Informal Open-ended GC on the E-commerce moratorium
17 June 2019

Joint Opening Statement by India and South Africa

Thank you Chair,

This statement is being made on behalf of both India and South Africa. We thank you Ambassador Sunanta for convening a dedicated session of the GC on this very important issue of the e-commerce moratorium, the decision which, unless renewed, expires in about 6 months from now.

Given this looming deadline and the call by the Chair at the last GC on 8 May 2019 to intensify deliberations and encouraging Members to table submissions, I take the opportunity to introduce another joint proposal with South Africa, titled, '<u>The E-Commerce Moratorium and its Implications for Developing Countries</u>' (contained in document WT/GC/W/774). You may recall, our earlier proposal 'Moratorium on customs duties on electronic transmissions: Need for a re-think' (contained in document WT/GC/W/747) was first deliberated upon by the GC in July 2018. Our current proposal is self-explanatory and, therefore, does not require a detailed presentation. Nevertheless, let me emphasize some key issues.

Firstly, it is apparent that the developing countries will bear the brunt of the <u>potential tariff revenue</u> loss due to the moratorium. The UNCTAD 2019 Study reveals that, even by conservative estimates, the potential tariff revenue loss per annum to developing countries is around US$ 10 billion as against only US$ 300 million for the WTO High-Income Members. This implies that developing country Members have the opportunity to generate 40 times more tariff revenue by imposing customs duties on ET as compared to the developed countries, many of which have almost zero bound duties on physical imports of digitizable products. Tariff revenue loss to WTO LDCs is estimated at US$1.5 billion which is five times that of the WTO High Income countries while for Sub-Saharan African countries, the loss is around US$ 2.6 billion, which is almost ten times that of the WTO High Income countries. The Study shows that 95% of world's total tariff revenue loss due to the moratorium will be borne by the developing countries. Why should the bulk of sacrifice of revenue fall disproportionately on the poorer Members of the WTO? Some Members claim that tariff revenue loss due to the moratorium can be balanced by levy of other taxes and internal charges. However, experience suggests that it is very difficult to tax the digital giants operating in our countries without physical presence. For example, Facebook generates huge profits from its India operations where a significant number of its global users are located, but pays abysmally low taxes to the Indian Government. Similar patterns of behaviour by technology firms are emerging in all parts of the developing world, especially Africa.

Secondly, it is extremely important for the membership to come to a common understanding on the <u>scope of the moratorium</u> and <u>what is covered under the definition of electronic transmission</u>. Indonesia, for instance, in a statement circulated at the MCXI had mentioned that the moratorium doesn't apply to "...products or contents which are submitted electronically..."Further, it is apparent from Brazil's proposal under the Joint Statement (contained in document INF/ECOM/27, dated 30 April 2019) that the e-commerce moratorium should apply only to 'electronic transmissions' and not on 'content transmitted electronically'.

The next critical issue is technical feasibility of imposing customs duties on electronic transmissions. Electronic transmissions and intangibles, including digital products, are now being taxed by many WTO Members. This implies that imposing customs duties on electronic transmissions may also be technically feasible. This was confirmed by the representative from the World Customs Organization (WCO) during the recently held workshop on this issue at the WTO on 29 April 2019. In this regard, we urge the Secretariat to arrange to disseminate to the membership, the policies and strategies adopted by Member countries such as the EU, Australia, New Zealand, Indonesia, India, etc. for taxing intangible imports. This could provide valuable lessons for the rest of the membership. We also encourage members to share their experiences and perspectives for taxing intangible imports.

As regards the broader impact of the moratorium on trade and industrialisation of developing countries, we are convinced that the moratorium will negatively impact the efforts of many developing countries to industrialize digitally on account of, at least, the following reasons:

- Tariffs play an important role in protecting infant domestic industries from more established overseas competitors until they have attained competitiveness and economies of scale. Therefore, customs duty free imports of digital products will hinder the growth of the infant digital industry in developing countries.
- There is evidence of huge concentration in the digital space. We are all familiar with the existing market power of the GAAFA. Coupled with the 'network effects', big is getting bigger, making it virtually impossible for new entities, incumbents and SMEs to enter. Even if they manage to enter, the monopolistic, anti-competitive practices of existing behemoths do not let them survive.
- There is erosion of existing GATT bound rates with increasing digitization and advent of Industry 4.0, propelled by Internet-of-Things and new technologies like 3D printing. It is predicted that with the current growth in investments in 3D printing, 50% of the manufactured products will be printed by 2060. This makes the e-commerce moratorium nothing short of 'duty-free, quota-free' (DFQF) access to the digital products of the digitally industrialized Members by the rest of the membership.

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.

The decision on the e-commerce moratorium expires in December 2019. The objective of this dedicated session is to facilitate a discussion on the revenue and developmental implications of the moratorium on customs duties on e-commerce. Our call is not about ending or extending the moratorium. It is about the need to deliberate upon the above key issues in detail and with the utmost urgency to enable us to make more informed policy decisions in future.
