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Understanding India's Reluctance at the WTO E-commerce Talks

Dipinder S Randhawa

Summary

On 25 January 2019, a group of 75 countries announced that they would launch informal discussions at the WTO to formulate trading norms and regulations for e-commerce trade. Despite its professed faith in multilateral discussions, why has India been reluctant to participate in a new round of discussions on e-commerce?

Introduction

On the sidelines of the annual World Economic Forum gathering of political and economic leaders at Davos on 25 January 2019, a group of 75 countries announced their intention to initiate negotiations at the World Trade Organisation (WTO) on trade-related aspects of electronic commerce (e-commerce).

The talks announced by the European Union's Trade Commissioner, Cecilia Malmstrom, were hailed as a "historical morning in Davos" that showed that the WTO "can take on challenges of the 21st century." Malmstrom said: "Electronic commerce is a reality in most corners of the world, so we owe it to our citizens and companies to provide a predictable, effective and safe online environment for trade." The talks are scheduled to start in March and will seek an internationally-agreed framework "to make it easier and safer to buy, sell and do business online. The launch of these negotiations shows the WTO stays in the centre of international rule making.[1]"

The signatories to the agreement include nearly all the OECD members, the US, the European Union (EU), Japan and Australia, as well as Singapore, China, Russia, and other developing nations including Nigeria, Thailand and Georgia. These states together account for 90 per cent of world trade. Notable absentees from the list are developing economies such as India, South Africa and others.

Despite being the fastest growing e-commerce market in the world and attracting record volumes of foreign investment, why has India chosen to stay away from discussions that could eventually lay the platform for norms, rules and regulations governing trade in e-commerce?

On the significance of E-commerce

[1] Moneycontrol "75 Counties launch WTO E-commerce talks" January 26, 2019 https://www.moneycontrol.com/news/world/75-countries-launch-wto-e-commerce-talks-3437281.html

Global e-commerce sales in 2015 amounted to US$25.3 trillion [2] (S$34.4 trillion). As much as 90 per cent of these online sales were in the business-to-business (B2B) segment, underscoring the importance of the digital economy in global commerce. The remaining 10 per cent were the more visible Business to Consumer (B2C), also known as e-tail sales. Up to 10 per cent of B2C e-commerce was cross-border, reflecting the increasing international integration of commodity markets through a new channel accessed directly by the final consumer.[3] While developed economies such as the US, Japan, the UK and Germany are some of the largest markets for e-commerce, China, Brazil, India and South Korea are among the fastest growing markets and account for over 40 per cent of total e-commerce spending.

Despite the rapid growth of e-commerce, the WTO still lacks specific rules governing e-commerce trade. In the absence of a global consensus, trading rules are increasingly being defined by regional and bilateral trade agreements. There is broad consensus that WTO rules on e-commerce will impart confidence and resilience to trade, further boosting the sector. A multilateral accord will help consumers and businesses, especially small businesses, making it easier and safer to trade and do business online. That the talks are being launched by the WTO during a trade conflict between the two largest trading economies, the US and China, lends added significance to the initiative.

India

In India[4], from a base of US$5.4 billion (S$7.3 billion) in 2011, B2C sales grew to US$38.5 billion (S$52.4 billion) in 2017.[5]. At current growth rates, exceeding 40 per cent per annum, the highest in the world, it is projected to cross US$103 billion (S$140.1 billion) by 2020. If this growth trajectory is sustained, by 2034, India will be the second largest e-commerce market after China. The growth is led by electronics with 47 per cent of total sales, and apparel accounting for another 31 per cent[6]. While, at 2.9 per cent e-tail accounts for a tiny percentage of total retail sales, the potential for growth is vast.

The significance of the e-tail sector extends far beyond overall retail. It has stimulated consumption in smaller cities faster than in the metropolitan areas. A growing number of enterprises from small cities and semi-urban areas are using online portals to sell their merchandise in the national market and beyond. The parallels with the Chinese experience are notable. In both economies, e-commerce, specifically B2C, is transforming how people shop, what they shop, where they shop, and how e-commerce can catalyse growth in hitherto neglected geographical areas and among marginalised demographic groups by enabling entrepreneurs in hitherto marginalised areas to sell to a potential global market. While it may be too early to gauge the overall impact of e-commerce, evidence from other

[2] Data from UNCTAD, 2017

[3] Cross-border B2C occurs when a customer orders a good that is imported directly from overseas by the E-commerce vendor

[4] This section draws upon 'E-commerce in India: Opportunities and Challenges" ISAS South Asia Scan 1, January 2019

[5] Data from United Nations International Development organization "*National Report on E-Commerce Development in India*", Inclusive and Sustainable Industrial Development Working Paper Series WP 15. 2017

[6] India Brand Equity Foundation (IBEF) "*E-commerce*" August 2018

countries indicates the transformative potential on some key sectors of the economy. Given the vast potential of e-commerce, it should be in India's interest to engage in and facilitate a rules-based multilateral regulatory regime overseeing e-commerce.

History of WTO negotiations on e-commerce

Discussions on e-commerce at the WTO date back to September 1998 when the largely exploratory work programme was adopted. The focus was on examining trade issues in e-commerce, encompassing goods and services, intellectual property rights, and the distinct development needs of developing countries. However, apart from the WTO member's agreement not to impose custom duties on electronic transmissions, the work programme did not make progress.

Impatience with the slow progress of the WTO's Doha Round of negotiations in 2001, where the focus had been on accommodating challenges faced by developing economies, resulted in a shift in emphasis to regional and bilateral trade agreements. E-commerce became an integral part of agreements with the US and the EU, as well as regional agreements such as the defunct Trans-Pacific Partnership (TPP) and Regional Comprehensive Economic Partnership (RCEP) that is under negotiation. The Buenos Aires round (2017) of WTO talks again emphasised completion of the works programme, but failed to make any notable headway.

The stalemate in multilateral negotiations led several countries including the US, the EU, Singapore, Canada and Japan among others to make submissions to the WTO regarding the need to develop trade rules in e-commerce, encompassing issues such as cross-border data flows, server localisation, technology transfer, consumer protection, intellectual property rights, source code, and trade facilitation aspects of e-commerce. These discussions culminated in the establishment of a working group on e-commerce, the precursor to the formation of the Group of 75 in January 2019. which aims to carry out the exploratory work on future WTO negotiations on trade-related aspects of e-commerce.

Why India is averse to WTO discussions on trade rules for E-commerce?

WTO members seeking to design a rules-based e-commerce trade regime can be grouped along two opposing paradigms. The first, advocated by India, South Africa, and other developing economies believes existing WTO agreements should be adapted to e-commerce, with a focus on the basic building blocks of an E-commerce trade regime. The second paradigm supported by the US, EU and Japan, contends that existing rules on e-commerce are outdated and argues for rules on free data flows, no data localisation requirements, and no disclosure of source – issues at the frontier of e-commerce today. Implementation of these rules would require a comprehensive opening up of digital economies. There is of course a vast space between these two positions, where an eventual consensus is likely to be found.

Though a strong advocate of the multilateral approach to trade issues, India has refused to join new negotiations on e-commerce, instead arguing for a sequential approach in which the WTO works programme of 1998, encompassing fundamental issues such as the definition and scope of e-commerce, be determined, supplemented by discussions and evidence-based research that will help developing economies gain a better understanding of the consequences of e-commerce for the domestic economy. The issues raised in the January 2019 press statement should be taken up after the basic issues in the work programme are resolved. Earlier, in November 2017, India had submitted a formal document reiterating this position.

The gist of India's position is that developing economies need time to acquire digital capabilities and develop a domestic regulatory framework that covers gaps in data localisation, restrictions on the flow of data, intellectual property rights (IPR), data security, and for policymakers to understand the landscape, prior to opening up the sector. Accession to a WTO e-commerce accord without sorting out the basics and allowing developing economies to build capabilities, will impair the country's ability to avail of the broader benefits of e-commerce.

Developing economies in the formative stages of adopting new technologies, such as Artificial Intelligence, risk being swamped by global tech behemoths if they open their markets. A root cause of the reluctance to participate in negotiations is the perceived vulnerability of India's domestic sector. Despite deregulation and reforms over the past 25 years, India's industrial landscape is still fragmented, with a small formal sector burdened with onerous regulatory costs. Consequently, while the ability of the domestic sector to quickly adapt to an open environment has improved over time, it is still far from optimal, reinforcing concerns about the loss of industry and jobs in the event of a rapid opening of the economy. Studies at the WTO Centre in New Delhi indicate that commitments to the WTO may constrain the Indian government's policy options to promote domestic industry.

Conclusion

While discussions on the 1998 works programme may continue, the world of 2019 is quite different from that of 20 years ago. India, withthe fastest growing e-commerce sector in the world, has the digital infrastructure, though far from ideal, which has grown faster than most projections suggested, with more than a 100 million consumers online and rapid expansion of access to broadband.

China's experience, though radically different from India's, is instructive. China did not open its e-commerce sector to foreign investment, enabling the rise of domestic champions such as Alibaba, JD.com and Tencent. Chinese e-commerce firms drew upon the protected environment to grow into some of the largest, most technologically advanced and innovative e-commerce enterprises in the world, developing distinct approaches to payments, tapping into rural and other marginalised areas, logistics and tapping into 'big data'. Chinese e-commerce giants were further helped by the rapid development of the digital infrastructure and policies conducive to growth. It is too late to adopt the Chinese approach in India, a market dominated by two major global players, Amazon and Walmart (through its acquisition of Flipkart). The landscape for domestic entrants in e-commerce is challenging.

There may be a political dimension to India's refusal to participate. 2019 is an election year in India, a time when political parties are loathe to undertake politically unpopular initiatives. Over 12 million small and tiny mom-and-pop stores, known in India as *kirana* stores, map the retail landscape, with potentially 60 million depending on these stores for their livelihoods. The *kirana* stores believe they are under severe threat from the e-commerce giants and constitute a large vote bank for the governing Bharatiya Janata Party (BJP). Any significant decisions that may impact *kirana* stores are likely to be deferred till after the elections. Until the elections in India are over, a clear long-term policy is unlikely to be articulated.

Several developing economies share the same concerns about the vulnerability of domestic retail. Yet many of them are participating in the talks, recognizing e-commerce as a key growth driver enabling them to tap into global supply chains. The opportunity to be at the table to shape the contours of this new rulebook is a powerful incentive for joining the negotiations. Its size and growing influence in the global economy will enable India to use discussions at the WTO as a bully pulpit to form a coalition of countries with similar interests and push forward a case for the sequential approach it favours. Active participation by developing economies in the negotiations will necessitate an outcome reflecting a balance between safeguarding interests of developing economies and endowing rights and obligations in a rules-based system. As the January 2019 announcement stated, participants are assured that discussions will "recognise and take into account the unique opportunities and challenges faced by Members, including developing countries and LDCs (Least Developed Countries), as well as by MSMEs (Micro, Small and Medium Enterprises), in relation to e-commerce". This sets the benchmark for outcomes at the very outset of negotiations and is essential if India is to tap into the substantial potential benefits e-commerce can offer for employment, incomes, the growth of the SME sector, for exports, and eventually, growth.

This reluctance reinforces the need to unshackle the Indian economy by dismantling the vestiges of the license Raj and creating conditions for domestic firms to gain resilience and flexibility, and restructure. The experiences of East and Southeast Asian economies in their early days of liberalisation is instructive. With the prevailing domestic compulsions, It is a moot if there ever will be a 'right time' to completely open the economy.

A continued policy dialogue, endeavours at policy experimentation and subsequent refinement of policies, drawing upon experiences and best practices, can be a catalyst for the growth of e-commerce, specifically, MSMEs. A common drawback inherent in many public policy initiatives is the presence of 'silos' in policy formulation and the demarcation of responsibilities, without in-built mechanisms for engagement on initiatives that require coordination. As an illustration, the Ministry of MSME's capabilities in assisting enterprises in the technology sector are limited, with the ministry needing to coordinate between different government departments, including those in the technology and international commerce domains. With limited resources, MSMEs are challenged to access services and programs designed to benefit them. A single window for assistance can help tide over some of the common coordination problems.

E-commerce policies are evolving globally. Rather than abstain from multilateral talks, it may be useful for the government to engage with multilateral agencies as well as other governments on developing capacity. The alternative would be letting developed economies set the agenda, only to have developing economies contest later to modify the agenda during multilateral negotiations.

Proponents of radical liberalisation of e-commerce, often erroneously conflate benefits of e-commerce with benefits of rule-making in the e-commerce trade. The latter manifests when there is a modicum of a level playing field in the industry, else monopoly power can lead to poor economic and social outcomes.

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Dr Dipinder S Randhawa is a Senior Research Fellow at the Institute of South Asian Studies (ISAS), an autonomous research institute at the National University of Singapore (NUS). He can be contacted at isasdsr@nus.edu.sg. The author bears full responsibility for the facts cited and opinions expressed in this paper.