"Policy Issues related to eCommerce and the FTAA process"

Presentation by Senator Dale D. Marshall, Chairman , FTAA Joint Government/Private Sector Committee of Experts on Electronic Commerce at the Expo International sponsored by the American Chamber of Commerce of the Dominican Republic held in Santo Domingo, Dominican Republic on the 19th March, 1999; Hotel V Centenario – Inter Continental.

Mr. Chairman, fellow panelists, distinguished guests, ladies and gentlemen.

I am honored to have been invited to be a part of this distinguished panel and I am particularly pleased to have the opportunity to speak on, and to discuss with you, the **Policy Issues related to eCommerce and the FTAA Process.**

You have already been treated to an expert discourse on exactly what is this thing called eCommerce. Having had such an excellent foundation laid for me, It is now so much easier for me to look at some of the policy issues which arise. In addition to this, the moderator has also asked that I spend a little time looking at what eCommerce has meant for my own country, Barbados. Indeed, the Barbadian experience, and its approach to eCommerce is of distinct relevance to this forum as Barbados is a fellow Caribbean nation.

But first, I must attempt to place eCommerce within the context of the Free Trade Area of the America. As you may be aware, the governments of the countries in this hemisphere have agreed to put in place a Free Trade Area of the of the whole of the Americas by the year 2007. In pursuance of this objective, the Trade Ministers of the region have set up nine (9) negotiating groups and three (3) consultative committees to look at specific areas of action. The Joint Government / Private Sector Committee of experts on Electronic Commerce, is one of those consultative groups.

In agreeing to set up this committee, the ministers recognized the rapid expansion of Internet usage and of eCommerce in the region. It was clear to them that this new phenomenon would impact on trade in a way that was fundamentally different from the impact of other developments over the centuries.

That eCommerce is booming cannot be doubted. Statistics show that it took **radio** 38 years to reach fifty million households in the USA. It took **television** 13 years to reach fifty million households. It took the **Internet** a mere four years to reach fifty million households. Extrapolating further would lead us to the same conclusion about the likely rate of growth for the rest of the region and the world.

We have estimates today of 20 million Internet hosts and well over 100 million Internet users. We have predictions ranging from 140 million users by the year 2000, to Nicholas Negroponte's prediction of 1 billion by the year 2000. In terms of dollars and cents, we have predictions ranging from $220 billion dollars of trade by the year 2001 to the more optimistic predictions of $1 trillion dollars of total revenue.

Out of 100 million Internet users in the world as of January 1998, only 1.25 million were found in Latin America and the Caribbean. In North America, about 25% of the population are Internet users, while in L. America and the Caribbean the proportions range from 0.01% in Paraguay and 0.04% in Ecuador to around 6% on Costa Rica.

Within the Western Hemisphere, Internet Hosts are located primarily in the USA and Canada with 19 million and 1 million respectively. On the other hand, in the 19 countries of Latin America, there were 240,000 Internet hosts and in the whole of the Caribbean there were just over 2300 as of late last year.

However, growth of Internet hosts has been more rapid in L. America and the Caribbean, than elsewhere. Between January to July 1998, the number of hosts grew by over 60% as compared to 24% in the rest of the world.

With such rapid growth in terms of number of users and also in terms of revenue, it is little wonder then, that **eCommerce** has so quickly become the darling of today's commercial activity. It's advantages and attributes are being heralded by business leaders, leaders in education, economists and politicians.

Today, it is certain that the United States dominates the world's eCommerce. This is not surprising. But the important thing about eCommerce is that, as the great leveler of the business playing field, it is also certain that the US dominance will not go unchallenged. Every single one of the much talked about advantages of eCommerce, - the fact that it makes geographical barriers irrelevant, the fact that the set-up costs are low, the fact that merchants can reduce or eliminate inventories, these are the very factors which will cause and which have been causing businesses in the rest of the world to look to the Internet. They look to the Internet for the chance to penetrate the markets around the world that have eluded them for so long.

It is precisely this phenomenal growth and the seemingly limitless potential that has forced the world to begin to consider the so called issues of eCommerce. eCommerce is being studied in many fora throughout the world. The subject is being studied by at least 14 international bodies - the World Bank; the World Trade Organization; the World Customs Organization; The World Intellectual Property Organization included among them. There are also numerous regional and sub-regional bodies studying eCommerce; the OECD; APEC; the EU; and of course, the FTAA to name a few. Of all of these, the FTAA is a relatively latecomer. The FTAA only set up this Committee of Experts on eCommerce, last year.

The mandate of the committee is to make recommendations by October of 1999, to the Trade Ministers of the hemisphere on :-

"**how to increase and broaden the benefits of electronic commerce and, in particular, how electronic commerce should be dealt with within the context of the FTAA**".

The committee is required, as part of its mandate, to

"**examine eCommerce (issues) with a view towards identifying the environment that will allow eCommerce to benefit (all) the countries of the hemisphere**".

The Work Program

As I mentioned before, the committee has to complete its study of the eCommerce issues and formulate it's recommendations and report to the Trade Ministers of the Hemisphere in October of this year. As Chair, I have circulated a draft work program which has received tacit acceptance by the committee. That work program called for the Committee to consider at our January meeting the following subject areas:

1. Standards for Forms of Transmission
2. Implications for Small Economies
3. Implications for Small Business
4. Governments as Model Users
5. Business Users
6. Raising Skills and Awareness
7. Network Access and Reliability

An in-depth look at these issues will allow us to begin to develop recommendations at this early stage, on the kind of national environment which will allow eCommerce to grow. We have looked at such areas as education and training and also access to the Internet, both in terms of availability of the hardware and also access to networks.

Our upcoming meetings will look to more specific issues such as **taxation and payment issues, legal issues, International trade issues** and "so-called" **user issues**, such as privacy, security and encryption, authentication, and consumer protection.

There are many issues to be considered. Limitations on time will permit me to do little more than to give some of them a brief mention.

LABOR ISSUES

We know that eCommerce will have important implications for labor, not simply in terms of permitting more and more people to work from at home, but also in terms of the possible job losses if companies shift comprehensively to eCommerce. For example, if a retailer in Santo Domingo chooses to move away from the typical retail operation and instead sell his goods exclusively on-line. It is likely that there will be some job loses. Some of his workers may be able to retool, but the need for a large number of staff on the floor, cashiers, and so on, will be diminished.

I do not mean to suggest that eCommerce will render droves of people unemployed. Far from this, it will create many, many opportunities. However, governments will need to plan for this shift, for the many job opportunities expected to open up can only be taken advantage of, if there is a well trained labour force with the skills required by the industry.

TAXATION ISSUES.

An important issue for Governments and businesses is how new telecommunications technologies will influence the collection of *Value Added Tax* and other indirect taxes.

New technologies for secure electronic payments present an opportunity for governments to enhance their tax services to consumers. They also present a challenge to tax authorities with respect to :

a) how a good or a service that is delivered electronically is to be classified for tax purposes, and

b) how to determine the party to a transaction from whom taxes, such as consumption or sales taxes, shall be collected.

New technologies are challenging the traditional boundaries between goods and services, and between tangible and intangible goods. For example, computer software may either be viewed as a good, a service, or as intellectual property. This creates a characterization problem when attempting to determine the type of tax to be applied to its sale over the Internet, or if fact whether or not it is to be taxed at all!

The concept of **place of supply** is generally used to determine where a transaction is chargeable with tax. This is usually defined as the location of the establishment providing the good or service, or the place of performance or enjoyment, irrespective of where the supplier or consumer belongs. The Internet has created a situation where many services can be supplied to a consumer without the supplier having a recognizable establishment in the country where the supplies are consumed. Cross-country service suppliers over the Internet have no need for staff, premises, or even equipment in the consumers country and this raises a serious jurisdictional issue for tax liability.

TARIFF ISSUES

The issue here is very similar to the domestic taxation issue and so I will not go into much detail. Suffice it to say that this issue arises where there is a cross-border transaction and relates only to electronically supplied goods or services, such as the supply of software over the Internet.

The USA appears at this time to be the only country to have committed itself to a totally tariff-free Electronic commerce marketplace for the future. Other countries and trading blocks seem to favor a standstill on the imposition of tariffs for the short term, so as to allow for thorough consideration of the legal and social issues. Such things as privacy and encryption feature weightily as considerations.

The WTO declaration on Electronic commerce calls specifically for a work program which takes into account the economic, financial and development needs of developing countries. For developing countries, the potential loss of revenue through the non-imposition of tariffs is great, as electronic commerce replaces traditional methods of the delivery of goods and services.

LEGAL ISSUES

As an attorney by profession, I could go on for hours on the legal issues surrounding electronic commerce, but I shall resist the temptation.

Commercial transactions are today conducted on the basis of well conceived laws, regulations and conventions. eCommerce now challenges those traditional modes. In many of our laws the requirement of an individual's signature is enshrined and is a prerequisite to the creation of many contracts. Often, these signatures must be witnessed or notarized. These concepts are now becoming outmoded or at the very least are being drastically transformed.   The concept of digital signatures and watermarks are the replacements created by eCommerce, however many of our laws were drafted at a time when eCommerce was not even contemplated. The adequacy or currency of our laws must therefore be addressed so as to accommodate eCommerce.

The question of jurisdiction over the contract is also relevant. Which countries court will have jurisdiction where a consumer in Santo Domingo goes online to a company's website which he assumes is in Miami, but unwittingly he is logging on to a site in Jamaica and placing his order in that jurisdiction?

How will we deal with piracy of software or music over the Internet?

REGULATION OF THE NET

Another very important issue is whether countries should enact laws to regulate eCommerce? Is there will be a need for government regulation, and if there is such a need, at what level should such regulation be set? This is an area in which great care must be exercised for there is much disparity among the nations of the hemisphere. Some countries may wish to avoid regulation of the sector, while others may be more conservative.

Since becoming Chairman, I have traveled to many places to address gatherings such as this. In the "margins" of those meetings, I have always sought out the people at random to find out how they feel about eCommerce and related matters. I have heard frequently heard the view expressed, that eCommerce is essentially a US thing and that people from developing countries will never be able to seriously get involved except to buy things from US websites. They proceeded to explain what in their view were the reasons for holding this view.

They said:

- We don't have the critical mass of people online to sustain activity in eCommerce
- Our networks are not reliable. The backbone is frequently down.
- The cost of access is too high

- We don't have the range of products to offer.

And there were others.

I do not dispute that the items which they specified were important issues and had to be looked at. However, in my view, we need to look to the opportunities and the advantages before a judgment is passed.

The Internet and eCommerce will be hugely beneficial to developing countries. A potter, manufacturing beautiful works of art in the hills of Barbados, in the past would have found it virtually impossible to market his work in European markets. eCommerce opens up the world to him. Barbados, as a developing country, has put substantial investment into planning for the effective use of eCommerce.
 I must first mention a program implemented in Barbados called *Edutech 2000*. This is a program expected to cost US $175 million dollars which has as it's aim to ensure that each student in all of our primary and secondary schools are trained in the use of the computer and the Internet as. Each student is to have access to computers and the Internet. This new generation is in effect being primed for this shift to eCommerce.

However, more than plans for the future, Barbados has actually seen tremendous growth in the number of international companies which have set up software development companies under our offshore regime. These companies have been developing software solutions for Fortune 500 companies and the programs are supplied to the clients online. Programming problems are also fixed on-line. These companies employ large numbers of Barbadians and moreover, they have trained hundreds of students at the University of the West Indies and the Community College in computer solutions.

In eCommerce, both business and policy makers have common interests.
eCommerce will only flourish where you have a large number of well educated, computer literate people. eCommerce will only flourish where there is a good telecommunications network, with high bandwidth. Governments have a vested interest in these areas, for

these are key to any country's national development. It is precisely because such matters as these are interdependent, that both governments and businesses must work together to achieve success.

Conclusion

My committee is only a consultative group. We are charged with the responsibility to study eCommerce and make recommendations to the Governments of the region. The issues are many and perhaps, given the rate at which the technology is developing, our recommendations may be of academic interest only, over a short space of time. However try we must.

The possibilities for trade and education and the simple sharing of information are limitless. We can barely guess at what is in store for the industry in the next decade. We may find that buying music and movies as discs or tapes will give way completely to purchasing and downloading them over the Internet. The concept of a library as a place where books are stored and a place where the serious student must visit daily, will change. Consulting doctors will review x-rays sent to them by e-mail and render a diagnosis.

The march of technology is inexorable. The region as a whole must grasp the opportunity to be at the forefront of eCommerce. We cannot afford to play "catch-up".

Thank you.

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