ELECTRONIC COMMERCE

AND

THE INTERNATIONAL TRADE RULES

Discussion of Key Trade Policy Issues

May, 2000

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and
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This document contains a brief outline of some of the key international trade policy issues in the area of electronic commerce, arranged in three themes. The first theme explores issues that affect access to global markets. The second theme considers issues related to the regulation of e-commerce and the manner in which trade rules affect such regulation. Finally, the third theme discusses the upcoming international negotiations on trade in services, and the way in which e-commerce might fit within the negotiations.

As background information, we have attached short sketches of the international trade agreements mentioned in these documents; the General Agreement on Tariffs and Trade ("GATT"), the General Agreement on Trade in Services ("GATS"), the North American Free Trade Agreement ("NAFTA"), the GATS Reference Paper on Basic Telecommunications and the Agreement on Trade-Related Intellectual Property Rights ("TRIPS"). For further information, we invite you to visit the following Web sites:

http://www.dfait-maeci.gc.ca/tna-nac/menu-e.asp
http://e-com.ic.gc.ca
http://strategis.ic.gc.ca/sc_mrkti/services/engdoc/homepage.html
http://www.wto.org
http://services2000.ic.gc.ca

The Domestic Context

Before starting the outline of the key trade policy issues, it might be useful to briefly set out the elements of the Canadian strategy on electronic commerce. In collaboration with the provinces, territories, private sector and other stakeholders, the Government of Canada released its Electronic Commerce Strategy in September 1998.

The Strategy outlines initiatives designed to establish Canada as a world leader in the adoption and use of electronic commerce. It aims (1) to ensure that Canadian consumers and businesses have trust in the digital economy by addressing security, privacy and consumer protection concerns, (2) to remove barriers to e-commerce by clarifying and updating the rules that govern how business is transacted to ensure that they apply to the digital world, (3) to strengthen the information infrastructure, and (4) to fully realize the opportunities presented by e-commerce, ensuring that they are diffused to all Canadians.

The Strategy notes that the private sector has traditionally led the development and use of e-commerce in Canada, and emphasizes the need for a close partnership between the private sector, including businesses, consumers and public interest groups, and all levels of government. The Government can support the private sector-led development of e-commerce by developing a supportive and responsive domestic policy environment that allows market flexibility while maintaining minimum baselines for a fair marketplace and consistent treatment of electronic and paper-based commerce. In addition, the Government can work with other governments and international organizations toward a global regime that provides consistent and predictable global rules for e-commerce. In this regard, Canada has been active within the OECD, APEC and the WTO in developing frameworks for e-commerce and in promoting its use.

It is in the context of discussions held at the WTO that many of the key trade policy issues discussed in this paper have been raised.

First Theme: Access to Global Markets

This theme groups together a set of four trade policy questions that affect, in different ways, access to global markets for e-commerce.

1. *Is the on-line delivery of information content such as software, music and books etc. trade in "goods" or trade in "services"?*

   - **Why does it matter?**

     The international trade rules applicable to goods are different from those applicable to services. As a result, on-line trade in information such as software, music and books will be governed by different rules depending on whether such trade is characterized as trade in "goods" or trade in "services."

   - **Some examples**

     Architectural software programs.

     If the on-line delivery of architectural software programs is treated as trade in services, presumably a country which has chosen not to liberalize its architectural services or computer services sectors would be free to prevent these programs from being sold on-line into their territory. Assuming this may be difficult to enforce against foreign suppliers, such a country might impose measures to stop Internet Service Providers from permitting access to the seller's websites or measures to deter consumers from making on-line purchases of foreign software programs.

On-line delivery of books.

If the on-line delivery of books is treated as trade in goods, a country which wished to support its domestic production for the Internet, may be limited in its choice of subsidy programs.

- **Discussion**

It seems uncontroversial that the electronic delivery of services such as the on-line delivery of consulting services would be treated as trade in “services”, just as if the consulting services were delivered in person. Similarly, physical goods that are ordered and paid for on-line retain their character as “goods” and must be transported and delivered in physical form across borders.

However, the situation is less clear with respect to information products such as software, music and books, which can be delivered either in a physical format or electronically (on-line). Trade in the physical diskettes, CDs and paper embodying this information has been treated as trade in “goods” under international trade rules. As for the on-line delivery of this information, there is much debate among countries about the characterization of these transmissions as services, goods, or something else. Certain countries are of the view that all electronic transmissions, including those that may have a physical equivalent, are services and consequently should be subject to the GATS rules, while others suggest that those with a physical equivalent are goods subject to the GATT, in part because the GATT rules would ensure greater access to foreign markets for digitally delivered products with a physical equivalent. A third option would be to classify such transmissions as neither goods nor services but within their own category. The issue is important because of the difference in the trade rules that apply to trade in “goods” and trade in “services.”

Trade in goods is subject to a well-developed, comprehensive and rigorous set of trade rules. For example, under the GATT, governments must treat all foreign goods alike (the “most favoured nation” or MFN principle). In other words, they cannot favour goods from one country over those from another. Governments must also treat all foreign goods as well as they treat similar domestic goods (the national treatment principle). The GATT also disciplines government use of subsidies to domestic industries and the use of countervailing and anti-dumping duties. Governments are prevented from using quantitative restrictions (such as quotas) to restrict access to their domestic markets. Customs duties, or tariffs, may be imposed on imported goods, although the tariff rates have been declining and in many cases are nil. This is particularly the case with respect to trade with the U.S. as tariff rates under the NAFTA are almost all nil.

Trade in services, on the other hand, is subject to a more recently-developed and different set of trade rules. Governments were permitted a one-time opportunity to exempt themselves from the MFN obligation in service sectors of their choosing. In addition, governments are permitted to choose the service sectors that they wish to open to foreign service providers. Even then, they may establish conditions or limitations on the extent of market access or national treatment that foreign service providers can expect. As a result, market liberalization for services varies from sector to

sector and from country to country. Customs duties, or tariffs, have not been imposed on services. Governments are free to subsidize their domestic service providers if they wish to do so, although subsidies disciplines may eventually be negotiated under the GATS as well.

Therefore, due to the differences in the regime governing trade in goods and that governing trade in services, the classification of electronic deliverables that may have a physical equivalent may be important to particular industries. An important consideration for Canada on this issue will be how Canadian businesses believe that they will be affected by the various classification choices. For example, during the GATS negotiations Canada was careful not to make commitments to liberalize cultural services.

2. *In an e-commerce transaction, does the supplier "go to" the consumer (i.e., cross-border supply in which the supplier enters the jurisdiction of the consumer) or does the consumer "go to" the supplier (i.e., consumption abroad in which the consumer enters the jurisdiction of the supplier)? In other words, where does the transaction occur from the international trade perspective?*

- **Why does it matter?**

  A country's market liberalization commitments under the GATS may differ for a particular service depending on the manner in which it is delivered (i.e., depending on whether the transaction takes place via cross-border delivery by the supplier, or consumption abroad by the consumer). As a result, a services supplier would be left in some uncertainty about what rules apply in a given market if we do not clarify which type of delivery e-commerce transactions are deemed to be. Many countries impose no trade restrictions on their consumers travelling to other countries to consume services, but do impose trade restrictions on the provision of the services on a cross-border basis by foreign service suppliers.

- **An example**

  Through a website in Country A, a company offers certain accounting services on-line. It wishes to provide those services on-line to foreign consumers in Country B. However, Country B does not permit the cross-border supply of accounting services and demands that any foreign service suppliers who wish to provide accounting services cross-border establish a local office. Country B does not prevent its citizens from travelling and consuming accounting services abroad. Can the company offer its on-line services to consumers in Country B without establishing a local presence? If on-line transactions are deemed to involve cross-border supply, a local presence would be required. However, if on-line transactions are deemed to involve consumption abroad by the consumer, no local presence would be

required.

- **Discussion**

Under the GATS, countries may make specific liberalization commitments for each of the service sectors they wish to liberalize. Within each individual service sector, countries further sub-divide by the "mode" or manner of delivery of the service. The four modes used in the GATS are based on the location of the supplier and the consumer. They are illustrated using the example of engineering consulting services, as follows:

(1) cross-border supply	e.g. a consultant provides engineering services by telephone across a border to a consumer in another country.
(2) consumption abroad	e.g. a consumer travels to the country of an engineering consultant to obtain engineering services.
(3) commercial presence	e.g. an engineering consulting firm establishes and operates an office (i.e. joint venture, subsidiary or branch) in another country to supply engineering services to that market.
(4) presence of natural persons	e.g. an individual engineering consultant is permitted to enter and remain temporarily in another country in order to supply engineering services there.

These terms are discussed further in Annex "B", which provides a brief overview of the GATS.

It is important to determine which mode of supply is involved in e-commerce because the openness of foreign markets may differ for a particular service depending on the applicable mode of supply. Unless the question is clarified, service suppliers may be left in some uncertainty about the conditions of access to particular foreign markets. As mentioned in the example above, a situation in which the service supplier and consumer based in different countries transact electronically could perhaps be argued to fall within one of several different modes of supply.

Furthermore, from the perspective of the WTO Members, countries may have fully liberalized the consumption of services abroad by their own citizens believing that this full liberalization only applied to the physical travel of citizens to another country to consume services. Such countries may have included restrictions or conditions on their liberalization commitments for "cross-border" supply ("mode 1"). Such restrictions or conditions might include domestic regulatory requirements in their own markets that would otherwise constitute market access barriers. Such restrictions or

conditions might not have been included within their liberalization commitments for "consumption abroad" ("mode 2"). If e-commerce transactions are deemed to occur through "consumption abroad", these countries could face difficulties in maintaining in the on-line world certain forms of regulatory requirements that may constitute market access barriers.

The choice of the applicable mode may also imply something about the geographical location in which the transaction is deemed to take place and, thus, which country may have regulatory jurisdiction over the transaction. For example, if the WTO Members agree to deem the supply of consulting services over the Internet to be "consumption abroad" by the consumer, then the consumption may be viewed as having taken place in the supplier's country. Conversely, if the transaction is considered to be "cross-border supply" by the supplier, then the consumption may be considered to take place in the consumer's jurisdiction. As a result, this discussion should not take place in isolation from the broader jurisdictional issues being discussed domestically and in other international fora such as the OECD.

As a practical matter, it may be difficult or impossible to establish predictable criteria to determine whether a given e-commerce transaction is more like a cross-border delivery or consumption abroad. One solution might be to agree to deem all e-commerce transactions to fall within one particular mode of delivery.

3. *Should customs duties be imposed on electronic transmissions?*

- **Why does it matter?**

  Customs duties, or tariffs, are border charges applied to international trade in goods. If customs duties are applied on physical goods but not on electronic transmissions of the same content, the difference may artificially skew the market's distribution choices. If tariffs on the physical goods are low or zero in all major export markets, distortions due to customs duties would likely not result. Regardless of the practical difficulties, some countries may attempt to impose customs duties on electronic transmissions.

- **Discussion**

Customs duties, or tariffs, differ from internal taxes such as income or sales taxes. Therefore, the issue of customs duties must be considered separately from the question of whether e-commerce should be subject to domestic taxation. Customs duties are due upon the importation of certain products, and traditionally apply only to goods, although they are sometimes applied to services that are embedded in goods. To date, no country has developed a system for collecting customs duties on electronic transmissions. Canada does not collect customs duties on electronic transmissions at present, and it is likely that the cost of any system to do so would exceed receipts. On the other hand, developing countries, which are generally more reliant on customs duties for governmental revenue, are concerned about any international ban on customs duties on electronic transmissions.

One concern voiced with respect to the application of customs duties to products that may be delivered physically or electronically is that the levying of customs duties on the physical and not the electronic form might skew the delivery choice in favour of electronic delivery. It should be noted, however, that customs duties on items that may be delivered in physical and electronic form are nil between Canada and the U.S. As a result, customs duties would be expected not to skew delivery choices between the two countries. It is important, however, that we understand which are the other key export destinations of interest to Canadian businesses, in case customs duties may still be charged on Canadian goods arriving at those destinations, and hence, possibly skew delivery choices. On the other hand, Canadian exporters may prefer to have tariff-free electronic access to these export destinations, regardless of whether physical goods are dutiable upon entry to these export destinations.

4. *What types of telecommunications services are involved in e-commerce?*

- **Why does it matter?**

  Access to telecommunications networks is essential to a variety of e-commerce related services such as Internet access services, website-hosting and other communications functions. The negotiating history of the trade rules applicable to telecommunications services have created two key distinctions.

  The first distinction is between private and public telecom networks and services. This is of interest to businesses such as independent Internet Service Providers since the existing trade rules would require that such independents be ensured access to high-speed cable networks only if they are classified as public rather than private.

  A second distinction exists between value-added and basic telecom services. This may be important because only basic telecom services are subject to the extra pro-competitive principles of the Reference Paper on basic telecommunications.

- **Discussion**

A wide variety of telecommunications services underlie e-commerce transactions. At the most basic level, electronic commerce consists of commerce conducted over telecommunications networks linking electronic devices (usually computers at present). Although the Internet is one of the principal vehicles for e-commerce, not all e-commerce is Internet-based.

E-commerce depends on the underlying telecommunications network services which carry the electronic transmissions. The treatment of telecommunications services under the international trade agreements is determined by the history of the international trade negotiations in that sector.

This history has given rise to two different ways of dividing telecommunications services; (a) the distinction between public and private telecom networks and services, and (b) the distinction between "basic" and "value-added" telecom services. Each of these distinctions gives rise to an important trade policy issue.

(a) public v. private telecom networks and services

At the time of the negotiation of the GATS, the WTO Members concluded an Annex on Telecommunications which recognizes the importance of the underlying telecom transport networks and services for the delivery of many sorts of services. The Annex requires each WTO Member to ensure that foreign service suppliers can obtain access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the provision of all services for which that Member has made liberalization commitments. As a result, it is quite important from the perspective of service suppliers whether a particular type of transport network or service is classified as public or private. Although the Annex explicitly does not apply to the distribution of radio or TV (i.e., broadcasting), when any network is used to provide telecom services to the public, it falls within the requirements of the Annex. This includes the use of cable networks for the provision of Internet access services.

(b) "basic" and "value-added" telecom services

An additional distinction was drawn between "basic" and "value-added" telecommunications services at the time of the GATS negotiations. "Basic" telecom services include services such as voice telephony, packet or circuit switched data transmission or private leased circuit services. "Value-added" or "enhanced" telecom services are provided via an underlying public telecommunications transport network and include services such as e-mail or voice mail. While "value-added" or "enhanced" telecommunications services were covered within the original GATS negotiations, many countries were not prepared to open their markets to foreign providers of basic telecommunications services, and basic telecoms were left to a separate sectoral negotiation.

During the separate negotiations on basic telecommunications services, many WTO Members undertook to open their markets to foreign service providers. However, numerous WTO Members considered that the GATS rules were not sufficient to ensure properly-functioning competition in the basic telecom sector. As a result, they negotiated a "Reference Paper on Basic Telecommunications" which sets out a set of principles covering competition safeguards, interconnection guarantees, disciplines on universal service provision, a transparent licensing process and the independence of regulators. Many countries, including Canada, have accepted the requirements of the Reference Paper by including it in their GATS Schedules of Commitments. A copy of the Reference Paper is included in Annex "D".

There is some disagreement internationally over which services should be considered basic, and, therefore, subject, to the Reference Paper's pro-competitive requirements, and which should be considered "enhanced" or "value-added". Some countries believe that certain Internet-related

telecom services such as Internet access services are “basic”. From their perspective, an advantage of this classification is that dominant service providers would be subject to the pro-competitive rules contained in the Reference Paper. This might be important in the hypothetical situation that some countries might wish to argue that a dominant U.S. Internet access/content provider is engaging in anti-competitive cross-subsidization by using a near-monopoly in the creation of popular content to extract premium prices for its content while providing Internet access services below cost, to the detriment of competing Internet Service Providers seeking to enter the U.S. market.

In order to promote Canadian interests, it is necessary to properly identify and classify the various types of telecommunications services involved in electronic commerce transactions. As e-commerce did not exist in its present form at the time of the original GATS negotiations, the descriptions of telecommunications services contained therein may need to be clarified for today’s telecommunications sector.

Second Theme: Rules for the Global Electronic Marketplace

1. *How should we approach the issue of domestic regulation of electronic commerce under international trade agreements?*

- **Why does it matter?**

  A government depends on domestic regulations to further legitimate public policy objectives whether it is to improve the functioning of the market through competition laws or to protect the vulnerable through criminal laws or consumer protection laws, to name only a few examples. However, the international trade rules recognize that countries may sometimes use domestic regulations for protectionist purposes. It is critical to strike the proper balance which recognizes governments’ right to regulate, but prevents veiled trade protectionism. It is therefore important to understand how the rapidly-evolving e-commerce marketplace functions in order to understand in what circumstances domestic regulation is required, and how international trade rules may affect such regulation.

- **Discussion**

Government regulation of electronic commerce is a critical issue. Topics such as data privacy and consumer protection have been raised as matters requiring government intervention and/or private sector self-regulatory initiatives. Clearly, governments must retain the right to regulate in the public interest and pursue national policy objectives. However, it is also important to facilitate e-commerce and to ensure that its development is not improperly constrained by regulations.

In recognition of the fact that domestic regulations may be used for protectionist purposes to impede international trade rather than for legitimate public policy objectives, rules governing

domestic regulations have been included in various ways in the international trade agreements.

For example, Article VI of the GATS is intended to provide some parameters for domestic regulation that affects international trade in services. For example, WTO Members must ensure that the regulations are administered in a "reasonable, objective and impartial manner," that administrative decisions are subject to objective and impartial review at the request of an affected service supplier, and that service suppliers receive reasonably prompt processing of license applications. Article VI also commits WTO Members to develop disciplines that will have the effect of ensuring that measures relating to licenses, qualifications or standards are based on objective and transparent criteria, are no more burdensome than necessary to ensure the quality of the service and are not in themselves restrictions on the supply of services.

As mentioned above, another approach to domestic regulations is reflected in the Reference Paper on Regulatory Principles applicable to a particular sector, namely, basic telecommunications services. The Reference Paper, a copy of which is attached as "Annex D", contains a series of pro-competitive regulatory principles and requirements.

With respect to e-commerce, some believe that minimal regulation will best foster the development of e-commerce and suggest that the international trade rules be strengthened to limit government regulation that could create barriers to international trade. Others believe that issues such as privacy and consumer protection are particularly important in the digital environment, and international cooperation is required to foster e-commerce. Therefore, they recommend that WTO Members negotiate a list of regulatory measures that governments must apply rather than a negative list of things that governments must refrain from doing. A middle road could be the negotiation of a set of principles that must be respected when enacting domestic regulations related to e-commerce.

Further analysis will be required to identify whether and how domestic regulatory measures may be used to improperly affect e-commerce, and whether existing WTO disciplines on domestic regulations are sufficient to deal with any problems that arise.

2. *How should we deal with intellectual property issues posed by electronic commerce?*

- **Why does it matter?**

  The Internet has delivered unprecedented challenges to the protection of intellectual property rights. These challenges are critical to those whose stock in trade consists of information or content that is digital or is easily digitized such as software, music, books and audiovisual content.

- **Discussion**

Canada has been supportive of the work of the World Intellectual Property Organization, or WIPO, to arrive at an international framework that facilitates e-commerce by addressing areas of

concern such as the impact of digital technology on copyright and related rights, the interaction of trademark protection and domain names, the impact of the Internet on well-known marks, the development of principles governing ISP liability for intellectual property rights infringement, and the administration of patent systems on the Internet. It is not yet clear which problems may be solved by the holders of intellectual property rights and which require government intervention at the international level.

Canada has signed the *WIPO Copyright Treaty* and the *WIPO Performances and Phonograms Treaty* which address copyright and related rights in the digital network environment. Canada is in the process of examining what changes may be required to Canadian legislation and international agreements in order to facilitate e-commerce and ensure appropriate protection of intellectual property rights.

Third Theme: International Trade Negotiations and Issues Related to E-Commerce

1. *How should we approach e-commerce within the new negotiations launched by the WTO on trade in services under the GATS?*

- **Why does it matter?**

  "Real" access to foreign markets for the purposes of e-commerce may require the liberalization of a group of related services which together constitute the core of most e-commerce transactions. For example, telecommunications services, financial services and distribution services are part of the e-commerce transaction chain. Liberalization by a particular country in these sectors would enable foreign e-commerce companies to provide such ancillary services in-house within that country or contract with a service provider of their choosing, including those outside the particular country. While not strictly necessary to permit cross-border e-commerce, such liberalization would arguably facilitate global e-commerce.

- **Discussion**

The WTO recently launched new negotiations on trade in services under the GATS. Many of the services involved with e-commerce are likely to be discussed during these negotiations.

In typical trade negotiations, countries make offers to, and requests of, each other in relation to the liberalization of trade in certain sectors. Electronic commerce is not, in itself, a trade "sector". Rather, it is a means of doing business and delivering goods and services that involves a wide variety of new and traditional supporting services. As a result, questions arise as to the best way to handle e-commerce related activities within the new GATS negotiations.

The traditional approach is to negotiate sectors individually, although, in practice, countries

may agree to trade concessions in unrelated sectors. Although it is very early in the negotiation process, some countries have suggested that WTO Members adopt a "cluster" approach to e-commerce, in which a group of e-commerce-related services could be addressed together. This approach is based on the idea that, for e-commerce, liberalization in some sectors may require removal of restrictions in related services. For example, if an e-commerce application service provider wishes to provide a full range of e-commerce facilities to small businesses in a foreign market, it might find itself blocked if it is permitted to provide customer relations services and inventory warehousing and control but not distribution, delivery or advertising services. Different levels of liberalization in related service sectors would also pose difficulties for vertically-integrated businesses wishing to operate in foreign markets to their full extent.

On the other hand, the "cluster" approach presents its own difficulties and risks. For example, it may be difficult to identify and reach international consensus on all of the services that should be included in an e-commerce cluster. This could perhaps delay results in any of the sectors involved.

In order for Canada to respond to this type of proposal or to consider alternative negotiating formulas, it is important to properly identify the various layers of services upon which e-commerce depends. What might we want to include in a cluster of core e-commerce services? What ancillary services might it be desirable to see included? Are there some services that we might want to treat separately?

2. *How can we best ensure that the benefits of e-commerce are realized by developing countries?*

- **Why does it matter?**

  There is an increasing disparity between rich and poor nations. The strength of the new communications technologies grows with the numbers that are interconnected. Furthermore, the strength and success of the world trading regime depends on realization of the trade benefits by all countries. Unless the "digital divide" between the rich and poor is addressed, the social and economic potential of the Internet and e-commerce will not be achieved.

- **Discussion**

E-commerce has the potential to encourage economic development and provides increased trade opportunities for companies from countries of all levels of development. One of the key challenges facing developing countries is the establishment and maintenance of the appropriate infrastructure and services. To this end, it will be important for developing countries to attract investment. Canadian businesses and volunteers could play a key role in these projects.

ANNEX "A"

An Overview of the General Agreement on Tariffs and Trade ("GATT")

The GATT was first negotiated in 1947, and has evolved through several rounds of international negotiations. The early rounds of negotiations focussed on the reduction of trade barriers such as customs duties (tariffs) and quantitative import restrictions (such as import bans or quotas). However, the negotiations gradually expanded to include non-tariff barriers to trade in goods as well as new areas such as services and intellectual property.

In the most recent round, the Uruguay Round, which lasted from 1986 to 1994, the World Trade Organization was established as a formal international body to deal with the rules of trade. At the heart of the WTO are a series of trade agreements; the GATT and a series of other agreements affecting trade in goods, the General Agreement on Trade in Services (the "GATS"), and the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS").

The GATT is a government to government agreement. However, it is of particular relevance to private businesses and individuals since it lays down the framework for trade in goods around the world, imposes rules by which all WTO Member countries must abide, and is enforced under the WTO dispute resolution mechanisms.

At the heart of the GATT are the most favoured nation ("MFN") principle and the principle of national treatment. The MFN principle requires that countries not discriminate between their trading partners by offering advantages to goods originating in some WTO members but not others. The national treatment obligation prevents discrimination between foreign and locally-produced goods, requiring that they be treated equally once the imported goods have entered the local market.

In addition, the GATT and the separate agreement on anti-dumping measures (formally known as the Agreement on the Implementation of Article VI of the GATT, 1994) allow countries to take action against the "dumping" of goods in their markets, but set out rules governing such action. Dumping refers to the exportation of goods at a lower price than is normally charged in the home market. Countries often wish to take action against dumping to defend domestic industries.

The GATT and the separate Agreement on Subsidies and Countervailing Measures sets limits on countries' ability to subsidize their domestic industries, and regulates the measures that countries may take to counter the effects of imports of subsidized goods.

The Agreement on Technical Barriers to Trade was negotiated in recognition of the difficulties that are posed for producers and exporters by differing technical regulations and standards and the possibility that such requirements could be set arbitrarily as a means of domestic protectionism. The Agreement tries to ensure that technical regulations, standards, testing and certification procedures do not create unnecessary obstacles to trade.

The Agreement on Trade-Related Investment Measures outlaws a variety of practices affecting trade in goods that violate the national treatment obligation or the general prohibition on quantitative restrictions. For example, countries may not demand particular levels of local procurement ("local content requirements")

A variety of separate agreements also exist, such as those which address import licensing procedures, valuation of goods for customs purposes, pre-shipment inspection, and rules of origin.

ANNEX "B"

An Overview of the General Agreement on Trade in Services ("GATS")

During the Uruguay Round of trade negotiations, which resulted in the establishment of the World Trade Organization in 1995, the 124 participating countries recognized the need for a comprehensive set of rules governing the growing trade in services.

In order to ensure that all countries, regardless of size or power, traded under a set of known and agreed rules, Canada and our partners concluded the General Agreement on Trade in Services (GATS). While the General Agreement on Trade and Tariffs (GATT) deals with trade in goods, the primary goal of the GATS is progressive liberalization of trade in services.

All of the WTO's 140 current members have agreed to open up parts of their domestic services markets to international competition through the GATS. Although the GATS is an international, government-to-government agreement, it is of particular relevance to private service suppliers as it lays down the framework for trade in services around the world, thus providing a more predictable environment in which to plan international activities.

The GATS is based on two basic obligations applicable to all service sectors; the MFN (most favoured nation) obligation and the transparency obligation. The MFN obligation requires that Member countries not discriminate between like foreign services and service providers, for example, by permitting opportunities or advantages to services and service providers originating in one country but not in another. The transparency obligations require that WTO Members promote clarity and the public availability of domestic laws and other measures, so as to facilitate the gathering of information by foreign services suppliers regarding domestic regulations affecting trade in services in that country.

The bulk of the trade liberalizing measures negotiated under the GATS are contained in the separate "Schedules of Commitments" of the WTO Members. These Schedules set out, on a sector by sector basis, the conditions under which foreigners may provide services in the domestic market and whether or not they are guaranteed national treatment in the domestic market. National treatment refers to the obligation not to discriminate between like domestic and foreign services and service suppliers.

Each country is free to choose those service sectors which it wishes to include in its Schedule. Each country is also free to include in its schedule any limitations or conditions on the market access and national treatment commitments that it adopts. After these commitments are made they are "bound" (they can be modified or withdrawn after negotiations with affected countries). Because of this, the commitments provide a stable and secure environment in a given sector.

The Schedules take into account the four major ways in which service suppliers can provide their services – the so-called "modes of supply", and deal with them separately. As a result, a WTO

Member's liberalization commitments may differ depending on the mode of supply. The four modes of supply are as follows:

1. **Cross-border supply** - a service is mailed or otherwise transported across a border.
2. **Consumption abroad** - a consumer travels across a national border to consume a service. Examples include a tourist or a student.
3. **Commercial Presence** - a service provider establishes a foreign-based corporation, joint venture, partnership or other establishment to supply services to foreign persons.
4. **Presence of natural persons** - an individual either alone or as an employee of a service provider travels to another country to deliver a service.

The GATS also provides for the possibility of sector-specific negotiations, as has occurred in the telecommunications and financial services sectors. The Agreement on Basic Telecommunications concluded in 1997. It significantly liberalized trade in basic telecommunication services. Some Members committed to a set of principles covering basic telecommunications matters such as competition safeguards, interconnection guarantees, transparent licensing processes, and the independence of regulators in a commonly negotiated text called the "Reference Paper". The example of the reference paper and its treatment of pro-competitive principles is one that may be considered for broader application to other service sectors.

A new series of GATS negotiations has just begun. Over the coming months, the Government of Canada will be consulting Canadians, with a view to establishing Canadian objectives heading into these negotiations. Input received during these consultations is an essential element of the trade policy-making process and will help form the core of Canada's negotiation strategy.

ANNEX "C"

An Overview of the North American Free Trade Agreement ("NAFTA")

The NAFTA entered into force in Canada, the U.S. and Mexico on January 1, 1994. It was designed to encourage increased trade and investment among the three countries by eliminating customs duties (tariffs) and reducing non-tariff barriers, as well as to set rules for the regulation of investment, services, intellectual property, competition and the temporary entry of business persons.

The NAFTA did not affect the phase-out of tariffs between Canada and the U.S. under the Canada-U.S. Free Trade Agreement (FTA), which proceeded on schedule with the elimination of almost all tariffs on trade in goods originating in the two countries by the beginning of 1998. The NAFTA provides for nearly all tariffs to be eliminated on trade in goods between Canada and Mexico by the beginning of 2003.

ANNEX “D”

Reference Paper on Basic Telecommunications Services

REFERENCE PAPER

Scope

The following are definitions and principles on the regulatory framew
telecommunications services.

Definitions

Users mean service consumers and service suppliers.

Essential facilities mean facilities of a public telecommunications transp

(a) are exclusively or predominantly provided by a single or limit

(b) cannot feasibly be economically or technically substituted in

A major supplier is a supplier which has the ability to materially affect th
regard to price and supply) in the relevant market for basic telecommun

(a) control over essential facilities; or

(b) use of its position in the market.

1. Competitive safeguards

1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of prevent
together, are a major supplier from engaging in or continuing anti-com

1.2 Safeguards

The anti-competitive practices referred to above shall include in pa

(a) engaging in anti-competitive cross-subsidization;

(b) using information obtained from competitors with anti-comp

(c) not making available to other services suppliers on a timely ba
about essential facilities and commercially relevant informat
for them to provide services.

2. Interconnection

2.1 This section applies to linking with suppliers providing public telec networks or services in order to allow the users of one supplier to com supplier and to access services provided by another supplier, where speci

2.2 Interconnection to be ensured

Interconnection with a major supplier will be ensured at any techn network. Such interconnection is provided.

(a) under non-discriminatory terms, conditions (including tech specifications) and rates and of a quality no less favourable th own like services or for like services of non-affiliated service subsidiaries or other affiliates;

(b) in a timely fashion, on terms, conditions (including technica specifications) and cost-oriented rates that are transparent, r to economic feasibility, and sufficiently unbundled so that th network components or facilities that it does not require for provided; and

(c) upon request, at points in addition to the network terminati majority of users, subject to charges that reflect the cost of c additional facilities.

2.3 Public availability of the procedures for interconnection negotia

The procedures applicable for interconnection to a major supplier

2.4 Transparency of interconnection arrangements

It is ensured that a major supplier will make publicly available eithe agreements or a reference interconnection offer.

2.5 Interconnection: dispute settlement

A service supplier requesting interconnection with a major supplie

(a) at any time or

(b) after a reasonable period of time which has been made publicly

to an independent domestic body, which may be a regulatory body as ref resolve disputes regarding appropriate terms, conditions and rates for i reasonable period of time, to the extent that these have not been establi

3. Universal service

Any Member has the right to define the kind of universal service ob maintain. Such obligations will not be regarded as anti-competitive per administered in a transparent, non-discriminatory and competitively n burdensome than necessary for the kind of universal service defined by

4. Public availability of licensing criteria

Where a licence is required, the following will be made publicly ava

(a) all the licensing criteria and the period of time normally req concerning an application for a licence and

(b) the terms and conditions of individual licences.

The reasons for the denial of a licence will be made known to the a

5. Independent regulators

The regulatory body is separate from, and not accountable to, any s telecommunications services. The decisions of and the procedures used with respect to all market participants.

6. Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, inc and rights of way, will be carried out in an objective, timely, transparen manner. The current state of allocated frequency bands will be made pu identification of frequencies allocated for specific government uses is

ANNEX "E"

An Overview of the Agreement on Trade-Related Aspects of
Intellectual Property Rights ("TRIPS") and the new WIPO treaties

The TRIPS Agreement was negotiated during the last round of trade negotiations which also gave rise to the World Trade Organization ("WTO"). TRIPS is a comprehensive multilateral agreement on intellectual property ("IP"), covering copyright and related rights, trademarks, geographical indications, industrial designs, patents, integrated circuit designs and undisclosed information such as trade secrets. TRIPS is a "minimum standards agreement", meaning that WTO Members may provide more extensive protections of IP rights than are required under TRIPS, if they so wish.

With respect to each of the types of IP rights described above, the Agreement sets out the minimum standards of protection that each WTO Member must provide within its borders. The standards are often set by reference to certain provisions of some of the existing conventions negotiated within the World Intellectual Property Organization ("WIPO"). TRIPS does, however, add a number of obligations beyond those contained in the pre-existing WIPO conventions.

The TRIPS Agreement also lays down certain principles applicable to domestic procedures and legal remedies for the enforcement of IP rights. It contains provisions on civil and administrative procedures and remedies, border measures and criminal procedures, which specify the procedures and remedies that must be made available to IP rights-holders for the enforcement of their IP rights.

Disputes between WTO Members over the respect of TRIPS obligations may be adjudicated under the WTO's dispute settlement procedures.

TRIPS, like the GATT and GATS, also follows the principles of most favoured nation and national treatment. In other words, the intellectual property rights standards and procedures must be equally available without discrimination between foreign IP rights-holders or between domestic and foreign IP rights-holders.

In addition, to the TRIPS, Canada has signed two WIPO treaties of relevance in this context; namely the *WIPO Copyright Treaty* and the *WIPO Performances and Phonograms Treaty* which address copyright and related rights in a digital environment. Canada is in the process of examining what changes might be required to our domestic legislation and to international instruments in order to facilitate electronic commerce and ensure that intellectual property rights are appropriately protected in the digital environment (including issues related to possible implementation and ratification of the WIPO treaties.)