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Keynote address by Ambassador J.S.Deepak, Permanent Mission of India to the WTO, Geneva.

Thank you, Theresa, Prof. Baldwin, Prof. Pauwelyn, Prof. Kende, Nivedita, lots of known and unknown faces in the audience and distinguished participants in this workshop. It is indeed a privilege to have an occasion to speak to you in this set up. E-commerce or digital trade, whatever you call it, is obviously an issue of great importance as far as public policy is concerned, and because of its cross-border aspect, also in trade agreements and negotiations.

2. We have had an excellent paper presented which gives the basis to kick-off discussion, but there are a few points that that I would like to emphasize. One is the size and growth of the digital economy. The e-commerce market, as per UNCTAD estimates of 2017, is of the order of 25 trillion dollars, or almost 30 per cent of the global GDP. We look at the size of the digital economy as a sum of the e-products, the e-services, the electronically-transmitted products, additive manufacturing or digital printing as well as rising use of the internet in designing, branding, advertising and so on and so forth. So, the digital economy is huge. It is growing fast all over the world, including in developing countries, and has been a driver of growth. E-commerce has been, and is, proving to be a game-changer in many ways!

3. When we look at the promise and potential of e-commerce, we need to keep in mind a few things. The first thing that comes to my mind, as a person from a developing country, is the huge digital divide that pervades the world and the losing competitiveness of developing countries and LDCs. Now, e-commerce is 25 trillion dollars, as I mentioned, about 22 trillion is b to b and about 3 trillion is b to c. But the key factor is that 64 per cent of it is in nine developed countries and in China. Rest of the countries account for only 36 per cent of it.

4. The digital divide is the most important concept to understand. More than half the world's population today is without high speed broadband. They are offline. Two of three in India, that is about a billion people, three of four in Africa and five of six in LDCs, don't have access to the kind of connectivity you need for digital trade or e-commerce. In addition to the challenge of connectivity is the problem of technology. A lot of us use broadband on mobile devices that are powered by second generation or third generation or fourth generation telecom technology. Developing countries, even large developing countries like India, got 2G services fifteen years after the West, 3G with a delay of ten years, 4G may be after five years. We thought we were catching up but for 5G, it is again likely to be delayed. For those of you who are not from the sector, the advantages of the fifth-generation telecom services are immense. They have huge capacity, almost no latency and the possibility of a large number of links. So, you can link a huge number of sensors to any object. You can give it commands which will reach it instantaneously, which enables applications like driverless cars, and there is a huge capacity, almost unlimited capacity, for data flows so that they can be used for transmitting wirelessly from stadia and congregations of people in big cities without clogging up the network. Now, 5G, which will be stamped by the ITU in 2020 and showcased in the Tokyo Olympics, will come to the developing world slowly, and may be to Africa even five to ten years after that. So, the developing countries have been, are and will continue to be challenged for both connectivity and technology.

5. In addition, there is the problem of digital literacy and skills. We, in India, did a survey a couple of years back and found that only 12 per cent of rural households were digitally literate; digitally literate being defined as persons who could use a computer or a tablet or a smartphone. Now, with this kind of a challenge, it is not surprising that 70 per cent of e-commerce is in developed countries and only 5 per cent of consumers in developing countries are able to access goods and services on e-platforms. The rising digitalization is impacting trade and competitiveness of countries. Access to ICT services determines access to financial flows and this asymmetry of digital development is leading to an asymmetry of opportunity in large parts of the globe.

6. A lot of talk we hear is arguments regarding the benefits of e-commerce. Now, we do understand the benefits of e-commerce. I think there is general understanding that it helps in customer convenience, efficiency in trade of goods and services, value addition, development of skills. It enhances competitiveness, reduces costs. A whole lot of benefits accrue by using electronic commerce in the trade arena. So, there is no real debate on the benefits of e-commerce.

7. What many of us do not understand are the benefits of rule-making in e-commerce as part of trade agreements. My view is that we need to understand the digital world better before we start trying to change it by developing new rules and it is for this reason that the WTO mandate is for an exploratory, non-negotiating programme on e-commerce. To understand the implications and its impact on trade, its impact on different stakeholders, what are the pluses and minuses. We believe that without this understanding, developing rules in e-commerce would be like a leap in the dark. And many developing countries have experiences where they have burnt their fingers. Take the case of India in the ITA-1. We acceded to ITA-1 in 1997 with great enthusiasm. The result was that it completely wiped out a very vibrant, though nascent, electronics industry in India for all times to come and the terrible impact it has had on jobs.

8. So, there is a concern that before we jump into rule-making we need to understand the impact of some of the elements which are considered to be part of digital trade or e-commerce. The debate at the WTO and the India-South Africa-propelled moratorium discussion on e-commerce, which happened day before yesterday in the General Council chaired by my esteemed colleague Junichi, who is present here, was one such initiative to understand the impact of various aspects of e-commerce. In WTO, we from the developing countries believe, that there are lots of trade rules, but the golden rule is that the member who has the gold makes the rules! And that is the worrisome part in case of e-commerce because a lot of members want to quickly make rules so that there is predictability & transparency. However, let me take you through some of the elements of e-commerce and why we think there is a need to understand the implications before looking at rules for them.

9. If you look at the TPP or the CPTPP template, there was the digital 2 dozen related to e-commerce which the US had introduced and which could be broken up into three categories. There were the soft elements, things which have been alluded to, which would help make trade efficient -- regulating spams, online consumer protection, online data privacy protection, things like electronic authentication & signatures, facilitating cross border e-commerce and the like. These are the soft elements. Not many people have objections to them except for the fact that they are burdensome for some countries. The concept paper introduced talks of the need for every citizen having a card to pay electronically. That seems, in this part of the world to be the most obvious thing to do. But if you look at countries like India, where 600 million people are below two dollars a day and the digital literacy and connectivity issues are as I mentioned, it is a huge burden. Providing the facility to pay through digital credit cards to every household would cost billions of dollars. So, it is something which is burdensome because of the digital non-

development of the developing countries. But they will catch up and they need to catch up! Therefore, the priority needs to be to address the digital divide so that they can use the benefits of these.

10. But there are other issues. One of them was alluded to as technical neutrality of the GATS. Now, this is a controversial issue and there are different views that require clarity. What does it mean? Those who say that the GATS is technologically neutral, say that whatever commitments have been made in 1994 are applicable even today with the advance of technology and growth of digital trade. For instance, in Canada's GATS schedule, in construction services, Mode-1, construction service is open. They have taken no limitations, and presumably the reason why they have not taken limitations is that it was technically not feasible in 1994 to construct houses cross border through electronic transmissions. But today, when digital printing allows you to construct houses in a different country, is there no limitation? Is it open? Is it to be reconsidered or it automatically applies? So, these are the kinds of issues we need to look at before deciding whether there is technical neutrality of the GATS.

11. Then there are the high standard elements. Free flow of data across borders. Now, it is almost a cliché today that data is the new oil. Everyone tells us that data is the new oil. But when it comes to treating data, you treat it like anything but oil. If it is the new oil, there have to be rules on who owns it, who can trade it or who uses it. There has to be a data policy as to how it will flow, how it can be processed, how value could be added and so on and so forth. Those who have oil get the benefits out of oil today. Even if they get it processed outside, other than the refining margin, the economic benefit of ownership of oil goes to the owner. Let's see how it is in the case of data. Data, the new oil, flows freely. It can be appropriated, it can be stored, it can be processed by anyone to the extent that the processor can keep the benefits of processing without acknowledging or any kind of benefit sharing. Ten-twelve years ago, the top ten corporates in the world were mostly oil companies. If you look at the top ten companies in the world today by market capitalization, there is only one oil company, Exxon. And there are eight data companies. All the GAAFA are there and the Chinese companies Tencent and Alibaba are there. So, it is the appropriation of benefits of free data flows and storage without any constraints in the absence of data policies in countries where this data is being generated that is a problem resulting in this situation. We believe that there has to be policy space for members to make policies on data ownership, use, rights, etc., before those policies can inform negotiations on binding rules at the WTO.

12. A third element is the discipline prohibiting infrastructural localization. There is an argument that there should be no restriction on localization of servers or storage because of technologies like cloud computing. They are efficient and they will expand if there is no restriction on servers or data storage. In this context, I would like to draw your attention to a McKinsey study which says that with the advance of technology in the next five years, and we are not talking long-term even, 60 per cent of back office jobs, the kind which countries like India, Philippines, Vietnam, Turkey have strengths in, will vanish. They will be casualties of robotization and digitalization. Now obviously, STEM education is a big thing in many developing countries like India. These jobs which will vanish have to be replaced and a possibility of replacement of jobs is through localization of servers, by developing an ICT ecosystem which has cloud computing, where assignment of domain names becomes an economic activity and big data analytics in the era of Industry 4.0 leads to creation of jobs. So that is the issue with disciplines. Many of us believe that while localization of servers may constrain efficiency, there is an element to be kept in mind as to who bears the cost of efficiency in the form of lost jobs or the lost potential of creating new jobs.

13. Another element is the permanent moratorium on customs duty on electronic transmissions. We have had this moratorium since 1998. We are told that it has been working well and it must be made permanent because it is working well. The issue is not about whether it should be extended, whether it should be made permanent, whether it should be extended for two years at a time. We are not going into that here. We are looking at the consequences of this moratorium. Obviously, the moratorium makes more and more products like books, music, films, photographic films, the works, traded electronically. So by agreeing to the moratorium, countries which have tariff schedules, which allow putting duties on these kinds of products, give up these rights and they lose revenues. There is also the issue that if electronic transmissions take place, the possibility of putting local taxes like sales tax or goods and services tax is impaired. But that is not the only issue. The major issue is what it does to your GATT commitments. The tariff schedules agreed to at the WTO are in a form that developing countries have typically got higher tariffs and they have paid for these in other areas of the Uruguay Round Agreements. Now, by making the moratorium permanent, for instance, and with more and more products now traded digitally in the era of additive manufacturing and digital printing, the GATT schedule of countries will erode and will vanish ultimately. Assuming if all non-agriculture products can be traded electronically, then everything will be at zero duty. So, the protection that is available to Africa and Asia, for the nascent industries in the digital arena will disappear in one go, and that is the immensely important issue which concerns public policy makers in the developing world.

14. I have one more point. The non-discriminatory treatment of digital products, sounds innocuous enough. I mean, we are in the WTO. We believe in MFN, non-discriminatory treatment. Some members may have lately decided, that as a fashion they will not agree to that. But, generally, we agree to non-discriminatory treatment. So, why don't we extend non-discriminatory treatment to digital products and bind it down. Sounds simple enough. Now, what does it mean? Let's look at our GATS schedule. The GATS allows you to take limitations on market access and national treatment, and many countries have taken limitations. Now, if you have a limitation on retail services on national treatment or market access, it means that you may not allow hundred per cent foreign direct investment in retail services online, you may retain the right to provide subsidies to domestic companies which you may not like to give to foreign companies for promotion of domestic companies. Rule based, allowed, and a flexibility which was very important for developing countries when they agreed to the GATS in 1994. Now, when you talk of non-discriminatory treatment of digital products, which means that retail service, service given for transfer of goods on electronic platform, if there has to be non-discriminatory treatment of digital products including this, there can be no market access limitations, there can be no national treatment limitations. The GATS schedule goes for a toss.

15. The short point I wish to make is by making rules in e-commerce, without understanding some of these implications, we are doing away with a lot of rules which have held us in good stead, both the GATT schedule and the GATS schedule. And if we do it in a hurry, as I say, it will be a leap in the dark which could have terrible consequences for some parts of the world. I have gone into these issues in detail because often people tell us that these are simple issues and if you are not willing to make rules on e-commerce, you are naysayers, you don't understand, you are technologically challenged, you are Neanderthals and all kinds of things, and you don't understand the benefits of e-commerce. So, this is the other point of view which I would like to place before you and I hope it provokes interesting discussion at least.

16. So, what is the way forward? As far as the developing world is concerned, I think what is required is preparation. E-commerce, as I said, is a game-changer. We need to prepare ourselves for digital trade, especially cross border digital trade. The first stage, I

would say, would be to have a digitally-informed trade policy. How can the digital content of exports be increased? How do we address these kinds of issues which have efficiency aspects but which also have repercussions which are adverse for certain developing countries? Two, have a domestic policy to enhance the use of digital skills and digital technologies for making trade more competitive. Once that happens, it will be easier to get on to the bandwagon of e-commerce rules. Develop infrastructure and address digital divide and promote and protect competition in the digital platform space so that the monopolies of the few platforms, which exist in the globe today are not used to have adverse contracts against the interests of the MSMEs, something which is increasingly happening. These are some of the things which we should do. My activist friends, many of whom I see here, would say, 'fight the anti-competitiveness of GAAFA'. I don't put it that way. I am saying, 'prepare'. Developing countries need to prepare before they can engage and agree to binding rules which freeze the present status quo which is against their interests. It is a non-level playing field. Please change it before you freeze it by trade rules.

17. India is working on these lines. We have a Digital India programme to improve digital infrastructure, e-services, e-governance, use the digital platform for empowering citizens for feedback on government policies. We are developing an e-commerce National Policy Framework to inform trade negotiations as well as for preparing ourselves to be competitive in the digital space. Therefore, I would say, as a concluding statement, that e-commerce or digital trade is not like the proverbial incoming tide which will lift all boats. It can be useful if we are prepared for it, if we have policies for it and if we engage on it with preparation. I think that e-commerce is beneficial for all. But rule-making in e-commerce, the trade rules, whether it is in the multilateral or the plurilateral or the bilateral forum is an idea whose time has not yet come!

Thank you for your patience.
