, even one as large as Turkey.

Nigeria

Cross-Border Data Flows: Guidelines for Nigerian Content Development in the ICT became mandatory in December 2015. The Guidelines contain problematic provisions that may undermine the ability of U.S. companies to compete in Nigeria's telecommunications sector, as well as other sectors of the economy that rely on telecommunications services. Of particular concern is a requirement to host all subscriber and consumer data in Nigeria, a requirement that could implicate Nigeria's WTO commitments relating to cross-border financial services and travel-related services.

According to the ITI (Information Technology Industry Council), the Guidelines require both foreign and local businesses to store all their data concerning Nigerian citizens in Nigeria. It also establishes local content requirements for hardware, software and services.

Digital corporations do not want governments to regulate in the future such that their global market access is restricted. To allow for markets to be open and not segmented

- data must flow without hindrance back and forth.

- Any localisation rules would also be costly because more data centers must be set up
- There should be no mandatory use of specific (domestically oriented) authentication methods, payment methods, or domestic technologies. All these would be costly or prevent market access.

Note in the box above the many elements in blue relate to electronic payment services. This is one of the 'Development' aspects of E-Commerce that has been suggested by Costa Rica (Annex 5). Whilst Costa Rica's proposal sounds innocuous (payment solutions to support developing countries), clearly there are major corporate interests involved in this area, or these complaints relating to payment services would not have been highlighted by the USTR.

(Annex 6 provides a summary of the latest at the WTO on E-Commerce. Annex 7 provides a more detailed analysis of the latest Japan, Russia and Costa Rica proposals. Annex 8 provides the areas in GATS where Members had agreed there should be further discussions in the early years after the launch of the Work Programme.)

V. Digital Industrialisation and the Clash over Access to Markets

Clearly there is a clash right now over access to markets – although the proponents of E-Commerce will not articulate it in those crude terms.

The Africa Group, LDCs, India and others have been stating the need for policy space, disagreeing with moving ahead to have new rules such as free data flows, emphasising digital industrialisation and the importance of having a data strategy and the ability to regulate data. In this context, they have reaffirmed continuation of the 1998 E-Commerce Work Programme.

The proponents of E-Commerce cannot even explain why they want to effectively marginalise the 1998 E-Commerce Work Programme and bring in free data flows and no localisation rules. Whilst in the 1980s/ 1990s, they had used liberalisation as the clarion call, this has become so discredited including by their own citizens. As such, they are using Micro and Small and Medium Sized Enterprises (MSMEs) as the rather spurious reason why new E-Commerce rules that completely open up markets are in developing Members' interests. (See Annex 9 on the MSME issue).

The opposite in fact is true – if developing countries want to support MSMEs, rather than free data flows and disallowing localisation, governments must step in to localise certain data related services in order to encourage the growth of domestic capabilities in data related services, and thus develop digital domestic / regional economies. If they do not, they will simply be digital consumers in the new economy.

A recent New York Times article is tellingly entitled 'How the Frightful Five Put Start-Ups in a Lose-Lose Situation' (18 Oct 2017).³

VI. Domestic Regulation (DR) in Services in the Digital Economy

In the digital economy, many of the measures developing countries may want to take to put in place digital industrial policies can be challenged under the DR disciplines which proponents have put forward.

In the box above on USTR/ US corporate complaints, the elements in yellow can be subject to challenge if the DR disciplines requested by proponents come into force. If developing countries want to digitally industrialise, these disciplines are simply inappropriate.

Possible DR rules were conceived in a different era, to deal especially with Mode 4 concerns – hence the first Working Party was on Professional Services. Applied generally and in the context of the digital economy which is also disrupting / bypassing GATS Art XVI limitations, these rules are inappropriate today (See Annex 10 on Domestic Regulation and how Members' digital strategies can be challenged under these disciplines).

³ https://www.nytimes.com/2017/10/18/technology/frightful-five-start-ups.html?_r=0

VII. Trade Facilitation in Services

The TFS is a combination of some of the very problematic domestic regulation elements as proposed by DR proponents, and also E-Commerce issues (free data flows in committed Mode 1 sectors). (See Annex 11 on the TFS)

The benefits for developing countries that are mostly net services importers are elusive. Whilst there are useful Mode 4 elements, these are outweighed by the DR and E-Commerce elements. This is why it was criticised by many developing countries.

Furthermore, before there can be rules to have free data flows in Mode 1, the conversation needed in the 1998 Work Programme on whether or not the GATS is technological neutral will need to be resolved. Taking on commitments on data flows without resolving this issue could bring very unpleasant surprises in the future.

VIII. Investment Facilitation (IF)

Some proponents have put forward possible elements of rules on Investment Facilitation. Any formal work on investment would be contrary to the July Framework that no work on the Singapore issues is to be undertaken in the WTO during the Doha Round.

Proposed IF elements are

- i) equivalent to 'DR rules on steroids' – One draft IF Agreement has suggested expanding the main DR discipline (measures developed have to be objective and criteria) to be applied to any criteria countries establish to screen and select investors.
 - ii) The IF proponents claim that IF has nothing to do with market access, but in fact, the elements have to impinge on pre-establishment and thus market access.
 - iii) IF rules will add to the problematic elements of the Bilateral Investment Treaties (BITs) rather than resolve the difficulties developing countries are already experiencing.
- (See Annex 12 for a short brief on the IF issue)

IX. Agriculture

There may be no outcome in Domestic Supports. Currently, payment is being asked of developing countries, rather than sought from developed countries! This completely disregards the inequities inbuilt in the Uruguay Round's Agreement on Agriculture. At least some of these inequities were recognised in the DDA, its principles, mandates and documents (Decisions as well as the last modalities text commonly known as the 'Rev.4'). The Rev.4 remains the final position of many developing countries.

See Annex 13 for a brief on the Agriculture Domestic Supports issue. See below on Public Stockholding. See Annex 14 for domestic supports of key players as notified to the WTO and what this means at a per farmer level.

X. Critical Decisions at the Ministerial

1.Roll-Over of Existing Mandates Will be a Success for MC11

a. DDA Continues i.e. we should have at least the Nairobi Ministerial Declaration language on the DDA. Failing which, it would be better to have a Chair's Statement. There are many losses for developing countries if we do not have DDA reaffirmation –

- July Framework language on no Singapore issues;
- Agriculture especially no commitments for countries with 0 AMS;
- Cotton;
- Special and Differential Treatment para 44 etc.

(See Annex 15 for the important mandates that would be lost if there is no DDA affirmation).

b. There will be an E-Commerce Ministerial Decision – this should reaffirm the continuation of the 1998 E-Commerce Work Programme. The discussions must take place in the relevant bodies (para 2 – 5 of the Work Programme) that oversee the existing WTO Agreements – the Council for Trade in Services, the Council for Trade in Goods, the Council for TRIPS, the Committee for Trade and Development (CTD).

There are attempts to formalise a horizontal discussion through a Working Group or the formalisation of the Dedicated Session. Given the interests behind such a move, this shift will marginalise the relevant bodies and hence the existing Agreements.

Proponents are also seeking to expand the issues discussed under the Work Programme, including those outside the existing Agreements (e.g. free data flows, no localisation requirements etc). This should not be agreed to.

c. DDA is already a Work Programme. Any language on a Future Work Programme is Riddled with Traps

Any language on the future work programme should at the most consist only of what is in Part III of the Nairobi Ministerial Decision reflecting

- i. different positions on the DDA (para 30 – Many reaffirm the DDA, others do no).
- ii. the strong commitment to advance negotiations on the remaining Doha issues.

Even to have ii without i would be highly problematic since it means those issues could be negotiated absent the DDA principles.

The DDA is already a work programme. To define an alternative Work Programme without reference to the DDA would not legally, but would in effect signal its demise. Also any Doha issue negotiated thereafter (eg agriculture, cotton, S&D), would not be premised on the DDA principles and mandates. It would be an uphill and impossible struggle to reinstate some of those critical flexibilities for developing countries.

d. Avoid Bringing Domestic Regulation (DR), Investment Facilitation (IF), MSMEs to MC11 – there is no Consensus on any of these issues

There is no need to have any language on any of these issues in the MC11 outcomes. Up to now, there is no consensus on these issues, and thus these issues should be dropped from the MC11 agenda completely.

On Domestic Regulation – there are many other mandates in the GATS for which negotiations have not advanced. Why pick out Domestic Regulation (GATS Art VI.4)? There is even stronger language on the development of Emergency Safeguards (GATS Art X), but this issue has languished.

Developing countries should not be baited into agreeing to any language on these issues in relation to future work.

Language that would bring the WTO towards rules in these areas (DR, IF) will eventually lead to constraints on developing countries' policy space when we want to undertake digital industrialisation strategies.

Equally, the MSME Agenda should be avoided. This is a Trojan horse for any number of new issues in the future.

2. PSH for E-Commerce is a Bad Exchange

Public Stockholding is an extremely important issue. However, up till now, there is no discernible improvement from the Peace Clause that has been offered. In fact, further conditionalities have been suggested (no exports, more transparency).

If the exchange is to for developing countries to be flexible in the E-Commerce Work Programme and move discussions away from the existing WTO Agreements towards discussing the type of digital rules the Corporations are requesting, this would be a disastrous exchange.

It would be effectively about delivering on a part of the problem in agricultural rules in exchange for opening up completely in NAMA and Services (as E-Commerce would be the trade route for NAMA and Services in the future).

3. What Happened to the DDA Balance?

Traditionally, in the DDA, agriculture was to be 'paid' by developed countries, and in exchange, developing countries were supposed to reduce barriers on NAMA and Services (not eliminate barriers).

This exchange is sought to be completely overturned today. Developed countries do not want to 'pay' in agriculture – in fact, they have been seeking payment from developing countries. Nevertheless, they want developing countries to pay in NAMA and Services, via E-Commerce – not simply lower tariffs, but completely eliminate barriers (free data flows, no local data strategy or localisation policies).

XI. Process Issues and Final Outcome Document

1. In the last 2 Ministerials, the issues most wanted by developed countries are not brought to the table at the MC for discussion by all Members (TFA in Bali; DDA/ new issues language in Nairobi Ministerial Declaration). Instead time was dragged out by negotiations on the 'package' – PSH in Bali; Export competition in Nairobi, until the conference extended into an extra day. This is a strategy to leave no time for discussions when the language on critical issues do emerge.

2. In the past 2 Ministerials, negotiations have been very exclusive to only a few. No big green room was held that included the G90 and other developing country coordinators and with breaks for consultations with the coalitions. This used to be the practice of some earlier Ministerials.

3. Negotiations have taken place around the clock to wear out the few Ministers that are trying their best to uphold a development position (they are usually also outnumbered).

4. By dragging out an extra day, many developing country Ministers would have left by the time the most critical decision has to be taken.

5. The final document is brought to all Members an hour or an hour and the half before the final plenary session. Most developing countries cannot object due to political pressures and their Ministers are not even present.

6. What is sought this time by developed countries is

- language on E-Commerce
- language on the future work (language on new issues, Domestic Regulation, IF, MSMEs)
- No reference to the DDA (this is linked of course to the nature of the final outcome document).

7. Members must state upfront that they must be included in the negotiating process on all these issues. They do not guarantee agreement if they are confronted with a fait accompli text at the end.

8. Ahead of MC11 – there must be the moment of truth that some have talked about – where issues that do not enjoy consensus are not brought to the Ministerial – neither for a package, nor for inclusion in the future work.

9. There should be early decision on the form of the outcome document. If there is no DDA mention, developing countries should not ask for a Ministerial Declaration. This would be contrary to our interests.

XII. Have Developing Countries Come Of Age?

Every small step we concede at every Ministerial, is pushed further at the next Ministerial. William Ury talks about the Power of a Positive No.

Which is made up of **YES! No. Yes?**

YES! Is an articulation of our interests and why. Digital Industrialisation, Development, Food Security, Employment etc.

No is the response after having evaluated what the other side has offered, and if this offer is judged not to be in keeping with our interests.

Yes? Is a proposal that honours our interests. It is a proposal – thus it leaves the door open and signals to the other that we remain interested to engage – if it respects our core principles, values and interests.

To come of age is to stand at the same place, and simply reaffirm our No until such time a Yes can be reached that also honours our interests. This is extremely difficult. However, it is the mark of maturity.

Annex 1: 1998 E-Commerce Work Programme**WORLD TRADE
ORGANIZATION****WT/L/274**

30 September 1998

(98-3738)

WORK PROGRAMME ON ELECTRONIC COMMERCEAdopted by the General Council on 25 September 1998

1.1 The Declaration on Global Electronic Commerce adopted by Ministers at the second session of the Ministerial Conference urged the General Council to establish a comprehensive work programme to examine all trade-related issues relating to global electronic commerce, taking into account the economic, financial, and development needs of developing countries, and to report on the progress of the work programme, with any recommendations for action, to the Third Session. The General Council therefore establishes the programme for the relevant WTO bodies as set out in paragraphs 2 to 5. Further issues may be taken up at the request of Members by any of these bodies. Other WTO bodies shall also inform the General Council of their activities relevant to electronic commerce.

1.2 The General Council shall play a central role in the whole process and keep the work programme under continuous review through a standing item on its agenda. In addition, the General Council shall take up consideration of any trade-related issue of a cross-cutting nature. All aspects of the work programme concerning the imposition of customs duties on electronic transmission shall be examined in the General Council. The General Council will conduct an interim review of progress in the implementation of the work programme by 31 March, 1999. The bodies referred to in paragraphs 2 to 5 shall report or provide information to the General Council by 30 July 1999.

1.3 Exclusively for the purposes of the work programme, and without prejudice to its outcome, the term "electronic commerce" is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means. The work programme will also include consideration of issues relating to the development of the infrastructure for electronic commerce.

1.4 In undertaking their work, these bodies should take into account the work of other intergovernmental organizations. Consideration should be given to possible ways of obtaining information from relevant non-governmental organizations.

Council for Trade in Services

2.1 The Council for Trade in Services shall examine and report on the treatment of electronic commerce in the GATS legal framework. The issues to be examined shall include:

- scope (including modes of supply) (Article I);
- MFN (Article II);
- transparency (Article III);
- increasing participation of developing countries (Article IV);
- domestic regulation, standards, and recognition (Articles VI and VII);
- competition (Articles VIII and IX);

- protection of privacy and public morals and the prevention of fraud (Article XIV);
- market-access commitments on electronic supply of services (including commitments on basic and value added telecommunications services and on distribution services) (Article XVI);
- national treatment (Article XVII);
- access to and use of public telecommunications transport networks and services (Annex on Telecommunications);
- customs duties;
- classification issues.

Council for Trade in Goods

3.1 The Council for Trade in Goods shall examine and report on aspects of electronic commerce relevant to the provisions of GATT 1994, the multilateral trade agreements covered under Annex 1A of the WTO Agreement, and the approved work programme. The issues to be examined shall include:

- market access for and access to products related to electronic commerce;
- valuation issues arising from the application of the Agreement on Implementation of Article VII of the GATT 1994;
- issues arising from the application of the Agreement on Import Licensing Procedures;
- customs duties and other duties and charges as defined under Article II of GATT 1994;
- standards in relation to electronic commerce;
- rules of origin issues;
- classification issues.

Council for TRIPs

4.1 The Council for TRIPs shall examine and report on the intellectual property issues arising in connection with electronic commerce. The issues to be examined shall include:

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

Committee for Trade and Development

5.1 The Committee on Trade and Development shall examine and report on the development implications of electronic commerce, taking into account the economic, financial and development needs of developing countries. The issues to be examined shall include:

- effects of electronic commerce on the trade and economic prospects of developing countries, notably of their small- and medium-sized enterprises (SMEs), and means of maximizing possible benefits accruing to them;
- challenges to and ways of enhancing the participation of developing countries in electronic commerce, in particular as exporters of electronically delivered products: role of improved access to infrastructure and transfer of technology, and of movement of natural persons;
- use of information technology in the integration of developing countries in the multilateral trading system;
- implications for developing countries of the possible impact of electronic commerce on the traditional means of distribution of physical goods;
- financial implications of electronic commerce for developing countries.

Annex 2: US WTO Submission on E-Commerce (2016)**WORLD TRADE
ORGANIZATION**

JOB/GC/94

4 July 2016

(16-3590)

Page: 13/45

Original: English

**WORK PROGRAMME ON ELECTRONIC COMMERCE
NON-PAPER FROM THE UNITED STATES**

The following non-paper, dated 1 July 2016, is being circulated at the request of the delegation of the United States.

INTRODUCTION

The United States has noted with appreciation a revived attention among Members to questions relating to electronic commerce and/or digital trade during the period since the WTO's 10th Ministerial Conference. It is encouraging that many WTO Members appear open to exploring how such issues may be relevant to the definition of future work in the WTO. This is particularly the case in light of the rapid growth of an electronic/digital component in global trade flows, and of the apparent interest of many Members in exploring positive linkages between digital trade and economic development.

The United States perceives that WTO Members remain in a period of defining terminology, studying implications, and considering in a deliberate fashion how best to approach new WTO work on e-commerce/digital trade. At present, the United States has no preconceived views on best approaches, or on whether negotiations on specific aspects of e-commerce should be pursued, and if so on what bases. The United States believes that, in this as in other aspects of our post-Nairobi work, it is critically important to consider all issues carefully, deliberatively, and through a wide variety of conversations.

In the interest of contributing to this emerging, positive discussion, the United States offers this non-paper outlining a number of trade-related policies that can contribute meaningfully to the flourishing of trade through electronic and digital means. Again, the United States emphasizes that it is advancing no specific negotiating proposals at this time. The concepts presented here are intended solely to contribute to constructive discussion among Members, a process in which the United States looks forward to participating actively.

EXAMPLES OF POSITIVE CONTRIBUTIONS TO A FLOURISHING DIGITAL ECONOMY

PROHIBITING DIGITAL CUSTOMS DUTIES: The complete prohibition on customs duties for digital products can ensure that customs duties do not impede the flow of music, video, software, and games so that creators, artists and entrepreneurs get a fair shake in digital trade.

SECURING BASIC NON-DISCRIMINATION PRINCIPLES: Fundamental non-discrimination principles are at the core of the global trading system for goods and services. Rules that make clear that the principles of national treatment and MFN apply to digital products can contribute directly to stability in the digital economy.

ENABLING CROSS-BORDER DATA FLOWS: Companies and consumers must be able to move data as they see fit. Many countries have enacted rules that put a chokehold on the free flow of information, which stifles competition and disadvantages digital entrepreneurs. Appropriately crafted trade rules can combat such discriminatory barriers by protecting the movement of data, subject to reasonable safeguards like the protection of consumer data when exported.

PROMOTING A FREE AND OPEN INTERNET: A free and open Internet enables the creation and growth of new, emerging, and game-changing Internet services that transform the social-networking, information, entertainment, e-commerce and other services we have today. The Internet should remain free and open for all legitimate commercial purposes.

PREVENTING LOCALIZATION BARRIERS: Companies and digital entrepreneurs relying on cloud computing and delivering Internet-based products and services should not need to build physical infrastructure and expensive data centers in every country they seek to serve. Such localization requirements can add unnecessary costs and burdens on providers and consumers alike. Trade rules can help to promote access to networks and efficient data processing.

BARRING FORCED TECHNOLOGY TRANSFERS: Requirements that make market access contingent on forced transfers of technology inhibit the development of e-commerce and a flourishing digital economy. Trade rules may be developed to prohibit requirements on companies to transfer technology, production processes, or other proprietary information.

PROTECTING CRITICAL SOURCE CODE: Innovators should not have to hand over their source code or proprietary algorithms to their competitors or a regulator that will then pass them along to a State-owned enterprise. It is important to ensure that companies do not have to share source code, trade secrets, or substitute local technology into their products and services in order to access new markets, while preserving the ability of authorities to obtain access to source code in order to protect health, safety, or other legitimate regulatory goals.

ENSURING TECHNOLOGY CHOICE: Innovative companies should be able to utilize the technology that works best and suits their needs. For example, mobile phone companies should be able to choose among wireless transmission standards like Wi-Fi and LTE. Trade rules may play a role in ensuring technology choice by stipulating that companies are not required to purchase and utilize local technology, instead of technology of their own choosing.

ADVANCING INNOVATIVE AUTHENTICATION METHODS: The availability of diverse electronic signature and authentication methods protects users and their transactions through mechanisms such as secure online payment systems. Trade rules may assist in ensuring that suppliers can use the methods that they think best for this purpose.

SAFEGUARDING NETWORK COMPETITION: It is important to enable digital suppliers to build networks in the markets they serve or access such facilities and services from incumbents – whether landing submarine cables or expanding data and voice networks – to better access consumers and businesses.

FOSTERING INNOVATIVE ENCRYPTION PRODUCTS: Encryption is increasingly seen as an important tool to address protections of privacy and security in the digital ecosystem. Rules may be developed to protect innovation in encryption products to meet consumer and business demand for product features that protect security and privacy while allowing law enforcement access to communications consistent with applicable law.

BUILDING AN ADAPTABLE FRAMEWORK FOR DIGITAL TRADE: New and innovative digital products and services should be protected against future discrimination. Trade-based protections for services and investment should continue to apply as markets change and innovative technologies emerge, unless a specific, negotiated exception applies.

PRESERVING MARKET-DRIVEN STANDARDIZATION AND GLOBAL INTEROPERABILITY: Innovators should not have to design products differently for each market they seek to serve; that is why we have the global standards process, where industry leads and the best technologies win. Trade rules can help to ensure that countries cannot arbitrarily demand that less competitive national standards be forced into innovative products.

ENSURING FASTER, MORE TRANSPARENT CUSTOMS PROCEDURES: The sorts of provisions contained in the WTO Trade Facilitation Agreement can make very direct contributions to digital trade. Administrative and at-the-border barriers can often be a bigger problem than tariffs for exporters of digital equipment.

PROMOTING TRANSPARENCY AND STAKEHOLDER PARTICIPATION IN THE DEVELOPMENT OF REGULATIONS AND STANDARDS: The development of new regulations and standards can pose a significant challenge to suppliers of information and communications technology, whose product cycles are short and whose regulatory environment is constantly evolving. A positive environment for e-commerce/digital trade entails strong commitments on transparency, stakeholder participation, coordination, and impact assessment for new regulatory measures, standards, and conformity assessment procedures.

RECOGNIZING CONFORMITY ASSESSMENT PROCEDURES: Conformity assessment procedures verify that products, including information and communications technology, meet required standards and technical regulations, but overly burdensome conformity assessment procedures can hinder such exports. "National treatment" in conformity assessment, so that testing and certification performed by one qualified conformity assessment body will be accepted as consistent with another Party's requirements, can be an important means of facilitating trade in products relevant to the digital economy.

Annex 3: MSMEs and E-Commerce by the International Chamber of Commerce

WTO BUSINESS FOCUS GROUP 1: MSMEs AND E-COMMERCE

BACKGROUND

Recent years have witnessed remarkable developments in the digital economy, creating unprecedented opportunities for cross-border trade. The Internet is enabling micro, small and medium-sized businesses ("MSMEs") to access global markets unlike ever before. Studies show that MSMEs that use on-line platforms are around five times more likely to export than those in the traditional economy. Empirical research also finds that companies connected to the global economy are more productive and contribute to the development of more prosperous communities. Small businesses and entrepreneurs in developing economies are already at the forefront of this emerging trend.

But Internet-led changes to the composition, nature and speed of global trade are raising increasing policy frictions. Today's trade rules—which largely reflect 20th Century patterns of trade—are not always well-suited to supporting the growth of MSME e-commerce.

What's more, fragmented national rules on data, consumer protection and the availability of online information can act as a major impediment to trade—creating new market barriers and pushing up costs for MSMEs looking to enter global markets. One precondition for the success and viability of e-commerce is the ability for information to freely and efficiently cross borders—without being limited by technical barriers or anti-competitive bottlenecks.

THE OPPORTUNITY

Traditionally, commerce over distance has come with significant costs—limiting the ability of MSMEs and businesses in developing economies to benefit from global trade. In an Internet-enabled environment this does not need to be the case.

We believe that with the right global policies in place there is an opportunity to unleash a new era of "inclusive trade": one in which all companies—regardless of size, sector or location—can benefit from equal access to the global trading system. Simply put, a trading system in which MSMEs are empowered to drive the transition to a fairer, more inclusive and robust world economy.

TOWARDS NEW WTO TALKS ON E-COMMERCE

We propose that WTO members give active consideration to launching new talks on a holistic package of trade disciplines, rules and assistance to boost MSME e-commerce with an overriding objective to promote inclusive growth.

It is important to note that such an agreement would not confer an inherent bias towards MSMEs within the global trading system, but would establish a global ecosystem that better enables small businesses to access global markets by leveraging new technologies. Since MSMEs operating online rely on larger service providers to deliver products and services, an effective e-commerce environment must level the playing field for all businesses—including global enterprises. The latter, in turn, offer opportunities to MSMEs by integrating them into their global supply chains or by providing platforms that enable them to reach international markets.

We recommend that any new WTO package should also encompass capacity building resources for developing economies—including targeted assistance to ensure that MSMEs can get online and expand their business through e-commerce.

It is proposed that such a WTO package could be built around three pillars:

- (i) **Enhancing connectivity and capacity building for e-commerce;**
- (ii) **Enabling MSMEs to get goods sold online to consumers more efficiently (“Trade Facilitation 2.0”); and**
- (iii) **Digital rules to support online growth and build consumer trust.**

Specific recommendations for measures under each of these three pillars follow below.

RECOMMENDATIONS FOR A WTO E-COMMERCE AGREEMENT



PILLAR 1 Connectivity and capacity building for e-commerce

Enhancing connectivity. WTO disciplines have already played an important role in supporting enhanced access to the Internet through the development of competitive telecoms markets. Given rapid technological changes over the past decade, the time may be right to consider whether these WTO disciplines should be upgraded in support of digital trade.

To take one important issue: information access management and data security is essential for inter- and intra-corporate transactions, whether at national, regional or global scale. However, the deployment of essential Internet infrastructure and/or services—such as hybrid cloud services and virtual private networks—is frequently frustrated by problems with the supply of business-grade data networks at the local level. These are too often overpriced or simply unavailable in some developing economies.

The global use of company-wide ICT applications and e-commerce must therefore be supported by better conditions of access to high quality data networks. A new WTO e-commerce agreement should therefore:

- Work towards the removal or reduction of regulatory non-tariff impediments to trade in telecommunications services by applying a review of the WTO telecommunications rules and its reference paper.
- Include measures such as: (i) removing barriers to the construction of new networks; (ii) enabling deployment of new technologies to enhance international connectivity; (iii) promoting use of unlicensed spectrum; (iv) increasing availability of both licensed and unlicensed wireless spectrums; and (v) encouraging a progressive light-touch approach to regulation that enables the entrance of new players in the ICT ecosystem.

Capacity building. The WTO should establish access to resources to help MSMEs in developing economies grow through e-commerce, encompassing:

- A significant scaling-up and enhanced coordination of existing trade-related capacity building programs with an MSME/e-commerce nexus. This should include targeted capacity building programs for MSMEs looking to expand through e-commerce, including through the use of global Internet platforms and online educational tools.

Under such an approach the WTO should be positioned as a global hub for e-trade related capacity building, working in synergy with UNCTAD’s eTrade for All initiative and existing donor-funded schemes, and leveraging private sector resources.

WTO BUSINESS FOCUS GROUP 1: MSMEs AND E-COMMERCE

- A commitment by WTO Members to aggregate trade, customs and other applicable rules. Such data should be made publicly available to allow third party developers to create user-friendly tools to help e-traders to better understand—and to suggest improvements to—existing trade rules.



PILLAR 2 **Trade Facilitation 2.0**

There is an opportunity to build on the WTO's landmark Trade Facilitation Agreement to further simplify and expedite the clearance of e-commerce shipments through targeted customs, tax, and market access measures. Such measures would aim to support the growth of self-employed entrepreneurs and MSMEs by facilitating the delivery of small shipments direct to consumers. Possible measures proposed by members of the Business Focus Group include:

- Establishment of a small number of harmonized tariff codes for low-value items (NB: only where classification is required to collect taxes or define specific treatment for Customs clearance such as quotas or preference regimes).
- New disciplines to enable simplified processing of low value shipments— including through establishment of a baseline *de minimis* threshold for low value/ low risk goods. (See also: Box 1).
- Provisions to enable electronic submission of customs documents prior to arrival to allow for an automated risk assessment and pre-arrival processing and immediate release/clearance.
- Provisions to encourage the use of electronic payments for customs and duties.
- Government-created customs and duties application and programming interfaces (APIs) that can be incorporated into any e-commerce website.
- New measures to simplify returns processes, certificates of origin and duty drawback procedures.
- Provisions to mandate advanced rulings on any applicable treatment for duties and taxes.
- Disciplines to simplify the collection of duties (including GST/VAT) by providing multiple options (including seller, buyer, vendor) around account based periodic payments. The collection of indirect taxes should match the account based systems in-country.
- Disciplines to ensure that data captured by Customs and other Regulatory bodies is restricted to only that necessary to carry out the required activity. Such provisions should focus on the way that data is captured and transmitted in the commercial world and look to exploit these to minimise costs all-round.
- Provisions to encourage the establishment of national "centres of excellence" within customs agencies with dedicated resources to focus on e-commerce, e-sellers, and buyers, including MSME shipments. This initiative should be based on a multi-stakeholder model, making full use of private sector resources and expertise.
- Establishing a globally consistent programme for "trusted e-commerce shippers" incorporating customs facilitation. Such a programme should recognise that technology-enabled global trade by MSMEs is diffused, package-level and about very, very large numbers.
- Developing rules on transparency to provide MSMEs information they need to sell online, including on certification/licensing, registration and standards requirements.
- Establishment of market access and national commitments for e-commerce service providers, including: retail, on-line platforms, transportation, logistics, warehousing, delivery, electronic payments and other related services.

- Development of rules on competition between private and public delivery service suppliers.
- Establishment of a new WTO committee to enhance cooperation with the Universal Postal Union to discuss how national postal services can become part of the global transportation infrastructure of the new package-based trade.
- Encouraging information sharing between government agencies and the private sector to better manage trade compliance.

RETHINKING *DE MINIMIS* THRESHOLDS — MODALITIES AND CAPACITY BUILDING

A first step towards a multilateral effort to raise the *de minimis* threshold could take the form of a ministerial decision and associated guidance.

This effort would represent a “package-based trade” equivalent of traditional efforts to reduce tariffs to promote world trade: a *de minimis* change promotes package-level trade which is almost exclusively a form of MSME trade, whereas traditional tariff cuts have promoted trade by large international enterprises.

With a higher *de minimis* threshold, government agencies will no longer expend resources to assess the low value parcels. One effect is that they will no longer collect taxes and duties on low value parcels, and as a result will receive less revenue. However, these agencies will benefit from freed-up resources. Research suggests that the net effect on government revenues from raising the *de minimis* threshold largely depends on what agencies decide to do with these new resources.

To support particular developing countries in this transition, the WTO could provide recommendations and technical support to assist countries in utilising these additional resources to protect government revenues.

PILLAR 3 Digital rules

We believe there is an opportunity for WTO members to establish a balanced package of measures to promote an open, trusted and secure Internet, which would drive down transaction costs and frictions for businesses trading online. Given that a large share of international data flows (critical to the success of e-commerce) are intra- and inter-company, efforts to tackle impediments to e-commerce should not only focus on business-to-consumer barriers to sale, but also business-to-business transactions.

New WTO disciplines could also play a significant role in building consumer trust in e-commerce, while promoting an online ecosystem in which MSMEs can thrive. Specific measures should include:

- Commitments on cross-border consumer protection standards and dispute settlement to build consumer trust and confidence in cross border e-commerce.
- Disciplines to promote technological innovation to enhance online security and reliability based on broadly agreed industry guidelines.
- A prohibition on customs duties for digital products to ensure that customs duties do not impede the flow of music, video, software and games.

WTO BUSINESS FOCUS GROUP 1: MSMEs AND E-COMMERCE

- > Establishment of a WTO rule to ensure the free flow, storage, and handling of all types—in any sector—of data across borders. Any exceptions to this rule under applicable privacy or security regulations should be limited to public policy objectives and subject to GATS XIV. Such a framework could build on the APEC Cross Border Privacy Rules system and the OECD guidelines on the protection and privacy of trans-border flows of personal data. (See also: Box 2, below).
- > Commitments to promote the growth of open digital markets across borders, including appropriate limitations on liability for online platforms that handle user content and transactions.
- > Disciplines to promote a free, open and globally-interoperable Internet that enables competition, consumer choice and unhindered access to online content.
- > Provisions to embed technological neutrality online, in that all technologies are given the chance to compete in the marketplace—subject to legitimate security or privacy let-outs.
- > National treatment in licensing regimes for financial services.
- > Provisions that establish and recognize the benefits for consumers of access to Internet services and applications, subject only to reasonable network management.

DATA LOCALIZATION REQUIREMENTS AND THE IMPACT ON THE COST OF DOING BUSINESS FOR MSMEs

Research shows that the impact of disrupting cross-border data flows should not be ignored.

Forced localization is often the product of a one-sided economic analysis, with the underlying objective of keeping foreign competitors out of local markets. Although this may create a small number of “national winners” in the short term, the overall impact is to significantly increase the cost of doing business online for MSMEs.

This is because MSMEs rely on an efficient, reliable and cost-effective Internet ecosystem enabled by global online platforms and services providers. Data localization measures add significant costs for additional data management and compliance, for local facilities and power—and in practice can undermine data security.

For example, some localization requirements mandate that social networks and search engines must store information on servers within their jurisdictions. Such data storage requirements are anathema to the “global platform” business model that most digital services suppliers apply to achieve greatest efficiency and to keep costs low for MSME users.

Studies to assess the economic impact of data localization requirements have pointed to significant GDP and welfare losses in a number of major economies.

Annex 4: Japan's Latest Submission on the E-Commerce Decision**WORLD TRADE
ORGANIZATION**

JOB/GC/138

6 October 2017

(17-5403)

Page: 22/45

General Council

Original: English

WORK PROGRAMME ON ELECTRONIC COMMERCE
COMMUNICATION FROM HONG KONG, CHINA; JAPAN AND THE SEPARATE CUSTOMS TERRITORY OF
TAIWAN, PENGHU, KINMEN AND MATSU

The following communication, dated 6 October 2017, is being circulated at the request of the delegation of Japan.

DISCUSSION DRAFT DECISION FOR MC11

Members,

In accordance with the Work Programme on Electronic Commerce of 1998;

Recognizing that advancement of digitalization has been transforming all aspects of business activities over the past 20 years;

Recognizing both the unique challenge and opportunities for developing country Members as well as micro, small and medium sized enterprises (MSMEs) for sustainable and inclusive growth through electronic commerce; and,

Recognizing that existing WTO Agreements apply to electronic commerce;

Decide as follows:

Members agree to establish a Working Group on Electronic Commerce. This Working Group shall conduct an evaluation of whether the clarification or strengthening of the existing WTO rules is necessary. In the course of conducting the evaluation, Members may refer to related submissions⁴, seminars and workshops since the 10th Ministerial Conference, and consider issues such as transparency, regulatory frameworks, open and fair trading environment, and development.

The Working Group shall report results achieved to the first meeting of the General Council in 2019. Members may then decide to initiate negotiations without delay depending on the result of the evaluation.

Members will maintain the current practice of not imposing customs duties on electronic transmissions until the next session.

⁴ JOB/GC/94, JOB/GC/96, JOB/GC/98, JOB/GC/99, JOB/GC/100, JOB/GC/110, JOB/GC/113, JOB/GC/115, JOB/GC/116, JOB/GC/117, JOB/GC/128, JOB/GC/129, JOB/GC/130 and IP/C/W/613.

Annex 5: Costa Rica's Submission on the E-Commerce Decision**WORLD TRADE
ORGANIZATION**

JOB/GC/139

10 October 2017

(17-5445)

Page: 23/45

General Council

Original: English

**WORK PROGRAMME ON ELECTRONIC COMMERCE
COMMUNICATION FROM COSTA RICA**

The following communication, dated 10 October 2017, is being circulated at the request of the delegation of Costa Rica.

**DRAFT MINISTERIAL DECISION
WTO E-COMMERCE DEVELOPMENT AGENDA**

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization;

Recalling the 'Work Programme on Electronic Commerce' adopted on 25 September 1998 and reaffirming subsequent Ministerial Declarations and Decisions on it;

Considering the potential of electronic commerce for socioeconomic development;

Recognizing the importance of clarity, transparency and predictability in domestic regulatory frameworks in facilitating the development of electronic commerce;

Further recognizing the importance of facilitating the use of electronic commerce by micro, small and medium sized enterprises;

Re-confirming the right of Members to maintain a regulatory environment conducive to electronic commerce to meet national policy objectives and, given asymmetries with respect to the degree of development of electronic commerce, the particular need of developing countries to exercise this right;

Decides:

To establish, as an integral part of the 1998 Work Programme on Electronic Commerce, an E-Commerce for Development Agenda to assess the needs of developing countries in relation to e-commerce and to facilitate focused dialogue on the challenges and opportunities they face, as set out in Annex XX.

ANNEX XX

The WTO E-Commerce for Development Agenda shall identify priority needs of developing countries, including Least Developed Countries, Landlocked Developing Countries, and Small Island Developing States with respect to e-commerce.

Given that the Agenda shall leverage the expertise and capacity of relevant international and regional institutions working collaboratively, we:

Request the Director-General to coordinate with the Secretary-General of UNCTAD, the Executive Director of ITC, and the President of the World Bank to leverage their institutions' expertise, and that of other international organizations, in preparing informational material on each of the subject areas in paragraph 3 below. This will assist all Members, especially developing countries, to engage fully in relevant discussions;

Consider inputs from regional organizations regarding challenges and priorities in the development of e-commerce in different regions to be essential, as are inputs from regional financial institutions regarding funding to meet gaps.

The Agenda should focus on the following six areas working on the basis of proposals and contributions submitted by Members:

- a. ICT Infrastructure and Services: How can we apply trade policy to help reduce the digital divide, especially considering Sustainable Development Goal 9(c): "to significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020"?
- b. Trade Logistics: How can we facilitate trade from developing countries, especially from LDCs, through transparent, predictable and more favourable terms for e-commerce by simplifying customs procedures for exports to developed countries?

Payment Solutions: How can we facilitate mobile payment services to advance financial inclusion, and to ensure international payments for e-commerce transactions in goods and services?

Legal and Regulatory Frameworks: How can we promote e-commerce enabling environment by improving regulations on consumer protection, data protection, secure cross-border data transfers, and other relevant issues?

E-commerce Skills Development and Technical Assistance: How can the WTO, ITC, UNCTAD, and other relevant international institutions improve e-commerce readiness and strategy and the delivery of assistance with a particular focus on MSMEs?

Access to Finance: How can we facilitate access to finance for e-commerce, especially for MSMEs and LDCs?

Work by WTO and other relevant international organizations to improve the availability of information related to cross-border e-commerce shall form an integral part of the Agenda, in order to facilitate evidence-based policymaking in the area of e-commerce and development that will benefit all Members;

That the Working Group on E-Commerce⁵ should engage itself with this Agenda as part of its regular work:

- a. A comprehensive report on the work carried out under the E-Commerce for Development Agenda shall be submitted to the General Council and a report on the progress achieved presented to the next session of the Ministerial Conference;

The Working Group may present recommendations to the General Council on the areas in paragraph 3, particularly issues of a cross-cutting nature.

⁵ This refers to informal proposals of other Members; the final text would need adjustment depending upon negotiations.

Annex 6: Summary of the E-Commerce Negotiations

There are two models for E-Commerce rules

- Rules that are based on the existing WTO Agreements and Schedules i.e. GATS progressive liberalisation and GATT and GATS schedules (reflected in 1998 E-Commerce Work Programme)
- Digital rules that are on a completely different track – based on free data flows, no localisation requirements possible, no disclosure of source codes etc. i.e. complete market opening and no possibility for developing countries to take regulation to ensure that that domestic players have preferential access to their own domestic market.

Developing countries (Africa Group, LDCs, India, Bangladesh, some Latin American Countries):

- We must discuss existing WTO rules to see how they would apply to E-Commerce i.e. continue with the 1998 Work Programme.

Proponents for E-Commerce rules are asking for:

- A Working Group that will start negotiations soon
- No or little mention of the issues for discussion in the current 1998 Work Programme – i.e. no willingness to engage on E-Commerce in the context of the WTO Agreements. Most maintain that those discussions have been exhausted.
- Issues for discussion / negotiations include so called seemingly ‘softer’ issues like authentication, payment solutions, even access to finance and infrastructure; to ‘harder’ issues such as free data flows, no localisation requirements will be allowed, no possibility to ask for disclosure of source codes, no local content requirements in the area of technology, no technology transfer etc. Many of these are also internet governance issues.
- China has proposed a different E-Commerce model for the time-being, based on physical goods and the freeing up of trade and customs barriers for the delivery of physical goods (Alibaba model).

Tariffs are no longer application for digital trade. There are no tariff walls. Markets can only be cordoned off for domestic suppliers via government regulations including licensing requirements.

- Are domestic / regional markets still important to build local supply-side capacities?
- Are local content policies with regards to technology and in the area of services important?

(The main issue here is the complete opening of our domestic and regional markets for digital trade – which is the trade route of tomorrow. This is the new NAMA and Services trade route. Do we want E-Commerce via the existing Agreements? Or do we want digital trade rules that completely open our markets?)

Unfortunately, one Member’s digital industrialisation strategy is another Member’s digital barrier, as illustrated by the USTR’s ‘Key Barriers to Digital Trade’ and other documents. ⁶

The 1998 Work Programme is far from being exhausted. There are many areas where ‘mandates’ were provided for further discussions, but for which no conclusions or definitive outcomes have been reached. The fact is that there has been no real substantive engagement on the issues highlighted in the Work Programme since 2001.

⁶ <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2017/march/key-barriers-digital-trade> ; USTR ‘2017 National Trade Estimate Report – Major Developments’ <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2017/march/2017-national-trade-estimate-report-%E2%80%93> ; USTR ‘2015 Section 1377 Review on Compliance with Telecommunications Trade Agreements, https://ustr.gov/sites/default/files/2015-Section-1377-Report_FINAL.pdf ; Information Technology Industry Council (ITI) ‘USTR Request for Public Comments to Compile the National Trade Estimate Report (NTE) on Foreign Trade Barriers’ <https://www.itic.org/dotAsset/de95d136-0d4a-475b-bfac-80c6168bb21c.pdf>

Annex 7: More detailed analysis of the latest Japan, Russia and Costa Rica Proposals**General Comments**

1. Proponents are attempting to take the discussions away from the existing agreements towards E-Commerce rules that are about complete market liberalisation. This will have huge implications on developing countries' capacity to regulate trade in the future (in the way tariffs have been used for trade in goods). (See submissions footnoted by Japan). Proponents should be asked why they want to shift away from discussing E-Commerce in the context of existing WTO Agreements to rules that are completely outside the scope of the existing Agreements.

2. Setting up a Working Group or shifting discussions out of the relevant bodies would shift the focus away from technical discussions on clarifying the existing agreements.

3. Identified issues have nothing to do with the issues highlighted in the Work programme eg. Classification issues, technology transfer etc.

4. Why the need for an E-Commerce for Development Agenda when there is already a development discussion on E-Commerce in the CTD? Why take this discussion out of the CTD into the Working Group on E-Commerce? The CTD has the mandate to undertake this development discussion. Its mandate is

'1. To serve as a focal point for consideration and coordination of work on development in the World Trade Organization (WTO) and its relationship to development-related activities in other multilateral agencies.'

'2. To keep under continuous review the participation of developing country Members in the multilateral trading system and to consider measures and initiatives to assist developing country Members, and in particular the least-developed country Members, in the expansion of their trade and investment opportunities, including support for their measures of trade liberalization.' (WT/L/46)

5. Some have been arguing that the 1998 Work Programme discussions have been exhausted. If so, where are the conclusions, outcomes, agreements, resolutions derived from these discussions? Discussions had taken place for 2-3 years after the Work Programme was launched. By 2001, there were no substantive discussions under the Work Programme. Many issues remain pending. See S/L/74 for areas where Members agreed that further work is needed.

6. Many of the 'development' issues highlighted in the Costa Rica proposal are not development centered. Several of the elements are focused more on Market Access (ICT Infrastructure and Services – can be arrived at through trade policy? Trade Logistics is about TFA+ rules and market access; Payment Solutions – the market is dominated by a few big companies). There are also a couple of items on financing. The important issue for developing countries is binding financial assistance. Developed countries refused to provide binding financial assistance in the context of TFA. It is not realistic that this will be possible under this 'development agenda'.

7a. There is no mandate for negotiations in E-Commerce.

7b. It is imperative that E-Commerce is discussed in relation to the existing Agreements, as provided in the 1998 Work Programme.

7c. The existing structures provided for in the Work Programme must be kept since this is about locating E-Commerce within the existing WTO Agreements.

8. Why are the existing Agreements so important? Tariffs are no longer relevant in the digital economy. In its place, to use trade policy for industrialisation, developing countries will have to institute regulations regarding data - to strategically open or be more protective of their domestic/ regional markets and sensitive sectors. The existing Agreements already provide such a template (based on progressive liberalisation, and selective tariff liberalisation) and therefore must be the basis for discussions on E-Commerce at the WTO. The alternative model – free data flows, no localisation – will imply complete market opening for all Members, including by LDCs. I.e. developing countries will give 100% DFQF treatment to digital imports, when LDCs have not even received 100% DFQF in physical goods.

8. Developing countries' supply side capacity constraints in relation to physical goods and traditional services exports continue to apply in relation to E-Commerce. There is no magic bullet regarding MSMEs and E-Commerce. In relation to exports, the same issues of competitiveness and barriers vis a vis standards (SPS, TBT) standards apply, with the added complication of the digital and technological divides.

Japan Proposal (JOB/GC/138)

- Preamble says: 'In accordance with the Work Programme', however, the content thereafter is not in accordance with the Work programme
- Mentions the challenges of E-Commerce for developing countries and MSMEs: the MSME agenda is a Trojan horse to change the S&D structure in the WTO so that all Members have the same treatment. MSMEs in developed countries cannot be treated the same as MSMEs in developing countries.
- It recognises that the 'existing WTO Agreements apply to electronic commerce': It is not a given that 'existing WTO Agreements apply to electronic commerce' – which is why there is the 1998 Work Programme to exactly clarify whether and to what degree the existing agreements apply to E-Commerce. Simply assuming that the existing WTO Agreements apply to E-Commerce could also mean that the WTO Agreements are technologically neutral (which developing countries do not agree with).
- A Working Group on E-Commerce: No mention of the 'relevant bodies'. Takes the E-commerce discussion away from the existing Agreements
- Evaluation of whether clarification or strengthening of the existing WTO rules is necessary (using the proposals that were submitted in E-Commerce in 2016 and 2017, see footnote 1) – this is about adding new topics for discussion and thereafter negotiations, including free data flows, no localisation requirements allowed, no technology transfer, no disclosure of source code etc.
- At the first meeting of the GC in 2017, 'Members may decide to initiate negotiations without delay depending on the result of the evaluation': There is no mandate for negotiations and we do not agree to negotiations.
- renew the moratorium for 2 years – There should be no automatic renewal. Are we getting a moratorium in TRIPS? Are we getting the continuation of the 1998 Work Programme as it is (without expansion of issues, or setting up of new structures)?

Russian Federation Proposal (JOB/GC/137)

- Russia only 'notes' the 1998 Work Programme
- Setting up of a Working Group on E-Commerce – 'as an appropriate forum for discussions'... 'including the possibility of developing international rules': I.e. they are seeking upfront the mandate already for the Working Group to negotiate rules.
- Topics for discussions are open ended, based on Members' submissions.
- The 'Working Group may ask WTO bodies for assistance...related to their areas of competence. Those bodies will report back to the Working Group any results achieved': This is not the bottom up process that was in the 1998 Work Programme. Instead, the focus of discussions will be the Working Group. This also means the main focus of discussions will no longer be fully centred on the existing agreements.
- Rather than the WTO relevant bodies submitting reports to the GC, in Russia's proposal, the Working Group is to submit a 'comprehensive report' to the GC
- renew the moratorium for 2 years (see comments under Japan proposal).

Costa Rica Proposal (JOB/GC/139)

- Recalls the 1998 Work Programme (also in the Nairobi and previous Decisions) but does not 'decide to continue the work under the Work Programme', as has traditionally been decided, including in Nairobi.
- Decides to establish as part of the 1998 E-Commerce Work Programme, an E-Commerce for Development Agenda. This raises several questions:
 - o Why the need for a new structure? Why is it that 'development' issues cannot be raised under the existing structures provided by the 1998 Work Programme i.e. discussions in the CTD?
 - o Whether, in fact, the E-Commerce Development Agenda introduces issues that will lead to 'development'. There are elements listed in para 3 that could lead to outcomes that are contrary to development for developing countries.
- This is not a complete proposal. It does not mention formation of the Working Group, but the Working Group is assumed in Annex XX para 5 and footnote 1. Clearly, this proposal is to be merged with other proposals. It also has not dealt with the moratorium.

All of this is simply to say that the development agenda should not be assumed to be without the introduction of other elements e.g. establishment of the Working Group, and other issues contained in other proposals (e.g. Japan's proposal).

-2a and b, and 3e on collaboration with other international and regional organisations: Do Ministers really need to instruct the WTO DG to collaborate with UNCTAD, ITC, World Bank and others? The collaboration between institutions is already in Art V of the Marrakesh Agreement, i.e. there is a standing mandate to collaborate with other institutions: *'The General Council shall make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO'*.

- Issues in para 3:

a. ICT Infrastructure and Services: The question posed is highly problematic 'How can we apply trade policy to help reduce the digital divide...'? In the WTO context, trade policy has traditionally meant liberalisation (via tariffs or rules on regulation that imply market opening). The question seems to imply that trade policy can help to address ICT infrastructure and services and the digital divide. Furthermore there is a sequencing issue that is ignored. ICT infrastructure needs to be well in place before countries can negotiate trade policy/ market opening.

ICT Infrastructure requires binding financial commitments from partners (which is highly elusive⁷), not trade policy!

b. Trade Logistics: This is about simplification of customs procedures for goods bought over the internet. Whilst it is written in a way as to help LDCs and developing countries, this facilitation will be two-way. Imports will also be facilitated into LDCs and developing countries. In as far as LDCs and developing countries are net importers rather than exporters, the outcome of these efforts will be more imports rather than exports into most developing countries. This is about facilitating market access –it has similar outcomes as lowering of tariffs. Domestic suppliers may be marginalised in their domestic / regional markets. This is along the lines of China's E-Commerce proposal i.e. facilitating trade for Amazon and Alibaba etc.

c. Payment Solutions: It is not clear what 'facilitate mobile payment services' mean. This must be seen in the context of the players that dominate the payment solutions market - Paypal and the credit card companies, ApplePay, (and AliPay in China) have a monopoly on these services. Does the proponent mean by 'facilitate mobile payment services' the opening of domestic markets to these companies?

From a development perspective, payment solutions should be about looking into developing domestic and regional capabilities to facilitate E-commerce i.e., enlarging the role of domestic/ regional banks and platforms. However, there is no need for a special Development Agenda. These issues can already be taken up under the CTD in the context of the 1998 Work Programme.

d. Legal and Regulatory Frameworks: The issues raised here – consumer protection, data protection, secure cross-border transfers, and other relevant issues, are important, but these are Internet Governance issues. They are beyond the scope of the existing Agreements and the WTO, and rules should not be made in these areas from a trade perspective. Many of these issues also touch on other important matters including cybersecurity, even human rights considerations, and need to be looked at from a holistic rather than a trade perspective.

e. E-Commerce Skills Development and Technical Assistance: This invokes WTO, ITC, UNCTAD and others to improve Members' e-commerce readiness and strategy. Furthermore, as noted above, this inter-agency cooperation is already written into the constitution of the WTO (Art V, Marrakesh Agreement).

- No need for a separate Development Agenda. This can already be part of the 1998 Work Programme (under 'challenges to and ways of enhancing the participation of developing countries in electronic commerce').

⁷ The Digital Solidarity Fund set up in 2005 and which was acknowledged in the Tunis Agenda was closed down in 2009! The Fund was meant to address the digital divide by increasing connectivity. It closed due to lack of funds. The ITU Connect 2020 Agenda seems not to be meeting its 2020 connectivity targets including more connectivity in the rural areas. Presumably, this is also due to lack of sufficient funds for infrastructure.

f. Access to Finance: This is not part of the core functions of the WTO. The WTO is primarily about setting trade rules. It is not a development bank. At most, this, like skills and development above, is about bringing together actors to have a conversation.

There is no need to change the structure of the 1998 Work Programme for this. If there is political will, these issues can be taken up in the context of that 1998 Work Programme e.g. under

- 'challenges to and ways of enhancing the participation of developing countries in electronic commerce' or
- 'financial implications of electronic commerce for developing countries'.

In conclusion on the Costa Rica proposal:

- The Costa Rica proposal diverts attention from the already very solid development mandate provided in the 1998 Work Programme: for the CTD to 'examine and report on the development implications of electronic commerce, taking into account the economic, financial and development needs of developing countries'.

The proponent should explain why its development concerns cannot already be discussed under this 1998 Work Programme. Why is there need to have a new Agenda? Is it not a matter of political will for WTO Members to deliver on the existing development mandate?

- Some of the issues framed and highlighted by the Proponent in the E-Commerce for Development Agenda are not likely to lead to development outcomes. For example
 - Trade policy is not the most efficient tool for achieving ICT infrastructure – what is needed is binding financial commitments, which has not been mentioned
 - Since most developing countries are net importers, Trade Logistics is about opening domestic markets. This could decimate, rather than build domestic supply-side capacities
 - Payment solutions – Facilitating this cannot be seen separately from the fact that Paypal, ApplePay and the Credit Card companies monopolise the global market today. Access to these solutions could mean liberalisation of these financial services. Discussion and sharing of best practices amongst countries can already be done under the 1998 Work Programme.
- Some of the issues listed that call upon the WTO to collaborate with other institutions (e.g. para 2 and 3e) do not require a Ministerial Decision. Collaboration between institutions is already part of the mandate of the WTO: Art V of the Marrakesh Agreement provides for 'effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO'.
- With regards to Legal and Regulatory Frameworks in relation to consumer protection, data protection, secure cross-border data transfers and others, care should be taken not to bring Internet Governance issues into the WTO as discussions and rules should not be made in the area of internet governance from a trade perspective. Issues outside the scope of the existing WTO Agreements should not be brought into the WTO.

Annex 8: Areas in the GATS where Members had Agreed would Require Further Discussions in the 1998 Work Programme**WORLD TRADE
ORGANIZATION**

S/L/74
27 July 1999

(99-3194)

Trade in Services**WORK PROGRAMME ON ELECTRONIC COMMERCE**Progress Report to the General CouncilAdopted by the Council for Trade in Services on 19 July 1999

The Council for Trade in Services submitted an Interim Report on its discussions under the work programme on electronic commerce (S/C/8) to the General Council on 31 March 1999. The Report identified issues on which discussions had progressed closer towards a common understanding and others requiring substantial further examination. Following the Interim Report, the Council for Trade in Services has continued to discuss the work programme at its meetings of 26 April, 18 May and 22-24 June 1999. At those meetings the discussions focused on the ten issues identified in paragraph 5 of the Interim Report as requiring considerable further examination as well as the twelve issues contained in paragraph 2.1 of the Work Programme adopted by the General Council (WT/L/274). Reports on those meetings are contained in documents S/C/M/35, 36 and 37.

Since the Interim Report, a communication on the work programme on electronic commerce by Australia (S/C/W/108) and an informal paper from the European Community (Job No. 3636) have been submitted.

This report is structured according to the individual items contained in paragraph 2.1 of the work programme and provides information on progress made on each of the items. Points of common understanding are reflected under each item, as well as issues which require further clarification and issues on which there are different views. It should be noted that it does not constitute a comprehensive record of the issues raised by individual delegations.

Scope of the GATS with respect to the electronic delivery of services

It was the general view that 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. 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.

It was recognized that services could be supplied electronically under any of the four modes of supply. However, there was particular difficulty in making a distinction between supply under modes 1 and 2 in the

case of electronic commerce, but no conclusion was reached as to how to clarify the matter, and it was agreed that further work is necessary.

Several delegations expressed the view that all products delivered electronically are services and that in the context of the work programme it would be useful to make clear that the GATS applies to all products delivered electronically. Other delegations said that it was not clear to them that all electronically delivered products are services and that if there were some which would not be considered services, rules other than those of the GATS would apply to them. It was suggested that further work on this issue was necessary.

MFN (Article II)

It was the general view that all general GATS provisions, including the MFN obligation, are applicable to the supply of services through electronic means.

Members noted that the issue of likeness is central to the application of MFN and that the main question to be addressed in this regard is whether electronically delivered services and those delivered by other methods should be considered “like services”. Members also noted that the issue of likeness is one of the most complex legal issues, not only in the GATS, but also in the GATT and that there is considerable GATT jurisprudence which establishes that the determination of likeness can only be made on a case-by-case basis. Some Members suggested that within the limits of individual sectors and modes of supply, it should be possible to agree that likeness would not depend on whether a service was delivered electronically or otherwise.

Transparency (Article III)

The general understanding was that the obligations of Article III on transparency apply to all laws and regulations affecting the supply of a service through electronic means.

Increasing participation of developing countries (Article IV)

The common understanding was that 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, including technology relating to encryption and security of transactions and to efficient telecommunication services. In this regard, some Members highlighted the impact on widespread uses in electronic commerce of existing restrictions on export of state-of-the-art encryption technology by some Members. It was also noted by some delegations that prohibitions on the export of encryption technology would be viewed in light of Article XIVbis of the GATS. Reference was also made to the importance of developing human resources and physical infrastructure. Some delegations stressed that it is important to take account of the revenue and other fiscal implications of electronic commerce for developing countries and suggested that advantage should be taken of the work done in UNCTAD and the Committee on Trade and Development in regard to developing country interests in the matter. It was also suggested that efforts to ensure the development of electronic commerce and internet infrastructure should also be addressed in development assistance programmes.

Domestic regulation, standards, and recognition (Articles VI and VII)

It was the general view that the provisions concerning domestic regulations in Article VI of the GATS apply to the supply of services through electronic means. It was the general view that in the area of domestic regulation it is crucial to maintain a balance between the right of Members to regulate and the need to ensure that domestic regulatory measures do not constitute unnecessary barriers to trade. Members also recognized the importance of the distinction between the disciplines of Article XIV (General Exceptions) and any possible disciplines to be developed under Article VI:4 of the GATS. Some delegations suggested the development of disciplines under Article VI:4 of the GATS in relation to electronic commerce. Some delegations said that electronic commerce is an area where rapid economic growth has been fostered by the existence of very little regulation and that the emphasis in the field of domestic regulation should be on keeping regulation to a minimum in order to favour further growth. It was also suggested that consideration should be given to the constraints facing

developing countries in fulfilling legitimate regulatory objectives in this field and to dealing effectively with technical barriers to trade encountered by developing countries.

Competition (Articles VIII and IX)

The general view was that the expansion of electronic commerce could help reduce the extent of restrictive business practices, *inter alia*, by facilitating market entry for smaller service suppliers.

It was noted that monopolies and restrictive business practices might pose obstacles to electronic commerce and that this issue needed further examination. Some Members were of the view that there might be a need to further clarify the applicability of the principles relating to competitive safeguards (including interconnection) and allocation of scarce resources in the telecommunications Reference Paper to major suppliers of telecommunication services in relation to electronic commerce. It was noted that the competition safeguards in the Reference Paper apply to major suppliers of basic telecommunications and that in some countries the Internet access provider is also a major supplier of basic telecommunications. A suggestion was also made that improvement of access to distribution channels and information networks, including the internet, needed further examination.

Protection of privacy and public morals and the prevention of fraud (Article XIV)

It was noted that Article XIV of the GATS (General Exceptions) applies, *inter alia*, to the protection of privacy and public morals and the prevention of fraud, and there was agreement that measures taken by Members must not be more trade restrictive than necessary to fulfill such objectives. They also must not constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade in services. It was also noted that, as Article XIV constitutes an exception provision, it should be interpreted narrowly, and its scope cannot be expanded to cover other regulatory objectives than those listed therein.

Market-access commitments on electronic supply of services (Article XVI)

Without prejudice to questions concerning likeness of services, it was the general view that the means of delivery does not alter specific commitments; they permit the electronic supply of the scheduled service unless otherwise specified. It was pointed out that it would be possible to define the coverage of a commitment, in the sector/sub-sector column of the schedule, as excluding supply through certain technological means.

Some delegations argued that it should not be assumed that a country which has made commitments in basic telecommunications has automatically committed Internet access services, particularly given the fact that some Members had explicitly scheduled these services. Other delegations argued that the issue of commitments on Internet access services and networks needed to be further clarified, in the light of the fact that many delegations regarded their commitments on basic or value-added telecommunications services as covering Internet access.

National treatment (Article XVII)

There was a general understanding that national treatment commitments cover the supply of services through electronic means unless otherwise specified.

Members expressed the same views on the issue of likeness as for MFN.

Access to and use of public telecommunications transport networks and services (Annex on Telecommunications)

The general view was that 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.

It was noted that the Annex guarantees access to and use of public telecommunication networks for Internet access providers, but it was not clear whether it also guarantees service suppliers access to and use of Internet networks and services. Since it might be important for service suppliers to have the right of access to Internet networks and services, it was agreed that it would be desirable to further examine this matter.

It was noted that a key question in the determination of the applicability of the Telecommunications Annex is whether some Internet related services can be considered "public telecommunications transport networks", as the Internet is a network of networks, which includes public and private networks.

Customs duties

Some delegations said that customs duties on electronic transmissions could affect electronic commerce and the electronic supply of services. Other delegations argued that the concept of customs duties is alien to the GATS and would become a relevant issue only if it were accepted that a category of electronically delivered goods exists. Other delegations maintained that customs duties could be applied to services, but saw a need to clarify the implications of applying customs duties to electronic transactions. **It appeared from the discussions on this item that Members might wish to address at least the two following questions: (i) how customs duties could apply to services; and (ii) how customs duties could apply to electronic transmissions.**

Some delegations supported making the current standstill on customs duties permanent and binding. Some said that unless the classification issue was resolved they would not be able to consider extension of the standstill. Others said that they could support a permanent and binding standstill, but without prejudice to their position on the classification issue. Other delegations said that they could only envisage extension of the standstill on the current basis, possibly until the end of the forthcoming negotiations, while some were not convinced of the case for extension. The point was made that a decision to extend the standstill would be a political one, which could only be taken by the General Council, while the debate in the Services Council should focus on the technical and legal issues involved. It was also noted that, when reporting to the Third Ministerial Session, the General Council will review the May 1998 Declaration on Global Electronic Commerce, the extension of which will be decided by consensus, taking into account the progress of the work programme. Some delegations said that the concept of technological neutrality could be undermined by assuming that customs duties could be applied to services electronically transmitted and not to services delivered by other means. Some delegations suggested the need to examine the impact of domestic taxation on electronic commerce. Others said that matters related to domestic taxation were outside the ambit of the work programme and should not be discussed. Classification issues

Delegations endorsed the view that all services, whether supplied electronically or otherwise, are covered by the GATS, and that the GATS makes no 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.

Some delegations were of the view that all electronic deliveries are services and could not see any non-services products, which could be delivered electronically. Other delegations suggested that it still remained to be clarified whether there were a number of electronically delivered products which should be classified as goods and therefore subject to the GATT rather than the GATS. The question was also raised as to whether such products, even if classified as services, should be subject to full MFN and national treatment obligations and to general prohibition of quantitative restrictions. It was also suggested that there might be categories other than goods and services for classifying certain electronically delivered products; in some cases a downloaded product might be regarded as neither a good nor a service. However, it was pointed out that no suggestion was made to the effect that there was any product that would fall outside the scope of WTO agreements. It was

agreed that further consideration, including the consideration of concrete examples, should be given to this question.

In discussion of the issue of possible new services, it was the general view that electronic delivery had given rise to very few new services, if any, but that further work is needed to identify any such services and decide how they should be classified. Some delegations argued that the identification of new services should be done keeping in mind the existing classification structure based on the Services Sectoral Classification List (MTN.GNS/W/120) and the UN CPC.

Annex 9: Micro and Small and Medium Sized Enterprises (MSMEs)

Some Members are now suggesting a Work Programme on MSMEs as one of the outcomes from MC11.

The new issues debate is extremely contentious. Proponents of new issues know that they will not get any language on new issues in the MC11 outcome documents that would improve on the Nairobi Ministerial Declaration (NMD) language for them. Para 34 of the NMD said

'While we concur that officials should prioritize work where results have not yet been achieved, some wish to identify and discuss other issues for negotiation; others do not. Any decision to launch negotiations multilaterally on such issues would need to be agreed by all Members'.

There is also the 2004 July Framework General Council Decision that on the 'Relationship between Trade and Investment, interaction between Trade and Competition Policy and Transparency in Government Procurement: the Council agrees that these issues mentioned in the Doha Ministerial Declaration ... will not form part of the Work Programme set out in that Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round' (para 1g, July Framework 1 Aug 2004 WT/L/579).

A Work Programme on MSME is another route towards negotiations on new issues, bypassing the language of the NMD, and if they are the Singapore issues, overriding the July Framework Decision of the General Council. For example, a proposal by Argentina, Brazil, Paraguay and Uruguay on MSMEs suggested a Ministerial Decision creating a Work Programme that would include several areas but also:

- E-Commerce. It cites some of the E-Commerce submissions of proponents. The International Chamber of Commerce is also advocating for the same rules: free data flows, no localisation requirements in relation to data, no possibility to mandate the use of domestic technology ('technological neutrality online, in that all technologies are given the chance to compete in the marketplace'), national treatment in licensing regimes for financial services etc.⁸
- Transparency in procurement procedures i.e. transparency in government procurement, which is a Singapore issue.

Others are suggesting a Work Programme with a perpetually open mandate for new areas to be brought in. For example, the following language has been put forward by some: 'Consider ways to promote a more predictable regulatory environment for MSMEs' (forthcoming proposal).

⁸ ICC, G20 Germany 2016 'Trade Dialogues: WTO Business Focus Group 1- MSMEs and E-Commerce', <https://cdn.iccwbo.org/content/uploads/sites/3/2016/10/WTO-Business-focus-Group-1-MSMEs-and-e-commerce.pdf>

Annex 10: Domestic Regulation and How Member's Digital Industrialisation Strategies can be Challenged

Proponents have put forward a consolidated text asking for a range of disciplines apply to 'measures ...relating to licensing requirements and procedures, qualification requirements and procedures and technical standards affecting trade in services where specific commitments are undertaken'. These measures and technical standards affecting trade in services shall be

- Based on objective and transparent criteria
- Procedures are impartial
- Procedures are reasonable and do not in themselves unduly prevent the fulfilment of requirements
- Are not more burdensome than necessary (NZ, Switzerland et al)
- Fees charged are 'reasonable, transparent...'
- Extensive transparency requirements including opportunity to comment by 'interested persons' and prior publication
- Technical standards developed through 'open and transparent processes' etc.

'Relating to' and 'affecting' trade in services are broad and can cover measures indirectly affecting trade in services. WTO jurisprudence on the word measures 'affecting trade in services' has said that "'affecting" has been interpreted to cover not only measures which directly govern the supply of a services but also measures which indirectly affect it' (Panel in EC-Bananas III). Thus they judged that the EC banana import licensing regime was a measure affecting distribution services.

DR disciplines will impact on developing countries' regulatory policy space. Most of all, regulations for digital industrialisation can be called into question. In the box above, many of USTR's complaints about countries' digital barriers can judged to be out of conformity with the proposed DR disciplines. For example, the following measures could be judged to be not 'objective and transparent'; 'more burdensome than necessary'; or fees are 'unreasonable'; or the measures have not been reached or administered in an 'independent' manner:

- o Supply of cloud computing or other internet related services subject to data localisation requirements to ensure cyber security (China)
- o Foreign services providers must provide technology transfer as a licensing requirement (China)
- o Licensing requirements for electronic payment services such that no licenses have been provided (China)
- o License is conditioned on having a joint venture with a local company (which is a competitor) (China)
- o Telecoms license fees exceeding \$100 million (China)
- o ICT products must be tested in domestic laboratories for safety leading to delays in product registration – this could be a measure that slows down the capacity of foreign companies to provide services in the ICT sector (India)
- o Electronic payment services must go through a national switch (Vietnam; Indonesia)
- o Importers of devices with 4G technology must have contributed to the development of the domestic industry (Indonesia)
- o Location-based data localisation requirements (Korea)
- o Data-localisation requirements for internet-based payment services (e.g. PayPal) (Turkey)

The GATS Art VI.4 mandate does not make it a given that these DR rules must be developed. The mandate says that the Council for Trade in Services shall 'develop any necessary disciplines'. A major objective when the Article was crafted was to improve market access in Mode 4. Hence the early work under Art VI.4 was about disciplines in professional services. This focus has been watered down over the years, and especially with the current format used by proponents (imported from the TISA negotiations), which water down the level of ambition in qualification requirements and procedures.

Given this shift away from Mode 4 issues and the emerging digital economy with its disruptive characteristics, the African Group and LDCs have repeatedly questioned the necessity of these disciplines. To date, this and other questions (see JOB/SERV/269 'Questions on Domestic Regulation', Africa Group) have not been satisfactorily answered.

Annex 11: Short Analysis of the Trade Facilitation in Services (TFS) Proposal of India

India's TFS proposal has now been scaled back in ambition and taken off the table for MC11. Nevertheless, there are still major problems with the proposal for many developing countries. The key problems include:

- Many developing countries lack institutional capacity – some provisions will be very burdensome
- Most developing countries' regulatory decision-making processes can already be subjected to pressures from 'interested parties' without too much difficulty. Some TFS provisions will further contribute to this
- Whilst the TFS has very good elements on Mode 4, the same provisions applied to other sectors will hit developing countries disproportionately (administration of measures, economic needs tests etc) because most developing countries are net services importers, not exporters.
- The same concerns as in E-Commerce and Domestic Regulation regarding the need to retain policy space to digitally industrialise eg. Members may not want to provide free data flows even in sectors they have opened, in order to develop domestic data processing capabilities.

Some of the problematic provisions include:

- Very extensive Publication of Information requirements that are more burdensome than GATS Art III. There is no mandate for this. E.g. shall promptly publish all 'requirements and procedures for authorisation'. Since the measures affecting trade in services are very broad, and the provision is mandatory, Members can be caught off-guard and accused of not have published measures affecting trade in services in committed sectors/ sub-sectors.
- 'Shall, to the extent practicable' ensure that there is prior publication of new measures. This is not some countries' practice since they do not want to invite pressure from 'interested parties'. 'Shall, to the extent practicable' is still a mandatory obligation and should not be taken lightly.
- There is a 'should, to the extent practicable' provision to allow for prior comment. Whilst it is best endeavour, it sets a standard that, for the most part, is not in developing countries' interest.
- Fees and Charges must be reasonable and commensurate with the costs incurred. This is not always in the interest of developing countries that may want to charge higher fees for many valid reasons including limiting the number of providers in a sector/ subsector (e.g. licenses for casinos or mining), or contributions to infrastructure etc.
- Economics Needs Tests - criteria must be published and must not lead to undue delays and uncertainty for service suppliers. There is no mandate for this in the GATS.
- Facilitating Cross-Border Flow of Information in the context of cross-border supply of services i.e. free flow of data for committed Mode 1 sectors.

The GATS can be greatly improved in the area of Mode 4, but broadening disciplines to other sectors and modes, becomes problematic for many net services importers.

The discussion on classification, new services, technological neutrality or non-neutrality needs to precede the discussions on data flows.

India clearly does have some advantages in the burgeoning digital economy due to its IT professionals and engineers. The free data flow demand is to support its IT outsourcing services industry. Yet some are already looking at current trends of declining employment opportunities in that sector (due to automation), and predicting that jobs may disappear for a big part of this industry as automation becomes increasingly sophisticated – indeed, this may well become a sunset industry (See MIT Technology Review, Vol 120, 'India Warily Eyes AI', November 2017).

Annex 12: Short brief on the Investment Facilitation (IF) Issue

1. Introducing this issue whilst the DDA has not been concluded will be inconsistent with an important DDA July Framework mandate. This could be seen as conceding that the DDA mandates no longer hold and thus the DDA is now moot.

2. Investment is an issue that does not belong to the WTO. The trade-related elements have already been incorporated into the WTO in the UR (TRIMS and also GATS Mode 3). Investment more generally goes beyond trade. This is why there was no consensus in the UR to bring this issue into the WTO and this issue remains controversial.

a) 'Investments' are very broad – they are not only about trade. They are assets that may or may not lead to trade activities. They can include short term capital flows, shares, debt instruments, IPRs – every kind of asset invested by investors.

b) The regulation of investment is not a multilateral trade concern. It is a domestic, behind the border issue.

3) One draft IF Agreement that has been discussed informally by many Members has an alarmingly broad scope – it applies to 'facilitation measures' by Members 'affecting the admission, establishment, acquisition and expansion of investments in services and nonservices sectors'. Facilitation measures are broadly defined as those 'measures by Members...of general application and sector-specific (application) that affect investors and their investment'.

Under WTO jurisprudence, 'affecting trade in services' has been interpreted by panels to mean 'any measure of a Member to the extent it affects the supply of a service regardless of whether such measure directly governs the supply of a service or whether it regulates other matters but nevertheless affects trade in services' (Panel in EC-Bananas III).

Measures affecting investment could potentially mean almost any measure a government has ever passed.

4) One of the most sensitive issues regarding investment is pre-establishment – the rights (or otherwise) of foreign investors to enter a territory. Bilateral Investment Treaties (BITs) are mostly about post-establishment. Proponents of IF are now suggesting to bring into the WTO the most sensitive aspect of investment – pre-establishment rights!

An informal IF proposal has indicated that Members 'may establish criteria for the admission, establishment, acquisition and expansion of investments'. Where established these criteria 'shall be transparent and objective'. This has clear market access implications since investors can challenge the criteria for being subjective or non-transparent, thus forcing their way into the territory.

'Objective and transparent' criteria is borrowed from Domestic Regulation disciplines in Services. In that context, the DR rules only apply to committed sectors. In IF, in the view of proponents, this would apply to any measure 'affecting' any investment! This can apply to any sector of the economy! For example an existing or potential foreign bank investor could challenge a Member if that Member institutes financial data localisation regulations. Such criteria could be challenged as not being objective or transparent.

5) As developing countries are attempting to retreat from BITs, any IF rules lodged in the WTO will provide another layer of disciplines additional to the BITs. In fact, any WTO IF rules can be used in the interpretation of BIT norms such as 'expropriation' and 'fair and equitable treatment' in BIT Investor State Dispute Settlement (ISDS) cases. For example, fair and equitable treatment has been used by tribunals to mean that the investor must have a stable legal and business environment. Investors have sued on grounds of change in terms of license or contracts or changes in policies or regulations. IF rules stating that criteria affecting investments must be 'transparent and objective' can provide further grounds for establishing the failure to provide fair and equitable treatment, if new regulations are deemed to be subjective (e.g. requirement to disclose source code or to have localisation of data processing as digitalisation in the economy progresses and a Member has cybersecurity or digital industrialisation concerns). Even if the IF Agreement is lodged in the WTO, WTO Members can be sued on the basis of those disciplines by investors in the ISDS!

Annex 13: Brief on the Agriculture Domestic Supports Issue

Some critical statistics:

- US Value of Production (VOP) in 2013: \$311.084 billion.
- Current Discussions/ Proposals: 10% of VOP: \$31.1 billion; 15% of VOP: \$46.6 billion
- Current US Applied AMS+ De Minimis: \$13.592 billion i.e. 4.4% of 2013 VOP (last notification, US does not provide Blue Box supports)
- EU Value of Production (VOP) in 2013: \$413.444 billion
- Current Discussions/ Proposals: 10% of VOP: \$41.3 billion; 15% of VOP: \$62 billion
- Current EU Applied AMS + De Minimis: \$9.867 billion; Current EU Applied AMS + De minimis + Blue Box: \$13.406 billion i.e. 3.4% of 2013 VOP

Compare this to the Rev.4 OTDS fixed monetary limits:

- \$28.7 billion for the EU
- \$14.5 billion for the US

No product-specific disciplines have been suggested in the recent proposals (including EU/Brazil and Australia / NZ):

- In effect, this means that the cap as % of VOP is useless and will not be meaningful at all. EU/ Brazil and Australia/ NZ proposals insist that '*Members shall continue to respect the existing limits set out in the Agreement on Agriculture on the provision of domestic support*' (para 6, JOB/ AG/114, Aus, NZ proposal). What does this mean?
- US product-Specific Supports: Products where product-specific AMS support exceeded the de minimis threshold (complete list)- US 2014 notification

Product	% Product-specific AMS as % of VOP	Product	% Product-specific AMS as % of VOP
Sugar	58.9%	Sorghum	8.1%
Sesame	57.5%	Wheat	7.7%
Peanuts	15.6%	Sunflower	7.5%
Cotton	15.5%	Flaxseed	5.5%
Millet	13.6%	Dry beans	5.5%
Tangelos	9.5%	Popcorn	5.5%
Canola	8.9%		

- EU product-specific supports: products where product-specific AMS support exceeded the de minimis threshold (not complete list) - EU 2012/2013 notification

Product	AMS	Production value	Product specific AMS support as % of production value
Silkworms	0.4	0.3	133.3%
Skimmed milk powder	1145	2,156.4*	53.1%
Butter	2743.4	6,531.5*	42%
Fiber flax	7	20.6*	34%
Common wheat	1,864.60	26,831.90	6.9%

- There are no disciplines for EU milk producers – negative impacts will continue in developing countries: eg. Burkina Faso milk producer in Sept 2016 in Brussels: "The average shop price for a litre of locally-produced milk is 600 CFA (about 91 eurocents). In comparison, milk produced from imported

milk powder costs only 225 CFA (34 cents). This puts the local production at risk and destroys opportunities for local pastoral communities to earn a living."⁹

- No disciplines for US cotton – negative impacts of US subsidisation will continue.

Green Box subsidies of developed countries remain undisciplined. They are trade distorting and they make up

- 94% of total US domestic supports
- 87% of total EU domestic supports.

Developing countries are asked to pay in the following ways:

- Bind their domestic supports, including those with 0 AMS– they will be asked to schedule their domestic supports (de minimis) and take cuts in this or the next tranche of negotiations. For the sake of equity, countries with 0 AMS were not required to take reduction commitments in the AoA, the DDA Decisions or Rev.4.
- Developing countries with 0 AMS continue to have product-specific disciplines (from the AoA), whilst developed countries do not (in the form of their 10% product-specific de minimis cap).
- Developing countries with 0 AMS are asked to reduce their de minimis – which was not subject to cuts in the DDA
- Art 6.2 subsidies are suggested by Australia/ NZ to be capped and possibly cut in the future.

I.e. Key subsidising developed countries make 0 payment in Agriculture. Developing countries are asked to pay.

⁹ Source : European Milk Board, Press Release http://www.europeanmilkboard.org/special-content/news/news-details/article/west-african-producers-in-dialogue-with-eu-policy-makers.html?no_cache=1&cHash=dc74da16887ce2efb4902fe34239fe17

Annex 14: Domestic Supports Provided by US, EU, China and India; and How Much Supports are Provided on a Per Farmer Basis

United States

(i) US Domestic Support – total and categories (Green, Blue, AMS, de minimis)

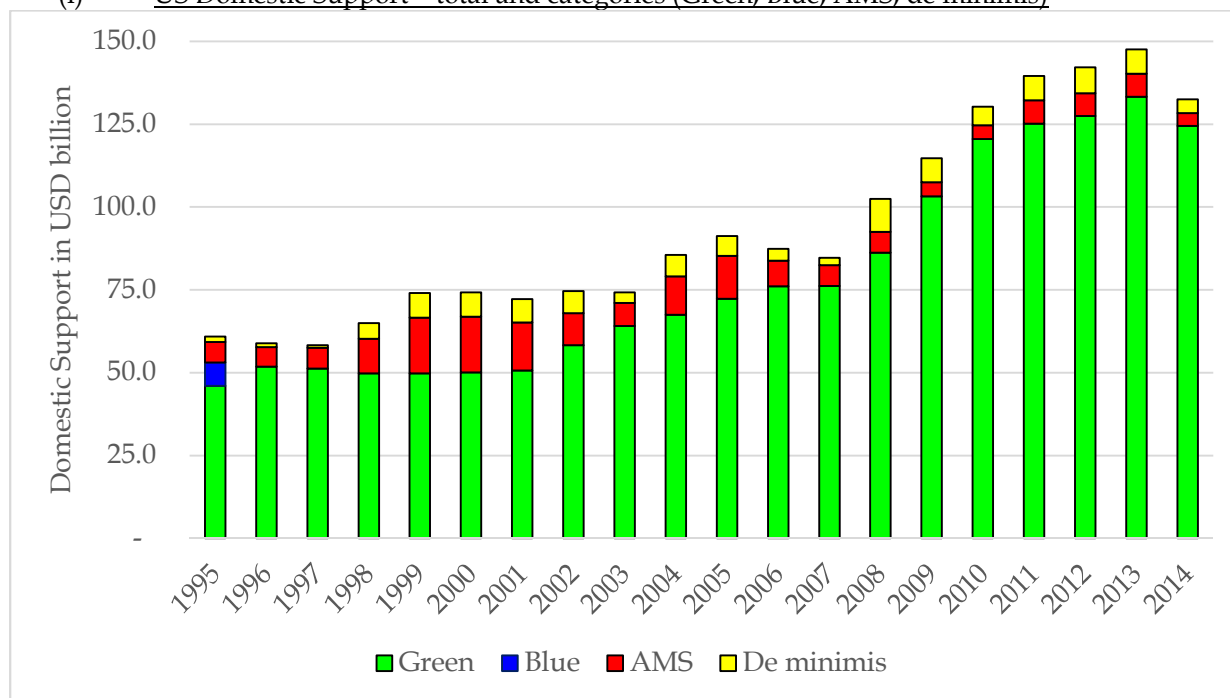


Table: US domestic support (based on WTO notifications)

Figures in USD million

Year	Green	Blue	AMS	De minimis	OTDS (Blue, Amber, De Minimis)	Total notified domestic support	% Green Box
1995	46.0	7.0	6.2	1.6	14.9	60.9	76%
1996	51.8	-	5.9	1.2	7.1	58.9	88%
1997	51.3	-	6.2	0.8	7.0	58.3	88%
1998	49.8	-	10.4	4.7	15.1	65.0	77%
1999	49.7	-	16.9	7.4	24.3	74.0	67%
2000	50.1	-	16.8	7.3	24.2	74.2	67%
2001	50.7	-	14.5	7.1	21.5	72.2	70%
2002	58.3	-	9.6	6.7	16.3	74.6	78%
2003	64.1	-	7.0	3.2	10.2	74.2	86%
2004	67.4	-	11.6	6.5	18.1	85.5	79%
2005	72.3	-	12.9	6.0	18.9	91.3	79%
2006	76.0	-	7.7	3.6	11.3	87.4	87%
2007	76.2	-	6.3	2.3	8.5	84.7	90%
2008	86.2	-	6.3	10.0	16.2	102.4	84%
2009	103.2	-	4.3	7.3	11.5	114.7	90%
2010	120.5	-	4.1	5.7	9.8	130.3	92%
2011	125.1	-	7.1	7.3	14.4	139.5	90%
2012	127.4	-	6.9	7.9	14.7	142.2	90%
2013	133.3	-	6.9	7.4	14.3	147.6	90%
2014	124.5	-	3.8	4.2	8.1	132.5	94%

European Union

(i) EU's Domestic Support – total and categories (Green, Blue, AMS, de minimis)

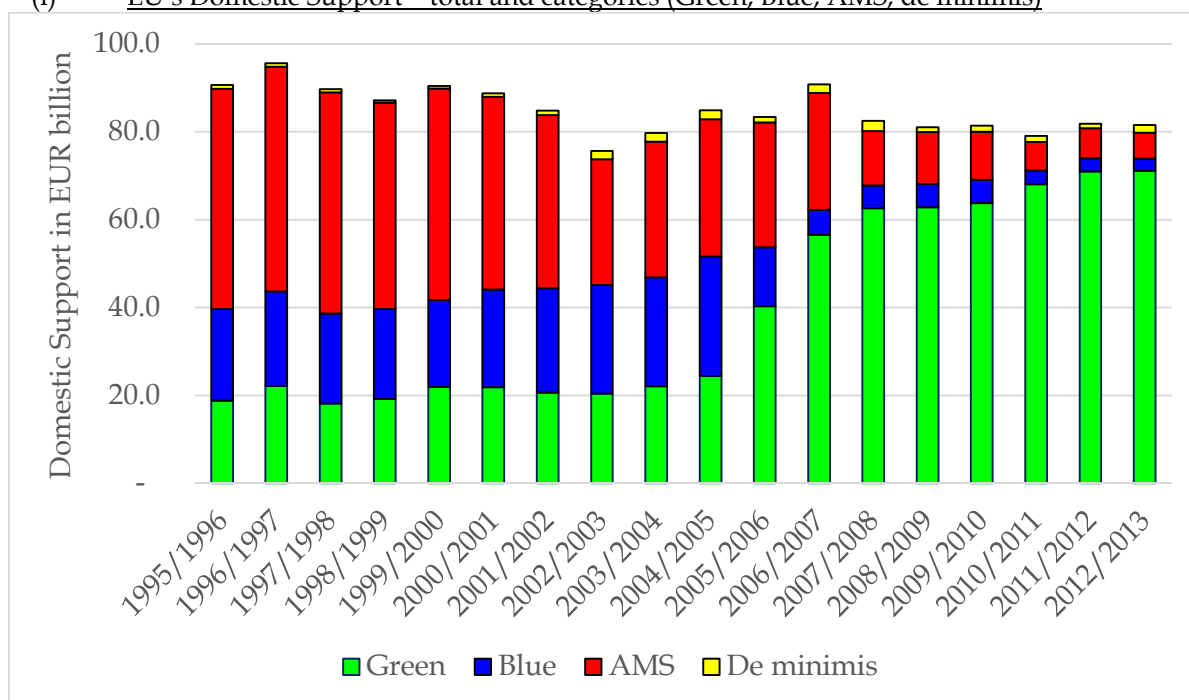


Table: EU domestic support (based on WTO notifications)

Figures in EUR billion

Year	Green	Blue	AMS	De minimis	OTDS (Blue,AMS de minimis)	Total notified domestic support	% Green Box
1995/1996	18.8	20.8	50.2	0.8	71.9	90.6	21%
1996/1997	22.1	21.5	51.2	0.8	73.4	95.6	23%
1997/1998	18.2	20.4	50.3	0.7	71.5	89.7	20%
1998/1999	19.2	20.5	46.9	0.5	68.0	87.1	22%
1999/2000	21.9	19.8	48.2	0.6	68.5	90.4	24%
2000/2001	21.8	22.2	43.9	0.7	66.9	88.7	25%
2001/2002	20.7	23.7	39.4	1.0	64.1	84.8	24%
2002/2003	20.4	24.7	28.6	1.9	55.3	75.7	27%
2003/2004	22.1	24.8	30.9	2.0	57.6	79.7	28%
2004/2005	24.4	27.2	31.2	2.0	60.5	84.9	29%
2005/2006	40.3	13.4	28.4	1.3	43.1	83.4	48%
2006/2007	56.5	5.7	26.6	2.0	34.3	90.8	62%
2007/2008	62.6	5.2	12.4	2.4	19.9	82.5	76%
2008/2009	62.8	5.3	11.8	1.1	18.2	81.1	78%
2009/2010	63.8	5.3	10.9	1.4	17.6	81.4	78%
2010/2011	68.1	3.1	6.5	1.4	11.0	79.1	86%
2011/2012	71.0	3.0	6.9	1.0	10.8	81.8	87%
2012/2013	71.1	2.8	5.9	1.8	10.4	81.6	87%

Total (notified) Domestic Support and Domestic Support Per Farmer

Country Group	WTO Member (year)	Total Domestic Support (USD bln)	Total Domestic Support per farmer (USD)
Developed countries	Australia 2013/2014	1.8	537
	Canada 2013	5.2	16,562
	EU27 2012/2013	130.4	12,384
	Japan 2012	33.9	14,136
	United States 2013	146.8	68,910
Developing countries	Botswana 2014/2015	0.1	486
	Brazil 2014/2015	2.1	468
	China 2010	97.2	348
	Gambia 2013	0.0	35
	India 2013/14	43.6	228
	Indonesia 2008	3.2	73
	Madagascar 2012	0.1	8
	Morocco 2007	1.0	229
	Namibia 2009/2010	0.0	272
	South Africa 2014	1.7	2,265
	Tunisia 2015	0.1	148
	Zambia 2012	0.2	77

Sources: Members' WTO Notifications, FAOStat (employment in agriculture), World Bank (exchange rates)

Annex 15: Losses for Developing countries if we have no DDA Reaffirmation in MC11

Whilst politically, the climate regarding the continuation of the DDA at the WTO is challenging, technically, the DDA remains on-going. For developing countries, reaffirming this fact is very important for the reasons captured below.

If Doha issues are negotiated, but not under the DDA framework, many of the development mandates that developing countries are concerned with will not likely be replicated in the same form they had taken in the DDA negotiations.

The following are likely to be lost in any 'Doha issues' negotiations if the DDA framework no longer stands:

- Special and Differential Treatment (S&D) mandate of para 44 - making 'precise, effective and operational' existing S&D provisions.
- Domestic supports in agriculture - the disciplines as captured in the July Framework; Hong Kong Declaration; and in the 2008 Chair's text (Rev.4) targeting very specific areas of developed countries' domestic supports e.g. the various product-specific disciplines etc.
- Less than full reciprocity (LTFR) as a principle in relation to non-agriculture Market Access (NAMA) negotiations (although it should be noted that the Swiss formula and the coefficients subsequently chosen in the Doha negotiations did not operationalise LTFR).
- Sectoral negotiations in NAMA are voluntary
- Para 1g of the 2004 July Framework keeping the three Singapore issues outside the WTO during the Doha Round:
- 'Relationship between Trade and Investment, Interaction between Trade and Competition Policy and Transparency in Government Procurement: the Council agrees that these issues, mentioned in the Doha Ministerial Declaration in paragraphs 20-22, 23-25 and 26 respectively, will not form part of the Work Programme set out in that Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round.' (July Framework 2004)
- The past DDA cotton mandates - The Hong Kong Declaration says that cotton must be dealt with 'ambitiously, expeditiously and specifically'. The main issue in cotton is and remains domestic supports. The Nairobi language in the cotton Decision on domestic supports is weak. It simply makes the observation that 'some more efforts remain to be made'. In contrast, the Hong Kong language goes much further:
 - Market access: Developed countries provide DFQF for cotton exports from LDCs
 - Domestic Supports: 'trade-distorting domestic supports for cotton production be reduced more ambitiously than under whatever general formula is agreed (in the DDA) and that it should be implemented over a shorter period of time than generally applicable' (Hong Kong Declaration, para 11).
 - Development (S&D) provisions applicable to all developing countries (DDA para 2).
 - Small and Vulnerable Economies - flexibilities as captured in Hong Kong para 41; the Rev.4 and Rev.3.
 - Recently Acceded Members (RAMS) modalities - flexibilities as captured in Rev.4 and Rev.3.
 - LDCs modalities - July Framework para 45; Hong Kong Declaration para 20 - LDC exemption from reduction commitments.
 - DFQF for LDCs for all products or at least 97% of products by the start of the implementation period of the DDA (Hong Kong Declaration, Annex F, para 36).
 - Public Stockholding - whilst this is both a Doha issue and also a stand-alone issue now separate from the DDA, the 'stabilised' solution reached on this issue in 2008 notifying Public Stockholding Programmes under the Green Box is already contained in the draft agriculture modalities text (Rev.4, 2008).
 - Special Safeguard Mechanism - important elements have been elaborated on it in the Hong Kong Declaration; and the Rev.4.
 - Implementation Issues - para 12 of DDA - whilst this has been sidelined for a long time, the implementation issues agenda and mandate provide the opportunity for the historical imbalances that developing countries are still facing in the WTO Agreement to be addressed.
 - Single Undertaking and the need for overall balance in the Doha package - The Single Undertaking is developing countries' only guarantee that not only developed countries' interests will be addressed,

but there must also be outcomes on developing countries' issues. Whilst the adoption of the Trade Facilitation Agreement is seen by some as having eroded the single undertaking, the instrument, as part of the DDA is still available should Members wish to invoke it. With the very problematic processes and political pressures seen in the last two Ministerials, the importance of the single undertaking should not be taken lightly.