Informal Open-Ended Meeting of the General Council on Work Programme of Electronic Commerce on 14 July, 2020

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Introductory Statement of India delivered by Ambassador & Permanent Representative of India to the WTO for introducing the Joint Communication from India and South Africa, "The E-Commerce Moratorium: Scope and Impact", dated 11 March 2020 (WT/GC/W/798)

We thank you Chair for convening a dedicated session of the General Council (GC) on this important issue of e-commerce moratorium. We know that the moratorium was extended by the GC held in December 2019 until the 12th Ministerial Conference (MC12).

Chair, it is useful at this juncture to recall that the membership was mandated by the General Council in December 2019 to reinvigorate the work under the Work Programme on Electronic Commerce especially on scope, definition and impact of the moratorium. I, therefore, take the opportunity to introduce another proposal, jointly with South Africa, namely, 'The E-Commerce Moratorium: Scope and its Impact' (contained in document WT/GC/W/798). You may recall, India and South Africa have earlier tabled two proposals on the e-commerce moratorium.

My delegation also acknowledges our appreciation for the webinar on the ecommerce moratorium organized by the WTO Sectt yesterday. Many useful insights were provided on different aspects of the moratorium. Of course, there are quite a few key issues on which it is important for the membership to come to a common viewpoint. We look forward to those deliberations in the forthcoming meetings.

Our current proposal, on the scope and impact of the ecommerce moratorium, is self-explanatory and therefore doesn't require detailed presentation. Nevertheless, let me emphasize some key issues.

I. Scope of the Moratorium:

Coming first to the scope of the moratorium, we believe, there are two main interpretations:

i. First, as per the view held by Indonesia, the moratorium on customs duties applies to the 'transmission' and not on the 'content' of the transmission. In other words, the prohibition of customs duties refers only to the 'transmission'. This, according to Indonesia, is also the view of the DG-WTO and his team. Accordingly, Indonesia added a new chapter, namely Chapter 99 in its HS code for electronically transmitted goods like e-books.

ii. The second view is that the moratorium applies to physical goods which have become digitised, or which are digitizable. These digitizable goods may consist of broad categories such as films, printed matter, video games, software and sound & music, etc. This list is neither exhaustive not exclusive. Also, this list is expanding as the digital economy grows.

II. Impact of the Moratorium:

Now I come to the more critical issue relating to the "impact of the moratorium", which, in turn, will be determined by its scope. If the scope of the moratorium is restricted to the "transmission", and given that it is technologically feasible today to impose duties on "content" only, the impact of the moratorium will be of a limited nature.

However, if the scope of the moratorium includes digitised and digitizable goods, its implications are very serious as technological developments have resulted in a rapid rise in the growth of online trade of digitized goods. Non-availability of the use of tariffs for digitized goods as a result of the moratorium therefore poses very profound challenges for developing countries. Now, let me touch upon some of these challenges:

(i) First, **impact on industrialisation due to the non-availability of the use of tariffs as an instrument of trade policy**

Tariffs are a tried and tested policy tool for supporting infant and even mature industries. All successful economies have arrived at higher levels of development because they started off first giving domestic industries the protection through tariffs to grow and gain competitiveness. Oftentimes and even up till today, tariffs are still being levied by such economies to support their industries and help other policy imperatives such as employment and ensuring that the economy does not lose productive capacities.

The importance of tariffs as a trade policy instrument for building domestic industries and the catastrophic effects when tariffs can no longer be used can be seen in the example of India and the ITA-I. India's commitments under ITA-I led to a significant decline in the share of domestic production and value addition in the total final demand of electronic products, computers and optical equipment declined by almost 50% in just 15 years of implementation.

Allowing the moratorium to lapse is important for developing countries to preserve policy space for their digital advancement and provide level playing field to budding domestic producers of intangible goods, which is extremely critical for employment generation and income creation.

(ii) The second challenge posed by the moratorium is **Tariff revenue loss**

The moratorium also poses a huge challenge for developing countries when it comes to tariff revenue losses. Based on the identification of a small number of digitizable products in five areas, namely, printed matter, music downloads, video downloads, software and video games, the UNCTAD estimated an annual loss in tariff revenue of more than $10 billion globally because of the moratorium. Of this loss, 95 per cent is borne by developing countries! It is also important to keep in mind that the estimate of $10 billion as the potential tariff revenue loss per annum is only the tip of the iceberg, as this estimate is based on only a small number of 49 HS-6-digit products.

A June 2020 publication by the Boston University on "Growing share of Online Trade Undercuts Government ability to pull in Revenue" estimates revenue losses due to the moratorium using average bound duties, to the tune of: “USD 10.1 billion for developing countries, USD 2.63 billion for Sub-Saharan African countries, and USD 1 billion for countries in the Middle East and North Africa.” According to this Boston publication, “these revenue losses are particularly problematic if countries cannot make up for the lost revenue by imposing other taxes” and that; “there is no evidence of an increase in indirect tax revenue with trade liberalization, which many assume will make up for any losses of trade tax revenue”.

The requirement of new sources of revenue to save lives and livelihood during the ongoing Covid 19 pandemic especially in developing countries including LDCs, when millions of their citizens are being pushed into extreme poverty, also underlines the need for ending the e-commerce moratorium. To the contrary, the unbridled and unchecked imports via electronic transmissions are increasing due to the existing moratorium due to the extended lockdowns as a fallout of the pandemic, resulting in imbalances in importing Members' current accounts.

(iii) The third challenge posed is on account of emerging technology and a shift in production of goods through these technologies. To take one example of **3D Printing**:

As more products are getting digitized with the advent of industry 4.0 and the advance of 3D printing technologies, in the near future, fiscal revenue foregone would only increase. The moratorium will also erode the existing GATT bound rates, which were negotiated and developing countries have paid for that. By bringing these rates to zero for digitized products, removes an important tool which developing countries have to protect their industries. This could have a catastrophic effect on the ability of developing countries to protect their nascent domestic digital industries resulting in loss of jobs and long term dependency on import driven consumption.

Chair, the e-commerce moratorium is nothing short of ‘duty-free, quota-free’ (DFQF) access to the digital products of the digitally industrialized Members by the rest of the membership.

While we have discussed the medium and long term impact of the moratorium, let me quickly also touch upon the immediate impact due to the prevailing pandemic. We are witnessing an exponential rise in imports of electronic transmissions, mainly of items like movies, music, video games and printed matter some of which could fall within the scope of the Moratorium. While the profits and revenues of digital players are rising steadily, the ability of the governments to check these imports and generate additional tariff revenues is being severely limited because of the moratorium on e-commerce. In short, the Covid-19 pandemic has demonstrated the importance of retaining the flexibility to regulate imports of electronic transmissions and levy customs duties on their imports by the governments. Therefore, the continuation of the moratorium must be urgently reconsidered by the membership.

Thank you, Chair.

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Statement of India delivered by Ambassador & Permanent Representative of India to the WTO on Communication from Australia; Canada; Chile; Colombia; Hong Kong, China; Iceland; Republic of Korea; New Zealand; Norway; Singapore; Switzerland; Thailand and Uruguay on "Broadening and Deepening the Discussions on the Moratorium on Imposing Customs Duties on Electronic Transmissions", dated 29 June 2020 (WT/GC/W/799/Rev.1)

We thank Switzerland and other proponents for the second proposal for today's meeting.

We understand, the proposal draws largely from the OECD publication on the e-commerce moratorium issued in November 2019. Let me quickly highlight some key issues covered in the proposal, and our views thereof:

- The proposal appears to presume that business services are covered within the scope of moratorium on electronic transmissions. This is not our understanding. According to us, the moratorium either applies to only the 'transmission' and not on the 'content' of the transmission, or at best it applies to intangible goods. Chair, the membership needs to come to a common understanding on the scope of the moratorium.
- We believe, the impact of digital technologies like 3D printing, robotics and artificial intelligence, etc. on members' GATT tariff schedules and built-in GATS flexibilities need to be specifically examined. We do not agree with the OECD assessment that technologies such as 3D printing are unlikely to have far-reaching implications on trade in the near term. Let us take the example of the hearing aid industry in a country which converted to 100% additive manufacturing in less than 500 days and not one company that stuck to traditional manufacturing methods survived In fact, it is estimated by other studies that if current growth of investments in 3D printing continues, 50% of the manufactured goods will be 'printed' in 2060 and if investments in 3D printing doubles, this target will be achieved in 2040. This will wipe out almost 40% of cross-border physical global trade. With Moratorium on ET, foreign firms will be able to export duty free any software to developing countries to 3D print the currently manufactured products. The most affected sectors will include textiles and clothing, footwear, auto-components, toys, mechanical appliances and hand tools, etc. which generate large scale employment for low skilled workers in most developing countries.
- While it is not the case that developing countries should insulate themselves from technology advancements such as 3DP, it would, nevertheless, be important to facilitate a transition from traditional manufacturing to additive manufacturing in as less a disruptive manner as possible. An important policy instrument available for this purpose would be to impose customs duties on CAD files necessary for 3-D printing. However, if the Moratorium continues then countries may not have the flexibility to impose customs duty on CAD files. This could result in large scale

disruption in traditional manufacturing, resulting in job losses and declining incomes.

- It is also argued that that exporters from developing countries require to import digitizable products like software for improving their production and exports of many products and services. Custom duties on digitizable products will increase the costs of these software. For a number of reasons, this line of argument is faulty. First, not all software would fall within the scope of the Moratorium. Some of them could be delivery of services through Mode 1. Second, removal of Moratorium in no way means that Members will necessarily impose customs duties across the board. The key is policy space and to use such policy space appropriately for domestic digital industrialization and generation of local jobs in the era of Industry 4.0. Depending on their domestic imperatives, countries could decide not to impose customs duties on intangible goods.
- The proponents of continuation of the e-commerce moratorium and studies by the ECIPE and the OECD argue that tariffs generate 'deadweight loss' and therefore it is better to rely on internal taxes. We do understand the different objectives behind the levy of tariffs and internal taxes. It is also a time-tested finding that tariffs have been effectively used by many developed countries in the past and even now to stimulate domestic production by protecting infant domestic industries from more established overseas competitors until they have attained competitiveness and economies of scale.
- The OECD study estimates the impact of tariff liberalization on only physical goods which are digitizable but are still being imported physically. However, as the UNCTAD Research Paper 29 has argued, the moratorium applies on the electronic transmissions and not on the physical imports of these products. Therefore, the results of the OECD and ECIPE studies on consumer welfare do not hold for Electronic Transmissions. If online imports are estimated and tariff revenue loss calculated, as has been done by the UNCTAD, then the tariff revenue loss will exceed the consumer surplus estimated by the OECD Study. Further, OECD Study uses the Computable General Equilibrium (CGE) Model which are based on unrealistic assumptions of perfect competition. To the contrary, there is evidence of huge concentration in the digital space.

Chairperson, to conclude, it is important for the membership to come to a common understanding <u>on the scope of the moratorium</u>, as many others have pointed out. Without clarity on the scope of the moratorium, there can be no predictability for business, trade and industry. More importantly, governments would not know what their obligations and rights are. Only a clear understanding on the Scope and an appreciation of its impact would help Ministers take a well-considered and wise decision on the Moratorium at MC12. And this understanding will come only by accelerating the 1998 Work Programme, as has also been mandated by the General Council in December 2019. In this regard, we once again want to thank the Sectt for the e-commerce webinar held yesterday. We look forward to more discussions on the various aspects of the moratorium deliberated upon yesterday and today in the coming days.

Thank you, Chair.

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