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THE E-COMMERCE MORATORIUM: SCOPE AND IMPACT

Communication from India and South Africa

The following communication, dated 10 March 2020, is being circulated at the request of the delegations of India and South Africa.

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1 SCOPE OF THE MORATORIUM

1.1. The 1998 Declaration on Global Electronic Commerce[1], contained the following operative text on moratorium on electronic transmissions: Members will "continue their current practice of not imposing customs duties on electronic transmissions". This wording has been replicated in subsequent Decisions renewing the moratorium.

1.2. What is the scope of the Moratorium? We believe that there are two main interpretations regarding its scope:

a. The moratorium on customs duties applies to the 'transmission' but not the content of the transmission. This line of thinking has been taken up by Indonesia. In statements at MC11, Indonesia had said:

> "In regards to the discussion on the moratorium on customs duties on electronic transmissions, it is our understanding that such moratorium shall not apply to electronically transmitted goods and services. In other words, the extension of the moratorium applies only to the electronic transmissions and not to products or contents which are submitted electronically. The Indonesian Head of Delegation shared this understanding with the Director-General and his team yesterday and today, in which they responded with a positive confirmation."
>
> For this reason, we would like to insert a footnote in the outcome document which states "it is understood that such moratorium shall not apply to electronically transmitted goods".[2]

1.3. The implication of this interpretation is that since the moratorium is only applicable to the transmission, Members would be able to put customs duties on the transmitted content. The prohibition of customs duties therefore only refers to the 'transmission' – the bits and bytes. Any possible revenue implications will be limited in nature given the scope of the moratorium.

1.4. Indonesia has also expanded its HS code (Chapter 99) to include goods which can be digitized i.e. intangible goods.

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[1] WTO 1998 WT/MIN(98)/DEC/2, 25 May.

[2] WTO 2017 'Statement by Indonesia: Facilitator's Consultation on Electronic Commerce, MC11 declaration, and other relevant plenary sessions', delivered on 13 December, WT/MIN(17)/68, 20 December.

b. There is in literature a number of studies that define the scope of the moratorium on customs duties on electronic transmissions as applicable to physical goods which have become digitized, or which are digitizable. Indeed, studies on the impact of the moratorium since 1998 have focused on the tariff revenue losses resulting from the digitization of physical goods. These studies have included (non-exhaustively):

- Schuknecht and Pérez-Esteve (1999)[3] – they used a list of goods that included cinematographic film, newspapers and videogames to provide upper bound estimates of possible tariff revenue losses when these products are digitized.
- WTO (2016)[4] – the Secretariat updated their analysis of tariff revenue losses. Using a list of 30 HS 6-digit goods and their applied rates, they looked at the reduced imports on 'digitizable' goods and thus the revenue losses.
- UNCTAD (2017)[5] and UNCTAD (2019)[6] also calculated tariff revenue losses from goods that have become digitized and which are digitizable.

1.5. Due to technological developments, there is a rapid rise in the growth of online trade of digitizable goods. This explains the concern around the impact of digitization of goods on tariff revenue.

2 IMPACT OF THE MORATORIUM

2.1. If the scope of the moratorium is restricted to the "transmission", it is technologically feasible today to impose duties on content and the impact of the moratorium will be of a limited nature.

2.2. However, if the scope of the moratorium includes digitized and digitizable goods, the literature identifies a list which includes cinematograph film; books, pamphlets, maps; newspapers, journals and periodicals; postcards, personal greeting message or announcement cards; other printed matter; video games; computer software; musical records, tapes and other sound or similar recordings; and other recorded media. These can be classified into five broad categories: Films, Printed matter, video games, software and sound & music. More importantly, this list will expand as the digital economy grows. Thus, its implications are very serious. The rest of the paper will consider these implications.

2.3. In 1998 when the Moratorium decision was taken, the digital economy was at its earliest inception. At that time, the world wide web was only starting to be used by the general public. There was no clarity regarding how the economy would be transformed by digital advancements.

2.4. Today, the digital economy is growing rapidly. This is radically changing trade as we knew it. With the advent of the new technologies - 3D printing, Big Data Analytics, Artificial Intelligence, our economy is being further transformed. With regards to traditional trade in goods, 3D printing is expected to be a game changer.[7]

2.5. What are the implications (mostly unforeseen in 1998) arising from the Moratorium as the digital economy grows at an exponential rate?

2.6. The main impact is the loss of the use of tariffs as a 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.[8] Oftentimes and even up till today, tariffs are still being implemented to support industries that may not be so competitive (including in

[3] Schuknecht, L and Pérez-Esteve 1999 'A Quantitative Assessment of Electronic Commerce', Staff Working Paper ERAD, No. 01, WTO, Geneva.
[4] WTO 2016 'Fiscal Implications of the Customs Moratorium on Electronic Transmissions: The Case of Digitisable Goods', JOB/GC/114, 20 December.
[5] UNCTAD 2017 'Rising Product Digitisation and Losing Trade Competitiveness' https://unctad.org/en/PublicationsLibrary/gdsecidc2017d3_en.pdf.
[6] UNCTAD 2019 'Growing Trade in Electronic Transmissions: Implications for the South', UNCTAD Research Paper, No. 29.
[7] EY 2019 '3D Printing: Hype or Game Changer?' A Global EY Report.
[8] Chang Ha-Joon 2002 'Kicking Away the Ladder: Development Strategy in Historical Perspective', Anthem Press.

developed countries, for example in agriculture, or the steel and aluminium sectors) as there are other policy imperatives such as employment and ensuring that the economy does not lose productive capacities. If tariffs are important to developed countries, what about developing economies?

2.7. The loss of the use of tariffs for the digitized goods as a result of the moratorium therefore poses very profound challenges for developing countries including:

- Impact on Industrialisation due to the Loss of the Use of Tariffs as a Critical Trade Policy Instrument
- Tariff Revenue Losses
- Loss of other duties and charges.

2.1 Impact on Industrialisation due to the Loss of the Use of Tariffs as a Critical Trade Policy Instrument

2.8. Currently the world is characterized by a massive gap between the under-connected and the hyper-digitalized countries.[9] The participation of developing countries in exports of digitizable goods has been marginal. In 2000, developed countries accounted for 91% of exports of digitizable products, while developing countries' share was only 9%.[10] Today, with the exception of China, the situation has not changed to any significant degree. Three countries account for 80% of the cross-border e-commerce in the world: US, China and the EU.[11] Clearly the benefits of digital economy are highly uneven and it does not serve all people equally. Under the current configuration of policies, rules, market dynamics and corporate power, economic gaps are likely to increase.[12]

Box: How Ready are Developing Countries for the Fourth Industrial Revolution?

Studying various developing countries including India; China; Korea; Thailand; Indonesia; Brazil; South Africa; Mexico; Turkey; Malaysia; Vietnam; Bangladesh; Egypt, UBS in their 2016 study noted that

'Many of these economies have still not dealt with the challenge of previous industrial revolutions. Their output and employment are still largely driven by agriculture, small-scale manufacturing and low-skilled services, large parts of which are in the informal economy. These are economies with low capital stock and high population growth rates. They will face the threat of the Fourth Industrial Revolution compromising low-skilled jobs via extreme automation, but may not have the technological ability to enjoy the relative gains that could be re-distributed via extreme connectivity. When the Fourth Industrial Revolution arrives, a country's present state of industrial technology and demographic patterns will together determine how successfully it adapts, economically and politically, to extreme automation and extreme connectivity. The Fourth Industrial Revolution will take the emphasis away from demographic quantity to demographic quality.'

The Study concluded that many developing countries 'have not yet adapted even to the Second and Third Industrial Revolutions'. These included Mexico, Turkey, Egypt, India, South Africa and Brazil, amongst others.

Source: UBS 2016 'Extreme automation and connectivity: The global, regional, and investment implications of the Fourth Industrial Revolution' January, White Paper for the World Economic Forum Annual Meeting 2016

2.9. Digitalization affects different countries in different ways, and individual governments require policy space to regulate the digital economy in order to fulfil various legitimate public policy objectives. UNCTAD Trade and Development Report 2018 found that the asymmetric composition of markets, the pricing power of firms from developed countries makes it very difficult for individual

[9] UNCTAD 2019 'Value Creation and Capture: Implications for Developing Countries', Digital Economy Report, p 8.
[10] Teltscher S. 2000 *ibid*, p. 17.
[11] UNCTAD 2017, *ibid*.
[12] UNCTAD 2019, Digital Economy Report *ibid*.

developing countries to regulate the digital economy and to have a significant economic role in Global Value Chains.[13]

2.10. The vast majority of developing countries are net importers of digital products. If they are to develop, and make progress on the Sustainable Development Goals (SDGs), these countries require the implementation of active industrial policies to get some benefits of E-commerce, including the use of tariff policies for the digital sector.

2.11. However, the moratorium will exactly prohibit countries from putting in place these needed tariffs. Further, with the advent of industry 4.0 and the advance of 3D printing technologies in the near future, carefully negotiated GATT bound rates which are typically higher in developing countries, will be brought to zero for their digitized counterparts. With zero tariffs, the moratorium is likely to make developing countries even more dependent on imports of digital products from developed countries. This will have huge negative impacts on industrialization, particularly digital industrialization and trade competitiveness. It will inhibit the ability of developing countries to protect their nascent domestic digital industries resulting in loss of jobs and increasing poverty. All in all, this will have catastrophic effects on industrial development and the attainment of SDGs.

2.12. The removal of the Moratorium by 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 the generation of local jobs in the era of Industry 4.0.

2.13. 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 Information Technology Agreement I.

Impact of Tariff Elimination Under ITA I on India's Domestic Output of ITA Products

The OECD's Trade in Value-Added (TiVA) database indicates that out of the total domestic demand for computers, electronic products and optical equipment in India in the year 2000, almost 60% was met by domestic production and value-addition. However, the share of domestic production and value-addition in total domestic final demand of this product category dipped sharply to around 40% in the years 2004-2005. This coincided with India completing the tariff elimination on products under ITA I. The share of domestic production/value-addition in the total final demand of this product category was around 30% by 2015 (the latest year for which information is available in TiVA).

This precipitous decline can be attributed to India's commitments under ITA I. While the product coverage under this analysis cannot be taken to be comprehensive, it is nevertheless indicative of the impact of ITAI on a broad product category - computers, electronic products and optical equipment.

Source: Centre for WTO Studies, using statistics from OECD's Trade in Value-Added Database

2.2 Tariff Revenue Losses

2.14. As cited above, several studies have looked into this issue. We will highlight the results of the most recent one - UNCTAD's Research Paper (2019).[14] The paper would seem to have provided the most comprehensive coverage of digitized and digitizable goods.

2.15. Based on the identification of a small number of digitizable goods in five areas, namely, printed matter, music and video downloads, software and video games, the Paper estimated a loss of tariff revenue of more than $10 billion globally because of the moratorium, 95 per cent of which 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. More details of the findings are as follows:

[13] UNCTAD 2018 'Power, Platforms and the Free Trade Delusion', Trade and Development Report. p.70-71.

[14] UNCTAD 2019 'Growing Trade in Electronic Transmissions: Implications for the South', UNCTAD Research Paper, No. 29.

- The potential tariff revenue loss to developing countries is estimated at US$ 10 billion per annum (using average bound tariffs). Tariff revenue loss to WTO LDCs is estimated at US$ 1.5 billion while for Sub-Saharan African countries the loss is around US$ 2.6 billion.
- WTO high-income countries experience a tariff revenue loss of only $289 million, as their average Bound duties are at 0.2%.
- 55% of global imports of the identified digitizable goods are electronic transmissions, while 45% are physical imports.
- If the trend in digitizable goods continue at the same rate UNCTAD estimates that the market for such goods would be half a trillion dollars for 2026.

2.16. As more goods are getting digitized with the advent of industry 4.0 and the advance of 3D printing technologies, this estimate of fiscal revenue foregone will snowball. One study notes that the 3D printing market has grown by a compound annual growth rate of 29% since 2016.[15] With 3D printing, the moratorium will erode the existing GATT bound rates yet further, which are typically higher in developing countries, and bring them to zero for digitized goods. 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 destitution.

2.17. A background Paper of the World Development Report (2020) noted that "3D printing particularly benefitted exports of upper middle-income economies and high-income countries, while it had a negative impact on exports from low-income economies". The study concluded that "3D printing is leading to a reshuffling in comparative advantage – from labour abundant /developing economies to capital abundant / advanced economies".[16]

2.18. Are developing countries ready to let go of the use of effective and time tested trade policies in goods like customs duties which even the developed countries have used and continue to use tariffs (including tariffs beyond their bound levels) in order to improve competitiveness and to protect certain domestic industries and local employment? Are our goods industries able to compete on equal grounds vis-à-vis other economies in the context of the digital economy?

2.19. It is often argued that exporters from developing countries need the imports of digitizable products like software for improving their production and export of many goods and services. Custom duties on digitizable goods will increase the costs of their production and exports (e.g. software etc.). However, as stated above, the removal of the 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 the generation of local jobs in the era of Industry 4.0.

2.3 Loss of other duties and charges

2.20. Various Members have also made the point that customs duties are not the only losses, but when customs duties are not collected, other taxes and charges which are charged to physical goods are also not collected. One estimate is that these charges can be up to 23%.[17] Hence it is not only tariff revenue that is lost, but Member should also be cognizant of revenue from other charges forfeited.

3 ARE DEVELOPING COUNTRIES ENJOYING THE BENEFITS OF THE DIGITAL ECONOMY?

3.1. What about the positive impacts of the digital economy for developing countries? Should these not also be taken into account in the discussion on losses and the impact of the moratorium? After all, it is often said that new digital technologies can provide developing countries with new income generation opportunities, including for their Micro and Small and Medium Sized Enterprises (MSMEs).

[15] EY 2019 '3D printing: hype or game changer? A Global EY Report 2019' https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/advisory/ey-3d-printing-game-changer.pdf.

[16] Freund et al (2010) "Is 3D Printing a Threat to Global Trade? The Trade Effects You Didn't Hear About", Background paper in World Development Report 2020.

[17] UNCTAD 2019 'Growing Trade in Electronic Transmissions: Implications for the South', UNCTAD Research Paper, No. 29.

3.2. There have indeed been gains but these are not being distributed evenly. The reality, as noted earlier, is that most developing countries are experiencing profound challenges due to the infrastructure / technological divide, the skills divide, and the rising concentration in digital markets, particularly the market power of global digital platforms.

3.3. In terms of the infrastructure and digital divide, 2018 marked the year where half of the global population was using the internet – 3.9 billion people were online. In LDCs, however, only 1 in 5 people had internet access, compared to 4 out of 5 in developed countries.[18] ITU has also projected that by 2025, 5G connections will be close to 60 percent in some of the more developed economies. However, it is expected that 5G penetration will only be 8 per cent in Latin America and 3 percent in sub-Saharan Africa.[19]

3.4. Further, ownership of platforms is the new critical factor measuring success in the digital economy. The platform has emerged as the new business model, capable of extracting and controlling immense amounts of data. However, with 'platformisation', we have seen the rise of large monopolistic firms.[20] UNCTAD's Digital Economy Report (2019) highlights that the US and East Asia accounts for 90 percent of the market capitalization value of the world's 70 largest digital platforms. Africa and Latin America's share together is only 1 percent. Seven 'super platforms' - Microsoft, Apple, Amazon, Google, Facebook, Tencent and Alibaba - account for two-thirds of total market value. In particular, Africa and Latin America are trailing far behind.[21]

3.5. UNCTAD's Digital Economy Report observes also that local firms in developing countries can benefit from being able to use services offered by the global platforms e.g. selling their products on these platforms. In some cases, local knowledge may also give an advantage to locally rooted platforms. 'Yet, due to the competition dynamics … developing-country platforms that are trying to scale typically face an uphill battle'. The report concludes that 'the dominance of global digital platforms, their control of data, as well as their capacity to create and capture the ensuing value, tend to accentuate concentration and consolidation rather than reduce inequalities between and within countries.'[22]

4 CONCLUSIONS

4.1. Today Members are only waking up to the weighty impact of the moratorium assuming the scope of the moratorium is centered on digitized and digitizable goods i.e. interpretation 'b' in Section I above. We are still at the cusp of the digital revolution. The challenges of this digital revolution are even more daunting than anything we have seen before. Thus developing countries need even more support to industrialise including access to technology, infrastructure (including related to the digital divide), education of the labour force, and of course policy space and the use of tried and tested instruments to build production capacities including trade policies such as tariffs.

4.2. The moratorium will be equivalent to developing countries giving the digitally advanced countries duty-free access to our markets. All countries trying to catch up need time for their industries to become competitive before full liberalisation can be optimal. To do so whilst industries are still struggling will consign many developing countries to be only consumers. This will be catastrophic for economic growth, jobs, and the attainment of SDGs.

[18] ITU 2018 'Measuring the Information Society', Geneva.
[19] ITU 2018 'Setting the Scene for 5G: Opportunities and Challenges', Geneva.
[20] Srnicek N 2017 'Platform Capitalism', Polity.
[21] UNCTAD 2019 'Digital Economy Report', p. xvi.
[22] UNCTAD 2019 'Digital Economy Report', p. xviii.

5 SOME FURTHER REMARKS

5.1. Today, some institutions are assuming that the scope of the moratorium includes some services.[23] This is not our understanding. If services are also included, such an interpretation would mean that WTO Members are agreeing to a completely duty-free trading environment, in other words, a fully liberalised digital economy.

5.2. This view is not supported by the historical discussions and understanding on the moratorium. In addition, it would imply a complete paradigm shift from anything the GATT /WTO has ever been about, and there has never been any discussion for such a paradigm shift. Due to the importance of tariffs and trade policy instruments, until now, liberalisation commitments in GATT/WTO have occurred gradually, with tariffs being negotiated line-by-line, and services have been liberalised sub-sector by sub-sector. All Members, including the most economically powerful carefully safeguard access to their markets, even in the context of their economic supremacy.

5.3. The moratorium covering digitizable goods is already a major challenge since it is about bringing a large portion, and in time, maybe even the majority of NAMA tariffs to zero. For this reason, the moratorium must be reconsidered as digitization becomes the mode of commerce. It would be unthinkable for the scope to go beyond this to also include other forms of digitized trade, an issue which has not been discussed.

[23] The ECIPE Policy Brief (No. 3/2019) notes that the following services could also be subjected to a tariff: online retailing services; internet publishing, web search portals, directories and information services; motion picture and video industries, sound recordings; software publishing, programming; data hosting, processing, systems and data communications; advertising. These fall under wholesale and retail trading services; recreational and other services; communications; and business services.