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Council for Trade in Services
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WORK PROGRAMME ON ELECTRONIC COMMERCE

REFLECTING ON THE INFORMATION INSUFFICIENCY IN E-COMMERCE

Non-Paper from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

The following non-paper, dated 30 June 2017, is being circulated at the request of the delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

1 INTRODUCTION

1.1. In our previous non-paper (JOB/GC/128; JOB/CTG/7; JOB/SERV/264; JOB/IP/24; JOB/DEV/45), we discussed the paradigm shift of digital trade. We introduced the idea of using the deductive approach to analyse the **qualitative** changes of e-commerce brought about by technological advancement, and to identify the fundamental differences between e-commerce and traditional trade. In our view, this exercise will help Members to narrow the scope and sharpen the focus of our digital trade discussions, which will allow us to speed up progress towards establishing a fair competitive environment for digital trade. Of equal importance is our hope of helping to facilitate the in-depth discussion of many inherent issues of e-commerce in future occasions, of course including the 11th Ministerial Conference.

1.2. We also highlighted the two Negroponte Transformations. These help to shed light on the various ways in which digital trade is undergoing a fundamental transformation from atoms to bits in the digital world. In this non-paper, the deductive approach will be used to analyse **cyberspace trade barriers (CTBs)**.

2 CYBERSPACE TRADE BARRIERS – CROSS-BORDER TRANSMISSION OF INFORMATION BY ELECTRONIC MEANS

2.1. E-commerce or digital trade goes beyond the border. Traditional trade may encounter certain issues such as customs procedures as it crosses the border, whereas digital trade has no such borders to cross. This is the fundamental difference between traditional trade and e-commerce. When there is a trade dispute, with advances in informational technologies and changes in the patterns of digital trade, Members may find it difficult to apply the existing WTO regulations under the GATT or the GATS to digital trade. As the Internet becomes more profitable and its boundaries continue to expand, WTO Members will have various reasons for imposing domestic Internet regulations. The most frequently-cited reasons include:

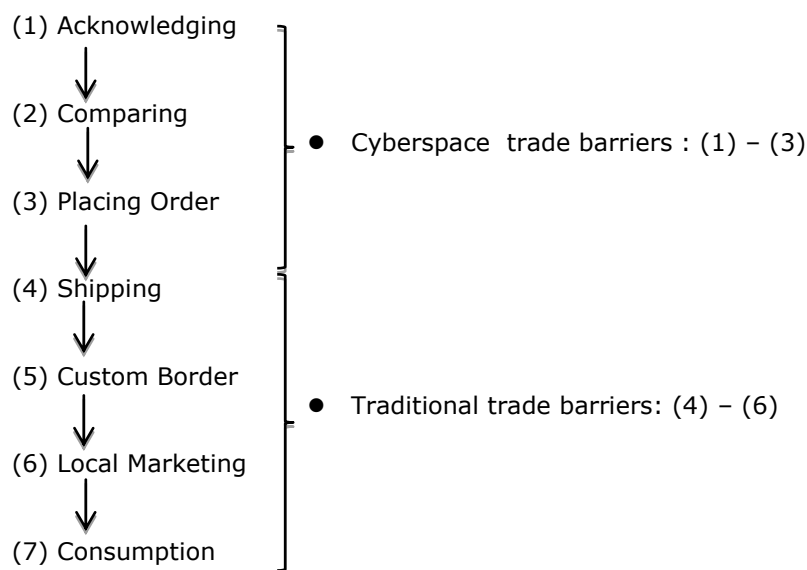
- to protect privacy, intellectual property, public morals or national security, or
- to achieve other legitimate policy objectives.

2.2. Despite the fact that some of the above rationales for regulation are legitimate, the impact of blocking or restricting the cross-border transmission of information by electronic means has more serious consequences than is usually imagined.

2.3. Before discussing CTBs, we invite Members to look at traditional international trade. As can be seen from the flowchart below, traditional international trade can be divided into a series of different stages. The first stage is that of a potential buyer (either a trading company [B2B] or a consumer [B2C]) acknowledging the existence of a commodity; the second step is that this potential buyer compares the target commodity with other competitive ones; the third step is the placement of orders; the fourth step is the shipment of the commodity; the fifth step is the customs check and taxation; the sixth step is domestic marketing; and finally, in the seventh step, the buyer gets the commodity. Traditional trade barriers are most often engaged in stages 4 to 6. They are either in the form of high customs taxes, non-tariff barriers, or others. The barriers to the Internet, however, are different.

2.4. First, it should be noted that most CTBs are engaged in the first three stages, 1 to 3. In fact, certain restrictions applied to website data flows by some Members even prevent the foreign commodity from being noticed at all by potential buyers in their country. If, in the first stage, the necessary data (information) is not transmitted efficiently, then any commodity (product) comparison, or order, shipment, customs check, etc., cannot happen. Thus, an Internet (cyberspace) barrier will often completely wipe away all trade opportunities at stage 1, which is especially serious for small- and medium-sized enterprises (SMEs), and particularly those in developing countries, who would probably have no other channels of access to potential foreign buyers.

Conceptual Trade Stages



2.5. Secondly, when traditional trade barriers are applied, the commodity (or product) usually ends up with a higher price, but may still be sold into the market and purchased by the customer if the quality is good enough. By contrast, when certain forms of cyberspace (or Internet) trade barriers are applied, potential consumers are denied from the start the chance of acknowledging the commodity's existence, therefore the trade, even of a high quality commodity (product), cannot proceed. Thus, cyberspace (or Internet) barriers to trade can have a stronger influence than traditional ones. Thirdly, in the case described above, because potential consumers are never made aware of the blocked trading opportunities, no complaints are likely to be raised, no dispute cases are established, and no amendments ever made. Thus, trade barriers formed by a restriction of the free flow of data or information are often much more significant than traditional barriers, are more difficult to recognize, and harder to remedy.

2.6. Moreover, developing country Members, and Least-Developed Countries (LDCs) especially, already face many traditional trade barriers in the form of non-tariff measures, customs

procedures, TBTs, SPSs, etc. Now, with CTBs, they face an even more difficult trading environment as they attempt to engage in e-commerce, which was supposed to bring them more trade opportunities. This makes the current "digital divide" problem even worse. We urge WTO Members to give this problem more serious attention.

2.7. We therefore suggest that Members should be extremely cautious of the serious risk and impact that can be caused by such regulatory measures applied to digital trade. Government intervention in the cross-border transfer of information by electronic means can significantly reduce the potential for international trade via the Internet, especially for SMEs.

2.8. From an economic perspective, if consumers are unable to access or communicate with a proportion of the world's foreign suppliers because of restrictions on the free flow of data, then the suppliers in the domestic market represent merely a subset of all the potential suppliers of the same goods and services. Foreign supply potential will be suppressed, and the prices of all subsequent value-added products will be distorted.

2.9. In any discussion on the subject of a fair competitive market, it is particularly important to distinguish between the potential demand/supply versus the realized demand/supply. Typically, the textbook definition is that, "other things being equal, given any price of the commodity in question, the *quantity demanded* is the amount of commodity a consumer can afford and is willing to buy." If we specify a certain set of prices (P_1, P_2, \dots, P_n), we can generate a corresponding set of quantities demanded (Q_1, Q_2, \dots, Q_n) by posing a set of hypothetical questions to any consumer: e.g., how many units would you like to buy if the price is P_i , $i=1, \dots, n$? The answer so generated (in terms of quantity demanded) is denoted as Q_i . Connecting the price/quantity-demanded dots, we get the demand curve shown in Figure 1 below. The important thing to note is that although any consumer at any particular point in time faces only one price and demands only one quantity, the demand curve derived is based on a set of hypothetical scenarios: *if* you face this or that price, how many units would you buy? For the definition of "quantity supplied" and "supply curve", the same logic applies. Thus, **to calculate the true market equilibrium price, all potential demanders and suppliers (including foreign ones) should be included *a priori*.**

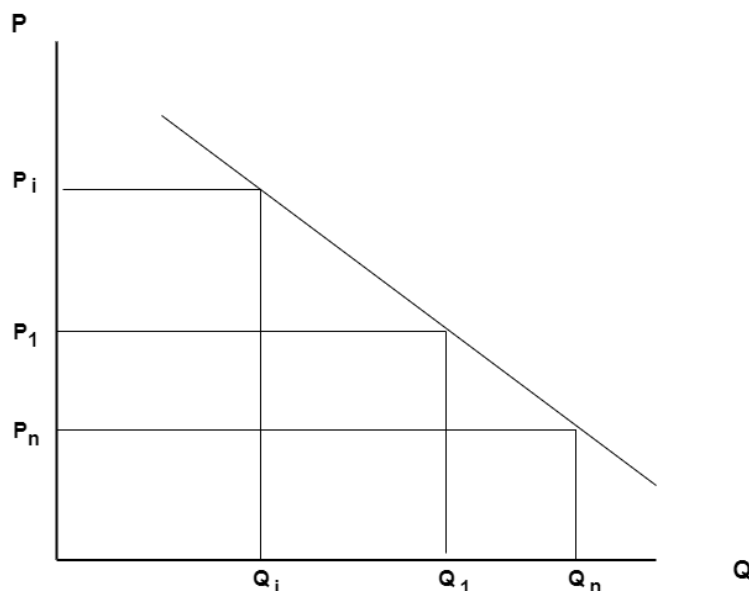


Figure 1: Demand curve characterizes the relation between various hypothetical prices and the corresponding quantities demanded; only one price/quantity would be realized in the market, but all potential hypothetical reactions should be taken into account. When there are widespread information blocks, many potential consumer reactions can not be revealed and measured, therefore the demand curve we see in the market is distorted.

2.10. The final stage in the formation of the aggregate demand and aggregate supply is to sum up the individual demand and supply. In Figure 2 below, if there are three consumers (A, B and C) with their respective demand curves, the aggregate demand would be the correspondence between each price and the total quantity demanded, shown in the right-hand panel of Figure 2.

2.11. With restrictions on the free flow of information on the Internet, however, a supplier is not aware of the existence of some potential buyers, so the latter's potential demand cannot be revealed to the supplier. Similarly, on the supplier side, with restrictions on the free flow of information on the Internet, a demander is not aware of the existence of thousands of potential suppliers. We must therefore conclude that **restrictions on the free flows of information on the Internet distort the range of the summation of aggregate demand and supply, thus rendering the equilibrium prices in these markets unreliable as references.**

2.12. Our conclusion is that with restrictions on the free flows of data on the Internet that systematically eliminate foreign demanders and suppliers, the fair competition mechanism is distorted and fair competition ceases to exist. Even if the remaining players still have their demand and supply curves, and the market still clears such demand and supply, the equilibrium results are not at all the same as they would be in a free and fair market.

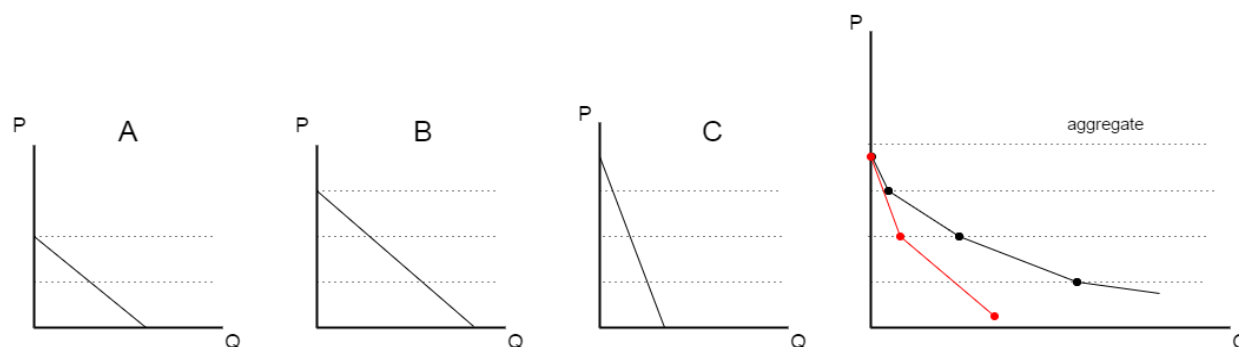


Figure 2: The market aggregate demand is the horizontal summation of all individual demands (in the Figure, A, B and C are the 3 individuals). If some members' information is blocked and their demands are not revealed, then the summation is partial, the aggregate demand is distorted, and the equilibrium would be different from the true market equilibrium. For instance, if individual B's demand is blocked and hence not revealed in the market, the new aggregate demand curve would become the red line on the right panel, different from the original black line.

2.13. We would also like to point out that widespread restrictions on the transfer of information by electronic means obviously constitutes a CTB for products with heterogeneous qualities. This illustrates the point that CTBs are price-insensitive, whereas physical space barriers may often be characterized by a price mark-up, in the form of either a specific tax or an *ad valorem* tax.

3 CYBERSPACE TRADE BARRIERS: DESERVING MORE DISCUSSION

3.1. Digital trade benefits all Members. As technology continually evolves, however, the emergence and use of CTBs will probably increase, and may cause greater market distortion. Additionally, a solid regulatory environment for digital trade is crucial if the real and exciting opportunities for international trade are to be grasped, and the benefits shared fairly. In our view, more focused discussion will help us to gain a better understanding of this issue, and to find an effective way to approach it. We encourage Members to consider:

- Using relevant WTO bodies as well as the Trade Policy Review mechanism to discuss and to exchange their policies and best practice experiences with open and fair markets for e-commerce.

- Reporting/presenting the cyberspace trade barriers they may encounter, and the impacts they may have. Developing country Members, and LDCs especially, may ask for the WTO Secretariat's assistance in this matter.
- Reviewing their trade policies with a view to accommodating the evolving development of e-commerce, in particular ensuring the efficient transformation of cross-border data flows.
- Sharing capacity-building experiences and/or policies with a focus on what Members have done to help other Members, as well as SMEs, to participate in digital trade.

3.2. As a fair and open e-commerce environment is an essential part of market access, we would encourage governments engaged in the process of acceding to WTO membership to present factual information on their e-commerce-related policies in their Working Party Reports.
