Government of India Submission to the High Level Panel on Digital Cooperation

In the recent past, the significance of economic activities in the digital space has grown substantially, both globally as well as in India. According to some estimates, by 2020, 15-20 percent of global GDP will be based on data flows. The e-commerce market, as per WTO's World Trade Report 2018, was of the order of US$ 27.7 trillion in 2016, of which US$ 23.9 trillion was B2B transactions. However, if we were to exclude China from the sample, developed countries account for nearly 64% of the B2B and B2C e-commerce. The share of developing countries is thus meager. The cross border e-commerce exports from India were estimated to be less than 1% of the total exports from India in 2016. In brief, the ability of developing countries to export goods and services through e-commerce platforms, or serve the domestic market for that matter, through home grown players, is very limited, and most of such business is currently run by few major multinational companies like GAFAAM. This is on account of the fact that unlike conventional business, e-commerce companies are able to exercise a much wider span of control over business operations across geographical domains and various functional/ commodity/ service verticals through digital platforms, and exercise much wider dominance across the globe.

As per the UNCTAD's B2C E-commerce Index 2018 most of the developing world including Africa and large parts of Asia lag far behind the rest of the world in E-commerce readiness. India is ranked 80 out of 151 countries in the index. While this index captures an economy's readiness to support online shopping, the parameters used to calculate the index are key determinants of e-commerce preparedness.

On all the four of these parameters, developing countries are very poorly placed and huge investment in technology, human resources and physical infrastructure, accompanied by access to huge capital(the order of magnitude of which is unheard of in many developing domains) for operators to compete effectively, is required before they could be ready to face competition. Even the e-commerce policy and regulatory space in developing countries is un-populated. In the absence of any policy or regulatory instruments, even issues of regulating the e-commerce space to create a fair and level playing fieldin the face of pressure from global behemoths, aided through aggressive supportive interventions by their influential and powerful nation States, are unresolved. This has seen many developing countries increasingly swamped by these entities at the cost of harm to unprepared domestic enterprises, often in circumvention of conventional border regulations related to tariffs and non-tariff measures. How these, already formidable, challenges will be faced, and how domestic policies would need to be framed to enable the necessary support for the (un-compromisable) policy goal of enabling domestic players to come up and have their fair share of the pie, are issues that have no answers today. Even the scope and definition of e-commerce remains ambiguous, unclear and undefined today. While developing countries see it as a platform for trade facilitation under existing rules and safeguards, others see it as a market access window to undo the protections developing countries have in place on conventional cross border movement of goods and services to safeguard their interests. In these circumstances, any premature push for international rule making, when developing countries are not prepared domestically, will permanently tilt the scales against developing country interests in the e-commerce area and create permanent disparities in income and welfare, and deny their citizens the standards of living to which developed country citizens alone cannot be entitled in perpetuity. In these circumstances, unless due care is taken, the benefits shall be limited to MNCs who are in a position to take advantage of the growing e-commerce market, notwithstanding the lip service paid to SMEs and gender equality in the garb of advocating e-commerce, which is entirely contrary to the actual reality that exists of these MNCs squeezing the margins of SMEs.

It is often said that data is the oil of the digital economy. The burgeoning on-line retail trade through platforms has data flows at its foundation. Communication using mobile applications and other real-time exchanges not only generates a vast array of data, including physical location, financial details and consumer preference, but also creates a dynamic profile of the individual user.The individual's profile can be used for a variety of commercial purposes, such as precision marketing, targeted advertisements and credit worthiness assessment, enabling these large digital companies to target consumers with tailor-made marketing content. In this manner, data generated by activity in one area can provide a competitive edge for a new business in another area.Further, algorithms can mine vast amount of unstructured data generated from diverse sources, including Internet of Things (IoT), for identifying trends and patterns which have considerable commercial value.

It is increasingly being recognized that ensuring competition in e-commerce is fraught with problems arising from certain unique characteristics of the digital economy, including network effects and access to data posing a significant barrier to market entry of new firms. In some jurisdictions, the competition authorities have found substantial evidence of anti-competitive practices in the e-commerce sector. Regulatory regimes in most developing countries are at a very nascent stage and have not even been able to develop a legitimate taxation framework for the sector.No doubt, e-commerce has been growing fast all over the world, including in developing countries, and has been a driver of growth but the benefits of this growth are very unevenly divided in favour of few large MNCs.

The digital revolutioncan potentially cause major disruption if conscious efforts are not made to bridge the digitaldivide and bring in an element of equity in technology and benefit sharing. No doubt this presents immense opportunities for developing countries such as India provided conditions are created in which all stakeholders are able to perform their functions adequately. As the conditions exist today, these opportunities can be harnessed only by those countries who have adequately prepared themselves to bridge the digital and physical infrastructure gap, besides addressing regulatory challenges such as legal, policy, taxation and enforcement issues.

The digital divide is a very important concept to understand. More than half the world's population today is without access to high speed broadband. Two of three in India, which is about one billion people, three of four in Africa and five of six in LDCs, do not have access to the kind of connectivity needed to carry out digital trade or e-commerce. At present, most developing countries lack the required digital capacity to avail the emerging opportunities. The growing digital divide is making 'catching-up' more difficult for developing countries, which are fast losing their trade competitiveness. India, too, is grappling with these problems. Our collective efforts need to be directed at addressing gaps related to infrastructure deficiencies, building skills relevant for the digital world, establishing a regulatory regime that nurtures the domestic digital economy, protects the consumer, promotes competition in the market and addresses emerging anti-competitive issues.

Given this wide disparity which exists between countries in terms of access to and development of the digital economy, it is obvious that there is a dire need for the technologically advanced countries to assist developing and Least Developed Countries in adequately developing their physical and social infrastructure as well as formulating the enabling policy and legal framework with a view to identifying and facilitating bridging of this digital divide. It is imperative to make policy makers aware of the underlying challenges to enable them to exercise prudent choices from available options so that these stakeholders can fully benefit from the opportunities that would arise from the progressive digitalization of the domestic and global economy.

In addition, there is the problem of digital literacy and skills. Both of these require a certain basic level of education and skill which is still a distant dream in large parts of the developing world. Efforts need to be made by the developing countries at several levels to develop digital skills by introducing digital education in schools and universities and upskilling the digital skills of the existing workforce.

Clearly, a digital economy is built on digital infrastructure and digital capabilities (including digital skills and competence). Three broad interrelated components of digital infrastructure which can be identified are networks, software and data; and digital capabilities which are needed to use them effectively. In addition to digital infrastructure, a digital economy requires the presence of supportive physical infrastructure,regulations,enforcement capabilities and institutions.The availability of continuous power supply and access to banking and financial institutions are crucial. While these are taken for granted in advanced economies, these are significantly underprovided in much of the developing world. The UNCTAD Trade and Development Report 2018 itself elucidates in great detail the current scenario and the disparities with respect to digital infrastructure and digital capabilities between the developed and the developing world.

In several international fora, we have been hearing about the benefits of e-commerce and there is no doubt in any of our minds that e-commerce has revolutionized several aspects of our lives and has been beneficial to us in many different ways. However, our considered view is that the gains from e-commerce should not be confused with the likely benefits of rule-making in e-commerce. While we have seen the benefits of e-commerce both in goods trade on electronic platforms, convenient delivery of services and benefits that it brings to consumers, negotiation on rules and disciplines in e-commerce would be highly premature at this stage especially given the highly asymmetrical nature of the existing global e-commerce space. The UNCTAD's report on Trade and Development, 2018 is a very timely warning to developing countries on how they could lose out to digital monopolies, unless they take charge of their trade and investment policies in the digital era.

This Report succinctly summarises the challenges being faced by developing countries resulting from premature rule-making at the international level. The report states that

"*Given that large-scale use of digital technologies is still unfolding and that related impacts are still not fully understood, international cooperation to fill data gaps and develop comparable metrics needs to accompany policy efforts at the national level. The international community is just beginning a dialogue on what rules and regulations can harness the productivity and development potential of the digital economy. Agreement needs to be reached on what parts of the issues around the digital economy are in the realm of the WTO and what part in that of other international organizations. A premature commitment to rules with long-term impacts in this fast-moving area where influential actors might be driven by narrow business interests should be avoided*."

Further "...*it is important to retain freedom and space to design digital policies which help in increasing developmental gains from trade and foreign investments, like policies around localization, restrictions on free flow of data, technology transfers and custom duties on electronic transmissions*."

The lagging digital preparedness of the developing world including India will weigh heavily on the trade competitiveness of these countries in the future. Therefore, the need of the hour is to be adequately prepared by focusing on improving digital infrastructure, digital capabilitiesand supportive infrastructure and institutions. This will, in turn, prepare us for framing digitally-informed trade policies. For this, special emphasis needs to be laid on designing policies which will enhance the use of digital skills and digital technologies for making trade more competitive. This journey can only be completed with the active support and cooperation of the digital leaders and till such time, there is a need to preserve policy space in the multilateral trade negotiations at the WTO as well as the future bilateral and regional trade agreements.

Data is a source of comparative advantage for developing countries, such as India. Those developing countries that are able to leverage their position as a prominent source of data will be in a position to capture a larger share of the digital pie. However, those developing countries that allow free flow of data across their borders will fail to leverage their 'data advantage'. They will not be able to capture any significant economic value in the digital economy. They will remain merely consumers of digital products.

The developed countries are seeking to use trade agreements to preserve their first-mover advantage in the digital economy and continue to benefit from having free access to large volumes of data generated in developing countries. Agreeing to such commitments will hinder the ability of India to implement digital industrial policy in the future and erode its ability to gain substantially from the digital revolution. Therefore, it is critical that India and other developing countries do not accept/make any commitment that has implications on the ability to regulate the flow of data which is generated domestically.

Conclusion: Thus, in light of the above facts, India at this time supports an exploratory and non-negotiating engagement under the e-commerce work program at the WTO to better understand issues of definition and scope of e-commerce; to find answers to questions as to how developing countries can use policy and regulatory instruments to create a level playing field in the face of the overwhelming market strength and anti-competitive practices of deep pocketed e-commerce behemoths; what policies can enable developing countries to support enterprises of their own citizens to have a fair share in the pie, before a negotiating mandate can be considered and a genuine consensus found for it.

Entirely to the contrary, there is a move, led almost entirely by developed countries, to launch negotiations immediately, without any serious good faith engagement in the work programme to explore these issues through sincere and open discussion. A contrived, though very partial, consensus is being endeavored through un-informed consent or inducing consent regardless of these very damaging consequences for developing countries, which risk permanent disparities in living standards for their citizens vis-à-vis developed countries if proper care is not taken on these issues.

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