

## **India's Intervention on E-Commerce Moratorium at the Informal General Council meeting held on 27<sup>th</sup> November 2018**

### **Introduction**

At the outset, my delegation would like to express sincere thanks to the GC Chair for his personal efforts in organizing this informal open-ended meeting to discuss the impact of the moratorium on customs duties on electronic transmissions, as set out under the Work Programme on Electronic Commerce.

2. India and South Africa jointly introduced the proposal 'Moratorium on customs duties on electronic transmissions: Need for a re-think', contained in document WT/GC/W/747, at the meeting of the General Council on 26 July 2018, with objectives, that included examination afresh of the impact of the moratorium, given that the realities prevailing in 1998, when WTO Members agreed for the first time, to the temporary moratorium on customs duties on electronic transmissions, have changed significantly. Digital trade has acquired dimensions unimaginable then. The impact of the moratorium needs to be understood from the revenue point of view. Also, looking from the larger development perspective, we need to analyse how the moratorium is impacting, the efforts of developing countries and LDCs, to industrialize digitally. We will today focus on these two issues.

3. The ecommerce moratorium is a very important decision by the WTO and we agree with the GC Chair that it's continuation should be driven by concrete facts and statistics.

### **Shortcomings in the WTO study of 2016 on digitizable physical 'goods' and not ET:**

4. This brings me to the study by the WTO entitled 'Fiscal implications of the customs moratorium on electronic transmissions: The case of digitisable goods', dated 20 December 2016, contained in document JOB/GC/114. I recall, most members who prefer the continuation of the moratorium, extensively referred to the findings of this study during the July GC. Hence, this study warrants detailed examination.

5. The subject of the WTO study is 'digitizable goods.' As per the WTO's explanation, digitizable goods are physical goods which have the potential to be electronically transmitted. In other words, these are physical goods, currently being traded physically across borders on which WTO members can apply their bound customs duties. However, digitizable physical goods obviously are not the subject of the ecommerce moratorium. Rather, the

ecommerce moratorium applies to electronic transmissions (ET) which is online, cross border trade in these products. These are not in any way captured by the study.

6. The main conclusion of the WTO study is that the share of trade in digitizable goods being traded in physical form to total trade is less than 1% of total goods trade. However, as already mentioned, the moratorium does not apply to such goods in physical form. On the other hand, its application results in tariffs not being levied on the electronic transmissions, which deliver these goods in digitized form. Let us take the example of one digitizable product, say books. The WTO study tells us trade in books in physical form is low and if they were to be traded exclusively in electronic form the loss of revenue would be small. But what the study does not tell us is that a large and growing proportion of books are already being traded in electronic form and because of the moratorium, Members are unable to impose tariffs on these e-books, even though this is technically feasible. We do understand that the burgeoning online trade in video games, e-books, music and video downloads and software, is not directly captured by most governments. But surely, there would be reasonable ways to estimate such trade and this is the minimum we expected from a WTO study, which has completely failed to capture the revenue loss that has occurred since 1998.

7. Another major shortcoming of the WTO study is that it lacks comprehensive coverage of digitizable goods. The study seems to have excluded some important tariff lines, such as photographic films and software, whose global imports by developing countries have been substantial.

8. It compounds this error by applying the applied rates of tariffs for respective products instead of the bound rates, which Members have the flexibility of applying anytime, and in this era of protectionism, are increasingly resorting to.

9. On account of all the above-mentioned factors, it is clear that the said WTO study grossly underestimates the tariff revenue loss on account of the moratorium. It is, therefore, erroneous to claim on the basis of a study done on physical trade of products that the moratorium on ET has a minimal negative impact on custom revenues of developing countries.

#### **Impact on revenue from other sources:**

10. Let me now come to the issue of how the moratorium has resulted in governments of developing countries & LDCs collecting lower revenues through other sources including 'internal charges.' Applicable internal taxes are also largely lost due to online trade. Any product imported into a country is subject

to internal duties such as manufacturing tax or sales tax or value added tax (VAT) or goods and services tax (GST). When such products are transmitted electronically to the consumer directly, it becomes very difficult to levy such taxes and hence the Government loses such revenues in addition to the basic customs duties on such products.

11. Further, it is very difficult to tax the super platforms. In fact, the OECD has published a number of reports on addressing the tax challenges of the digital economy, including the concept of 'Base erosion and profit shifting' (BEPS) which refers to tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations. Let me cite the case of Facebook which generates huge profits from its India operation where almost 20% of its global users are located, but pays an abysmal 0.06% of its total tax outgo to the Indian government.

12. Thus, the moratorium deprives developing countries & LDCs, which are large recipients of online traded goods or ET and have higher tariff rates bound at the WTO, of huge customs revenue. As online cross border trade is exploding, the loss in revenue is also cascading steeply. Secondly, this loss is augmented by the additional loss of domestic taxes, making digital trade a huge revenue loss making proposition for most developing countries & LDCs.

#### **Other significant impacts of the moratorium:**

13. As if the sacrifice of revenue, which could be used for development and for bridging the digital divide was not bad enough, there are other equally large negative impacts of the moratorium which are difficult to quantify. To just mention a few, the moratorium will negatively impact the efforts of many developing countries, which are laggards as far as digital industrialization is concerned, to industrialize digitally. We all know how tariffs play an important role in protecting infant industries from older and established overseas competitors until they have attained some economies of scale. Custom free imports of digital products will hinder the growth of the infant digital industry in developing countries.

14. Second, we also need to understand the ruinous impact of digitization on SMEs in developing countries & LDCs. As the UNCTAD study of 2017 points out, three countries, namely, China, USA and UK have captured around 70% of the cross-border e-commerce market, SMEs in other developing countries are facing huge challenges. Given low levels of broadband penetration and the fact that only 5% people in developing countries use e-commerce platforms, the probability of domestic e-commerce to grow in the developing countries and benefit their SMEs appears to be low. This is compounded by the monopoly pricing powers of behemoths that run platforms and can force sub-optimal contracts on SMEs. Thus, in these countries digital trade or ETs is harming

rather than helping the cause of SMEs, contrary to what some would want us to believe.

15. Lastly, with the advent of Industry 4.0, propelled by internet of things and new technologies like 3D printing and artificial intelligence, the number of products which can be transmitted electronically will increase exponentially. Thus, the GATT tariff commitment of Members- the bound rates- of these digitized products will get undermined as more and more trade moves online. As a logical extension, if virtually all non-agricultural manufacturing products can be digitized and, therefore, transmitted electronically, the moratorium on application of customs duties on ET will be akin to reducing bound rates to zero on all manufactured products! In other words, the ecommerce moratorium will render meaningless the existing GATT bound rates, which are typically higher in developing countries and for which they have made payments in the Uruguay Round.

16. Therefore, there is an urgent need for the developing countries and LDCs to develop their digital capacities for facing the growing challenge of digital trade. This will require developing national digital industrial policies which match the level and pace of their digital development. However, for designing such policies it is extremely important for developing countries to preserve policy and regulatory space in the WTO.

### **Concluding remarks:**

17. Some estimates show the global size of online markets is many trillions of US dollars. Even if 10% of this is cross border ETs, as broad estimates show, the moratorium is preventing the levy of tariffs on more than a 100 billion US dollars of trade. And mostly in the developing world! In addition, it will result in serious harm to infant digital industry and SMEs in these countries.

18. Chair, the MC-XI decision on the ecommerce moratorium will continue till December 2019. We have before us almost a year to revisit the key issues identified by the Members in the context of the ecommerce moratorium. We look forward to better and more comprehensive empirical studies by the next year on this issue to guide us in our decision-making process.

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