

E-commerce as the New Transformative Force in Global Trade: An Opening for Developing Countries to Gain a Stronger Foothold in the Multilateral Trading System

One of the significant outcomes of the recently concluded B20 Summit in Hangzhou, China, was the recommendation adopted to build an Electronic World Trade Platform (eWTP), which would bring together businesses, other stakeholders, international organizations and governments to share ideas on making electronic commerce more inclusive. The related discussions had revolved around how digital technology can help small and medium sized enterprises (SMEs), thereby making the trading system more inclusive and pro-development.

The International Chamber of Commerce (ICC) also recently concluded an event in collaboration with the WTO and the private sector on the role of trade policy in accelerating the growth of e-commerce and the digital economy around the world. Speaking after the discussion the Director General of WTO, Roberto Azevêdo, stated that e-commerce is a transformative force in global trade, supporting growth, development, job creation and inclusion. He further stated that the developed, developing and least-developed Members of WTO are growing increasingly interested in e-commerce and the digital economy as an issue for further discussion on the WTO platform. This dialogue is a part of a series of 'Trade Dialogues', which are the first of its kind WTO-hosted dialogues in partnership with the global business community, providing a range of stake-holders the opportunity to discuss their concerns on trade related matters. The first of such dialogues was held at the WTO headquarters on the 30th of May, 2016. The dialogue was initiated in response to growing concern within the global business community about the faltering global trade growth.

The recent failure by WTO member governments to reach an agreement at the 2015 WTO Nairobi Ministerial Conference on the future continuation of the Doha Development Agenda has left the international community without a shared agenda for the future evolution of the global trading system. The WTO Members are therefore, currently reflecting on how best to move the negotiating agenda forward, and in this context, the private sector is being included in the negotiation processes. There has been a strong call from the business leaders in such dialogues for the WTO to play a central role in underpinning an open, reliable and secure global digital economy. Participants have expressed particular interest in future "e-commerce negotiations" which could encompass a broad range of issues such as customs duties, electronic signatures, and data protection and localization requirements.

Electronic Commerce as a Work Programme in WTO was launched in 1998, in recognition of the rapid growth of global electronic commerce and the legal issues to which it could give rise in the WTO. The Briefing Note to the Work Programme on Electronic Commerce defines electronic commerce as 'Electronic commerce, commonly known as e-commerce, involves the digital transfer of goods and services across borders. Broadly speaking, e-commerce is the sale or

purchase of goods or services conducted over the internet or other computer networks. An e-commerce transaction can be between enterprises, households, individuals, governments and other public or private organizations'. The WTO Work Programme on Electronic Commerce covers all issues related to trade arising from global e-commerce, including enhancing internet connectivity and access to information and telecommunications technologies and public internet sites, the growth of mobile commerce, electronically delivered software, cloud computing, the protection of confidential data, privacy and consumer protection. The Programme also explores the economic development opportunities afforded by e-commerce for developing countries, particularly least-developed countries. The WTO institutional arrangements for deliberations on e-commerce is fragmented across different bodies – General Council, Council for Trade in Goods, Council for TRIPS, Committee on Trade and Development and the Council for Trade in Services. The General Council plays a central role and keeps the Work Programme under continuous review. Since the start in 1998 WTO Members have agreed not to impose customs duties on electronic transmissions, and the moratorium has been renewed in every Ministerial Conference, including in the last Ministerial held in Nairobi in December, 2015.

Much reflection is currently taking place in Geneva and elsewhere on the subject of maximizing the multi-faceted opportunities of the internet for trade. In 2013 the WTO Secretariat in its Report titled 'E-Commerce in Developing Countries' highlighted the relationship between e-commerce and development. It noted that the small and medium sized enterprises (SMEs) which make up a majority of businesses and employ the majority of workers in both manufacturing and services sectors in both developed and developing countries have the possibility to benefit immensely from the developments in the field of e-commerce. However, the SMEs in these countries fail often to maximize the use of information and communication technology (ICT). The Report, therefore, hailed e-commerce as an opportunity for developing countries to gain a stronger foothold in the multilateral trading system, as unlike the requirements necessary to run a physical business, e-commerce does not require storage space or infrastructure investment, and entails further benefits such as higher profit margins, and better and quicker customer service. The Information Economy Report, 2015 of the United Nations Conference on Trade and Development (UNCTAD) has also highlighted how some of the greatest dynamism in electronic commerce can be found in developing countries, but how that potential is far from being fully realized; and that owing to the slow progress over e-commerce at the multilateral level – countries have started to include e-commerce provisions in various bilateral and other regional trade agreements. The Report further mentions taxation as a concerning issue with relation to e-commerce. Large revenues are being generated today through e-commerce – but the international taxation system, that allocates jurisdictional tax claims over profits of multinational companies based on physical presence, is not proving to be very helpful. This has given rise to inevitable issues such as where to tax non-resident e-commerce businesses, how to assess intra group transactions, how to classify digital goods, how to identify the tax payers, where and how to collect consumption tax, as well as issues of enforcement. Thus,

developing countries where foreign e-commerce businesses are in the majority may be unable to collect tax revenue where the businesses have no physical presence within their jurisdictions.

As per the Note by the WTO Secretariat on the Work Programme on Electronic Commerce, of 1998 - the Secretariat had suggested to assist Members' examination of the treatment of electronic commerce in the GATS legal framework in light of the significant market and regulatory developments in e-commerce since the launch of the Work Programme. Many delegations had welcomed the suggestion, but a few required more time to consider the proposal. More recently, this suggestion has been reviewed and it has been stated in the Report by the Chairman of the Council for Trade in Services (CTS) of 11th July, 2016 to the General Council, that there would be further consultations in CTS on the matter. However, no proposals have been submitted by members in the Council for Trade in Goods and in the Committee on Trade and Development. Also, there has been no further work on e-commerce in the TRIPS Council.

Recognizing the increasing importance of the digital economy and related flows for trade, growth, and development - the transformation of the current e-commerce Work Programme into an ambitious mandate for a digital trade agreement is being contemplated. However, some of the major trade policy initiatives in the post-Nairobi setting are endorsing the taking up of certain essential precursory measures before embarking upon such ambitious projects. The E15 Initiative under the International Centre for Trade and Sustainable Development (ICTSD) for example, in its post-Nairobi policy analysis papers recommends convening a Working Group to better understand the scope for WTO law to support digital trade, that is, examine how the needs of digital trade are covered presently under the existing WTO rule framework; and/or establishing a platform in the WTO to receive inputs from external experts on the digital economy and its relationship with the international trade system. In the G20 Leaders' Communique of the recently concluded G20 Hangzhou Summit, 2016, also, the resolution adopted includes cooperation between States to lower trade costs through promoting e-commerce development.