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Statement by

Sri Lanka

The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.

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**Sri Lanka intervention at Session 5: The role of international policymaking and cooperation in
promoting a more inclusive digital economy**

My intervention relates to the aspects covered both in session 5 and 4, in particular, the taxation matters pertaining to the digital economy.

E-commerce presents a major challenge for tax administrations in Sri Lanka, given the often multi-jurisdictional nature of the transactions and the potential anonymity of the parties. In the absence of a multilateral solution, it is fully within Sri Lanka's rights under international law to adopt an Inclusive Framework to take national measures to address the tax challenges of the digital economy.

At the same time, there is a rise in national measures on taxing the digital economy, a move spurred by the onset of the COVID-19 pandemic. This is also fully within the rights of countries under international law, despite labels of 'unilateralism'. Many research papers have highlighted the direct tax measures being taken by various countries and found three key approaches to tax the digital economy and Sri Lanka is exploring to choose the best approach as per its existing practices. The three approaches are;

- i. the imposition of taxes on digital services;
- ii. developing rules to establish a fiscal link for digital businesses that operate through a significant digital presence;
- iii. Withholding taxes on digital transactions.

Further, Sri Lanka is facing a threat of an "exponential rise in imports of electronic transmissions" of luxury items such as movies, music, video games and printed matter during the Covid-19 crisis. While the profits and revenues of those digital players are rising steadily, the ability of the Sri Lankan government to check these conspicuous imports and generate additional tariff revenues is being severely limited because of the WTO moratorium of customs duties on Electronic Transmissions. Due to the unique nature of software, which is required for development for ICT sector, Sri Lanka can allow computer software duty free, but it should have the right to impose duties on products like movies, music and video games, especially with the exponentially growing imports of these items at present.

This is crucial as Sri Lanka is a net importer of electronic transmissions and the WTO moratorium takes away its flexibility of regulating its imports and to generate tariff revenues when needed. According to UNCTAD estimates the corresponding Sri Lanka's per annum tariff revenue loss of the Moratorium will be US\$ 10 Million (based only on custom duty component). Accordingly, Electronic Transmissions can be a potential fast-growing source of tariff revenue for Sri Lanka.

It is important to be borne in mind that this WTO led Moratorium requires countries to exempt only imposition of custom duties on Electronic Transmission and applies only on the Customs Duties or

Ordinary Customs Duties within the meaning of Article II:1(a) & II.1(b) of GATT 1994. However, due to lack of technical feasibility of imposing customs duties on electronic transmissions, Sri Lanka is also not able to recover other duties (such as Import CESS, PAL, Excise duties and VAT).

It is also important to flag that TDR 2020, has discussed in detail the need for expanding the fiscal space for the developing countries in the times of Covid 19. There are strong recommendations to improve international cooperation in tax matters to avoid a race to the bottom.

Recommendations according to UNCTAD's TDR over past few years (2018, 2019, 2020) in the digital economy include:

- introducing taxes on digital services;
- base corporate taxation on "significant economic presence";
- adopt principle of unitary taxation where MNE subsidiaries are not treated as separate individual entities for tax purposes;
- adopt "formulary apportionment" whereby the resulting taxes are distributed across countries according to an agreed criteria; and
- give a more prominent role to monitoring institutions such as the United Nations Committee of Experts on International Cooperation in Tax Matters, and to adopt a fully multilateral convention against tax avoidance and evasion.

Sri Lanka is of the strong opinion that, due to its universal membership United Nations is the most legitimate body to balance the voices of Member States of different size and to coordinate processes of collaboration and coordination between countries. We therefore urge the UNCTAD to carry out more work under the subject of revenue implications likely to prevail within the developing countries and LDCs to the proliferations of digital services across the borders.
