

**Intervention by the Delegation of India at the 3rd Session of the Inter-Governmental
Group of Experts on E-commerce and the Digital Economy**

3-5 April 2019

Opening plenary (03rd April 2019) – General Introductory Remarks

Madam Chair,

We agree with the presentation of the Secretariat that there are four pieces of legislation that are needed to do ecommerce – these are: laws relating to data protection and privacy; consumer protection, cyber security laws and e-transaction laws. These are but the necessary conditions to do ecommerce, not the sufficient conditions, if gains from ecommerce are to be more equitably shared amongst all stakeholders. For that, there are at least three additional pieces of legislation which are required– namely:

- a legal framework for ownership and pricing of data;
- a legal framework to regulate cross border flow of data; and
- on taxation, to move to the concept of economic presence as the basis of taxation as against the earlier used concepts of physical or commercial presence.

In addition, we need laws to curb concentration and anti-competitive practices in ecommerce.

Topping it all, what is needed are efforts by National governments themselves and international organisations like the UNCTAD and the WTO to develop digital infrastructure in developing countries and LDCs to bridge the digital divide. Critical in this regard is the need for policy space for developing countries and LDCs for appropriate legal and regulatory framework.

Thank You Madam Chair.

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Session 2: Digital data and implications for inclusive trade and development (03rd April 2019)

Madam Chair,

My first comment relates to presentation by Mr Joshua Meltzer – on the slide relating to attribution of 60% of India’s services exports to ITeS (mode 1).

In this context, I would like to draw your attention to a recent McKinsey study which says that with the advance of technology in the next five years, and we are not talking long-term even, 60 per cent of back office jobs, the kind which countries like India, Philippines, Vietnam, Turkey have strengths in, will vanish. They will be casualties of robotization and

digitalization. Now obviously, STEM education is a big thing in many developing countries like India. These jobs which will vanish have to be replaced and a possibility of replacement of jobs is through localization of servers, by developing an ICT ecosystem which has cloud computing, where assignment of domain names becomes an economic activity and big data analytics in the era of Industry 4.0 leads to creation of jobs.

Let me come to some other arguments, which complement and supplement the points made by the 3rd presenter, Mr Parminder Jeet Singh.

Today, a handful of companies have managed to dominate the digital economy. Because of the significant first mover advantage, once a certain scale is reached, it becomes virtually impossible for a 'second mover' to, on its own, make an entry in the market. Globally, small beginnings have been made for communities to take some control over their own data. I will illustrate three of these beginnings, each from developed countries:

- The Maori community in New Zealand has developed a framework for data sovereignty for indigenous groups;
- The Project 'DECODE' (Decentralized Citizen-owned Data Ecosystems) in Amsterdam and Barcelona; and
- Data sovereignty for indigenous people in Canada has been trademarked as 'OCAP' - OCAP stands for ownership, control, access and possession of data.

These are indeed positive beginnings.

In short, data about an individual belongs to that individual; data about a community belongs to that community; data about a nation belongs to that nation. It definitely doesn't belong solely to the large MNCs that are appropriating all economic benefits through monetisation of data.

It is in this context, as emphasized by me in the morning session, we need a legal framework for ownership and pricing of data and a legal framework to regulate cross border flow of data. These are but essential to ensure that economic benefits from ecommerce are more equitably shared amongst all stakeholders.

Since the session is on 'inclusive trade and development', we also need to review the impact of the WTO decision on moratorium on payment of custom duties on electronic transmissions which has implications not just on revenue, but also on the efforts of developing countries and LDCs to industrialize digitally, as custom duties play an important role in protecting infant domestic industries.

Finally, efforts by National governments themselves and international organisations like the UNCTAD to bridge the digital divide are important. Critical in this regard is the need for policy space for developing countries and LDCs for appropriate legal and regulatory framework.

Thank You Madam Chair

3rd Session of the IGE on E-commerce and the Digital Economy

4 April 2019

India's interventions

Session 3: Opportunities and challenges related to data and data flows

Madam Chair,

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 retain their ability to regulate the flow of data which is generated domestically.

Thank You Chair

Session 4: Regulatory issues and challenges

Madam Chair,

I thank the speakers for their presentations. Madam Chair, the issue, according to us, is not just about privacy or protection of personal data. In fact, yesterday, I had mentioned that globally small beginnings have been made for communities to take control over their own data. For instance:

- The Maori community in New Zealand has developed a framework for data sovereignty for indigenous groups;
- The Project 'DECODE' which is Decentralized Citizen-owned Data Ecosystems, in Amsterdam and Barcelona; and
- Data sovereignty for indigenous people in Canada which has been trademarked as 'OCAP', which stands for ownership, control, access and possession of data.

In the context of regulatory issues and challenges, which is the subject of this session, I would like to emphasize on three main regulatory issues from the perspective of developing

countries – namely – competition, digital industrial policies and regulatory challenges like taxation.

- There is evidence of huge concentration in the digital era – we all know the existing market power of the GAAFA and coupled with the ‘network effects’, big is getting bigger making it virtually impossible for new entities to enter; even if they manage to enter, the monopolistic anti-competitive practices of existing behemoths don’t let them survive – in short, it is critical to look at competition issues under ecommerce and we are grateful to the speaker from South Africa for emphasizing this.
- Second, how to assist developing countries and LDCs develop appropriate policies that can enable them to industrialise digitally. For eg, what kind of supportive policies, especially on data and digital infrastructure, can we have to encourage home-grown entities to come up? How best can developing countries leverage their position as a prominent source of data? Is data localisation for certain types of data, the answer? Also relevant in the context of digital industrial policies, is whether we need to review the WTO decision on the ecommerce moratorium which prohibits levy of custom duties on ETs. In this context, we are referring not just to the huge amount of revenue lost, but also to the efforts of developing countries and LDCs to industrialize digitally, as custom duties play an important role in protecting infant domestic industries. It is strange that while it is WTO compatible to impose CDs at bound rates on books imported in physical form but if we import e-books, we are prohibited from imposing the same bound CDs. Is this fair especially given the increase in digitisation with new technologies like 3D printing which could imply that virtually all non-agricultural manufacturing products can be digitized and, therefore, transmitted electronically?
- My last point is on taxation and the imperative to move to the concept of economic presence as the basis of taxation as against the earlier used concepts of physical or commercial presence. Also, experience tells us how very difficult it is to tax the super platforms. In fact, the OECD has published a number of reports on addressing the tax challenges of the digital economy, including the concept of ‘Base erosion and profit shifting’ (BEPS) which refers to tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations. Let me cite the case of Facebook which generates huge profits from its India operation where almost 20% of its global users are located, but pays an abysmal 0.06% of its total tax outgo to the Indian government

We, therefore, urge the UNCTAD to use its expertise to help us work on the above mentioned critical areas – namely - competition, digital industrial policies and taxation in the digital era.

Thank You Chair