

Workshop on the Moratorium on Customs Duties on Electronic Transmissions

Session V: Development dimension of the moratorium

WTO, Geneva

Monday, 29 April 2019

Ashish Aggarwal, NASSCOM

Notes

Ladies and Gentlemen,

I am pleased to discuss the impact of the customs moratorium on electronic transmissions in e-commerce and the challenges going forward. I would like to thank the WTO secretariat for organising this workshop and inviting me.

1. Customs duties in general impose friction on cross border trade irrespective of whether it involves traditional commerce or e-commerce. Therefore, it implies that the customs moratorium on *electronic transmission* (ET) has enabled cross border e-commerce. However, in the absence of specific studies, it is not easy to isolate the developmental impact of the moratorium. The impact, on account of customs duties forgone in the past, is debatable as many nations did not have strong capability to tax electronic transmissions in e-commerce. Further, the duties forgone would need to be weighed against the benefits accruing from cheaper availability of digital products/ services.
2. NASSCOM has supported the customs moratorium as it has been conducive to innovation in technologies and has promoted knowledge and content based e-commerce. However, it is important to understand the implication of the moratorium on WTO's GATT-GATS framework due to emergence of a few distinct trends:
 - i. *Shift in the carrier*: Though piracy continues to be a menace, developments in cloud infrastructure, internet access and technologies to curb piracy has moved digital products from physical CDs to ET.
 - ii. *Digital products to digital services*: All of the above combined with innovative business models, developments in Internet of Things (IoT) and access management has transformed digital products into digital services and enabled altogether new digital services like interactive games etc.
 - iii. *Emergence of Remote Additive Manufacturing*: 3D Printing is not mainstream today but it is likely to disrupt traditional commerce and contribute to ET based e-commerce in the future.
2. A two year moratorium and its rollover is particularly useful in a scenario where the ET based e-commerce is in a nascent stage and the technical challenges and the costs involved in levying tariffs are considered to be significant barriers. However, it can be argued that the scenario is changing. It is important to take these changes on board:
 - i. The success in levy of consumption tax or GST on foreign based entities for digital products/ services shows that it might also be possible to levy customs tariffs. Attribution rules for *Permanent Establishment* are being developed to tax a country's

- share of global taxes of multinational corporations. Though technical challenges may remain – the ability of various countries to tax e-commerce has improved significantly.
- ii. Further, digital e-commerce is increasingly coming under regulatory scrutiny in other spheres – be it consumer protection issues related to data and privacy or liability of platforms around copy right infringements. These apply to start-ups too, with threshold level exemptions for certain compliances. In this scenario, a blanket customs moratorium could increasingly be a subject matter of debate.
3. As the part of the review of the moratorium, it would be useful for the WTO to study:
 - i. Appropriate classification of ET in e-commerce under the WTO framework.
 - ii. Technical feasibility of levying customs duty on ET in e-commerce.
 - iii. Effect of Remote Additive Manufacturing on the trade under the GATT.
 - iv. The impact on ET based e-commerce of restrictions on cross border flow of data being imposed through local laws.
 4. WTO should develop these studies with inputs from member nations. Studies on these lines could help in developing a better understanding of the merits of continuing the moratorium and its continued effectiveness in promoting ET in e-commerce.
 5. Irrespective of the status of the moratorium, ultimately, nations which encourage development of digital products/ services will be better placed to leverage the digital economy.