E-Commerce in WTO: Agenda for Nepal

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*with support from*
Shaleen Khanal and Pragati Koirala
- Background
- Defining E-Commerce
- WTO and E-Commerce
- Nepal’s readiness in E-Commerce
- Agenda on the table
- Issues to be addressed
Background: Transformational impact of digital economy

- Goods are becoming services;
- Manufacturing system is changing - smart factories, automation, centrality of technology and data;
- Mode of delivery of goods and services is changing - delivery is not only digitalized, but interconnected;
- Approach to reach out to consumer is changing - from mass approach to individual customerisation,
- Platform economies is changing the entire sector;
### Background: Changing Trade Policy Issues

**source: OECD 2018**

<table>
<thead>
<tr>
<th>Type</th>
<th>Characteristics</th>
<th>Driver</th>
<th>Trade policy issues</th>
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<tbody>
<tr>
<td><strong>&quot;Traditional&quot; trade</strong></td>
<td>- Separation of production and consumption across international borders</td>
<td>- Reductions in transportation costs</td>
<td>- Market Access</td>
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<td>- Trade in final goods</td>
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<td><strong>GVC trade</strong></td>
<td>- Unpacking of factories across international borders</td>
<td>- Reductions in transport and coordination costs</td>
<td>- Trade-investment-service knowledge nexus</td>
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<td>- Trade in intermediate goods and services</td>
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<td>- Trade facilitation, domestic, behind-the-border NTMs</td>
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<td>- Changing role of services as tasks are outsourced</td>
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<td><strong>Digitally enabled trade</strong></td>
<td>- Unpacking of production, logistics and consumption, more traditional and GVC trade: age of hyperconnectivity</td>
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<td>- Data flows</td>
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<td>- Trade in smaller quantities of physical goods and digital services</td>
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<td>- Digital connectivity</td>
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<td>- Changing tradable nature of services</td>
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<td>- Interoperability</td>
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<td>- Bundling of goods and services</td>
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**OECD 2018**
Background: Size of Information Economy

Source: UNCTAD 2017
Background: Digital Divide

WTO Work Programme on Electronic Commerce has defined the term electronic commerce “...to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means.”

- **B2B**: transaction between businesses, such as between a manufacturer and a wholesaler, or between a wholesaler and a retailer;
- **B2C**: involves sales by ‘pure play’ e-commerce enterprises to consumer and by traditional bricks-and-mortar retail or manufacturing firms that add an online sales channels
- **C2C**: online auction platforms (such as eBay or Taobao) and sales within online communities;
- **B2G**: similar to B2B, except that the buyer in this case is a government entity, e.g. public e-procurement.

Source: WTO 1998 and UNCTAD 2017
### Defining E-Commerce: Possible Modes

**Source:** Ciuriak and Ptashkina 2018

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<thead>
<tr>
<th>Mode</th>
<th>Type</th>
<th>Examples and Business models</th>
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<tr>
<td>Mode 1</td>
<td>“Digital to real” transactions, including provision of access to the internet</td>
<td>Web search, e-learning, gaming, mobile applications, online gambling, communication services (such as WhatsApp or Skype), information services (such as maps and online encyclopaedias), online advertising, Netflix, etc.</td>
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<td>Mode 2</td>
<td>“Real to real” business to household (B2H) and business to business (B2B) transactions with digital intermediation</td>
<td>Amazon and other distributional services; also travel services (hotel bookings, flight reservations), purchasing software, etc., provided on a B2H basis; for business services, this captures “trade in tasks” conducted on a B2B basis;</td>
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<td>Mode 3</td>
<td>“Real to real” household to household (H2H) transactions with digital intermediation</td>
<td>Peer-to-peer transactions (eBay, Uber, AirBnB) from H2H, digitally mediated</td>
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<td>Mode 4</td>
<td>“Real to real” household to business (H2B) transactions with digital intermediation</td>
<td>Platform-based providers of household services to business (including trade in tasks conducted on a H2B basis)</td>
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<td>Mode 5</td>
<td>The capitalisation of data flows</td>
<td>Personal data (Facebook, Google), data generated over the Internet of Things, financial and personal data of online</td>
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General Council established a comprehensive work programme on 25 September 1998 ‘to examine all trade-related issues relating to global electronic commerce, taking into account the economic, financial, and development needs of developing countries, and to report ... ... with any recommendations for action ...’

- Continues review through a standing item on its agenda;
- Take up consideration of any trade related issue of a cross cutting nature;
- Examine imposition of customs duties on electronic transmission;
- Take into account the work of other intergovernmental organization;
- Consider the issues relating to the development of the infrastructure for electronic commerce;
E-Commerce in WTO: Work Programme

Shall examine the treatment of electronic commerce in the GATS legal framework:
✓ scope (including modes of supply) (Article I);
✓ MFN (Article II);
✓ Transparency (Article III);
✓ Increasing participation of developing countries (Article IV);
✓ Domestic regulation, standards, and recognition (Articles VI and VII);
✓ Competition (Articles VIII and IX);
✓ Protection of privacy and public morals and the prevention of fraud (Article XIV);
✓ Market-access commitments on electronic supply of services (including commitments on basic and value added telecommunications services and on distribution services) (Article XVI);
✓ National treatment (Article XVII);
✓ Access to and use of public telecommunications transport networks and services (Annex on Telecommunications);
✓ customs duties;
✓ classification issues.
Shall examine on aspects of electronic commerce relevant to the provisions of GATT 1994, the multilateral trade agreements covered under Annex 1A of the WTO Agreement, and the approved work programme:

✓ Market access for and access to products related to electronic commerce;
✓ Valuation issues arising from the application of the Agreement on Implementation of Article VII of the GATT 1994;
✓ Issues arising from the application of the Agreement on Import Licensing Procedures;
✓ Customs duties and other duties and charges as defined under Article II of GATT 1994;
✓ Standards in relation to electronic commerce;
✓ Rules of origin issues;
✓ Classification issues.
Shall examine and report on the intellectual property issues arising in connection with electronic commerce:

- Protection and enforcement of copyright and related rights;
- Protection and enforcement of trademarks;
- New technologies and access to technology.
Examine and report on the development implications of electronic commerce, taking into account the economic, financial and development needs of developing countries:

- Effects of electronic commerce on the trade and economic prospects of developing countries, notably of their small- and medium-sized enterprises (SMEs), and means of
- maximizing possible benefits accruing to them;
- Challenges to and ways of enhancing the participation of developing countries in electronic commerce, in particular as exporters of electronically delivered products:
  - Role of improved access to infrastructure and transfer of technology, and of movement of natural persons;
  - Use of information technology in the integration of developing countries in the multilateral trading system;
  - Implications for developing countries of the possible impact of electronic commerce on the traditional means of distribution of physical goods;
- Financial implications of electronic commerce for developing countries.
### Progress on Work Programme

**Source:** Various Ministerial Declarations

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<tr>
<th>Year</th>
<th>Description</th>
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<tr>
<td>1998</td>
<td>Establish <strong>ment of Work Programme</strong>. Moratorium on customs duties.</td>
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<td>2001</td>
<td>The work to date demonstrates that electronic commerce <em>creates new challenges and opportunities</em> for trade for Members at all stages of development, and we recognize the importance of creating and maintaining an environment which is favourable to the future development of electronic commerce.</td>
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<td>2005</td>
<td>We take note ...that the examination of issues under the Work Programme is not yet complete. We agree to reinvigorate that work, including the development-related issues under the Work Programme and discussions on the trade treatment, inter alia, of <strong>electronically delivered software</strong>.</td>
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<tr>
<td>2009</td>
<td><strong>... Work Programme shall include development-related issues, basic WTO principles</strong> including among others non-discrimination, predictability and transparency, and discussions on the trade treatment, inter alia, of electronically delivered software.</td>
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... enhance internet connectivity and access to all information and telecommunications technologies and public internet sites, for the growth of electronic commerce, with special consideration in developing countries, and particularly in least-developed country Members. The Work Programme shall also examine access to electronic commerce by micro, small and medium sized enterprises, including small producers and suppliers,

... instruct the General Council to emphasize and reinvigorate the development dimension in the Work Programme.... Further, any relevant body of the Work Programme may explore appropriate mechanisms to address the relationship between electronic commerce and development in a focused and comprehensive manner...
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<tr>
<th>Year</th>
<th>Progress</th>
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<td>2013</td>
<td>Any relevant body of the Work Programme may explore appropriate mechanisms to address the relationship between electronic commerce and development in a focused and comprehensive manner, To reiterate the importance of adhering to WTO's basic principles in the on-going discussion on ecommerce including non-discrimination, predictability and transparency. In that regard, the Work Programme should continue to examine the trade related aspects of, inter alia, enhancing internet connectivity and access to information and telecommunications technologies and public internet sites, the growth of mobile telephony, electronically delivered software, cloud computing, the protection of confidential data, privacy and consumer protection,</td>
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<td>2015</td>
<td>... reaffirming subsequent Ministerial Declarations and Decisions on the Work Programme, ... To continue the work under the Work Programme on Electronic Commerce since our last session, based on the existing mandate and guidelines and on the basis of proposals submitted by Members in the relevant WTO bodies. ...</td>
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<tr>
<td>Year</td>
<td>Description</td>
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<td>2017</td>
<td>... agree to <strong>continue the work</strong> ... based on the existing mandate. Will endeavour to <strong>reinvigorate our work and instruct the General Council to hold periodic reviews</strong> in the sessions of July and December 2018 and July 2019.</td>
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**Joint statement** by 43 Members to initiate exploratory work **toward future WTO negotiations on trade related aspects of electronic commerce**...
Nepal’s Readiness for E-Commerce: UNCTAD B2C E Commerce Index 2017

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Nepal’s Readiness for E-Commerce: E-Commerce Barriers

Source: Kshetri 2007
Nepal’s E-Commerce Readiness
Classification of products and services,
✓ Customs duties- future of moratorium on customs duties,
✓ Basic non-discrimination principles,
✓ Cross-border data flows,
✓ Free and open internet,
✓ Localization,
✓ Technology local content,
✓ Technology transfer,
✓ Critical source code,
✓ Technology neutrality,
✓ Authentication method,
✓ Network competition,
✓ Privacy and security,
✓ Standardization and global inter-operatability,
✓ Digital industrial policy
✓ E-commerce for development agenda-ICT infrastructure and services, trade logistics, payment solution, legal and regulatory framework, e-commerce skills development and technical assistance
A. Regulatory Frameworks Facilitating Electronic Commerce/Digital Trade
- Electronic contracts
- Electronic Signatures and Authentications
- Online Consumer Protection
- Unsolicited Commercial Electronic Messages
- Paperless Trading
- Privacy Protection
- Access to Online Payment Solutions/Electronic payment
- Standardization and Interoperability
- Reference paper on electronic commerce

B. Open and Fair Trading Environment
- Customs Duties
- Non-Discriminatory Treatment of Digital Products
- Cross-border Transfer of Information by Electronic Means
- Prohibition of Data Localization Barriers including Using or Locating Computing Facilities
- Open Networks/A Free and Open Internet
- Scope of Legitimate Public Policy Objectives
- Liberalization of Commitment/Improving Market Access Commitments
- No prior authorization
- Technological neutrality
C. Protection of Intellectual Property
✓ Protection of Important Information such as Trade Secrets including Source Code and Proprietary Algorithm
✓ Protection of Innovation in Encryption Products
✓ Protection of Trade Aspects of Intellectual Property

D. Enhanced Transparency
✓ Exchange Information on Regulatory Measures and Procedures
✓ Utilization of Trade Policy Reviews and DG Monitoring Report

E. Development and Cooperation
✓ Regulatory Cooperation among Members and/or regulatory authorities
✓ Improving access to information for MSME
✓ Aid for Trade/Technical Assistance
E-Commerce: Questions for discussion

✓ Should there be further work on the Work Programme or negotiation on rule making on e-commerce be initiated?
✓ What should be the elements of multilateral rules on e-commerce?
✓ Is Nepal ready for multilateral e-commerce rules? If not, how Nepal should improve its preparedness- legal and regulatory, infrastructure, human resources, finance?
✓ What are the existing barriers for international e-commerce in Nepal that need to be addressed at the multilateral level?
✓ How the operational constraints of MSME and women managed enterprises can be overcome?
Thank you

For comments and queries
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