

# E-Commerce and Services Classification

# Identification of services transactions of e-commerce

- The provision of Internet access services?
- The electronic delivery of services: services products are delivered to the customers in the form of digitised information flows?
- The use of the Internet as a channel for distribution services?

# Two types of classification issues related to e-commerce

- Goods vs. services: are electronically delivered products goods or services? In other words, are they governed by the GATT or the GATS in the WTO? Are some of them neither goods nor services?
  - E.g. the status of software: good or service?
- For services that are delivered electronically, how should they be classified? Are some of them new services?

# Digital products (US-Korea PTA).

- **digital products** means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution, regardless of whether they are fixed on a carrier medium or transmitted electronically
- The definition of digital products should not be understood to reflect a Party's view on whether trade in digital products through electronic transmission should be categorized as trade in services or trade in goods.

# Classification in the Scheduling Guidelines

- **There is no compulsory system. According to the Scheduling Guidelines:**
  - “In general the classification of sectors and subsectors should be based on the secretariat’s revised services sectoral classification list. (MTN/GNS/W/120)
  - Where it is necessary to refine further a sectoral classification, this should be done on the basis of the CPC or other internationally recognised classification (e.g. financial services annex).
  - If a member wishes to use its own sub-sectoral classification or definitions it should provide concordance with the CPC.
  - If this is not possible, it should give a sufficiently detailed definition to avoid any ambiguity as to the scope of the commitments.”<sup>1</sup>

<sup>1</sup> MTN/GNS/164 (Scheduling Guidelines), para. 19

# E-commerce challenges in the application of the current GATS classification

- In undertaking specific commitments, how to map technological advances, “new” commercial terminology or business models into W/120 is challenging, for example: cloud computing, social networking, search engine, ebook, etc.
- Key issue: what are the criteria on the basis of which these services could be classified?

# Why classification matters?

- Better understanding of classification helps clearly describe sectors in the schedule
- Unclear, ambiguous sectoral description may lead to dispute
- When addressing inconsistency claims under Articles XVI (market access) and/or XVII (national treatment) of the *General Agreement on Trade in Services (GATS)*, the first step is to determine what the service at issue is and whether the defending party has undertaken any specific commitment in the relevant service sector .

# Scheduling of specific commitments and classification

- While there is no definition of “services” in the GATS, specific commitments are to be inscribed in the schedule on a sectoral basis.
- Therefore, for the scheduling purposes, services need to be identified and classified.

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