**Government of Pakistan**

**E-Commerce Policy Framework**



**Report on E-Commerce, WTO & Development**

**Prepared by:**

**Working Group on E-Commerce, WTO & Development**

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**PART – I**

**Background**

Pakistan is in the nascent stages of development with regard to the e-Commerce industry and its regulatory and legal frameworks. Yet, there is potential for accelerated growth, given conducive business, regulatory and legal environments. As of 2016, worldwide e-Commerce retail sales amounted to around US$ 2 Trillion while UNCTAD estimated the global e-Commerce market worth at US$ 22 Trillion. In comparison, the current e-Commerce market in Pakistan is estimated at between USD 100 Million and USD 600 Million (even at USD 600 Million, it comes to 0.0027% of global e-Commerce market) and, despite good potential, it is estimated to grow to merely US$ 1 Billion by 2020. Given that e-Commerce is not only a growing global industry, it is also one on which an increasing share of future business, financial and trading transactions will depend, there is a dire need to *develop* it in Pakistan.

2. In addition to the instant efforts in the country towards the formulation of a National E-Commerce Policy Framework, Pakistan is also actively engaged in discussions on e-Commerce at the WTO – a discipline that was identified as one of the deliverables at the 11th WTO Ministerial Conference (MC-11) held in Buenos Aires, Argentina from 10 to 13 December, 2017. Various proposals have so far been tabled by various WTO members, either individually or jointly. Moreover, Pakistan is one of the founding members of the group called the Friends of E-Commerce for Development (FED), which is a group of developing countries at the WTO that are actively involved in discussions focused on the developmental aspects of e-Commerce.

**PART – II**

**MC-11 – Before & Beyond**

3. In the foregoing background, Pakistan’s Permanent Mission to the WTO (Mission) has prepared a Paper titled ‘E-Commerce: The Way Forward for Pakistan’. Ministry of Commerce (MoC) and the Mission have constantly been in touch with regard to the discussions and proposals on e-Commerce being deliberated and tabled at the WTO, especially in view of MC-11. At the WTO, Members have been discussing various proposals with regard to different aspects of e-Commerce, for instance, Moratorium on Customs Duties on Electronic Transmissions, Cross-Border Transfer of Information, Electronic Contracts, Electronic Signatures, Online Consumer Protection, and Transparency. Moreover, Members have also put forward proposals focused on various other areas including Consumer Protection, Electronic Authentication, Regulatory Frameworks, Trade Facilitating Measures, Open Markets, and Development of e-Commerce. With regard to MC-11, more proposals have been tabled by Members, mostly aimed at a possible Ministerial Decision on e-Commerce with varied focus and thrust, depending upon the proposing countries and their levels of development and expectations for future actions with regard to e-Commerce. In this context, eleven (11) proposals were tabled and evaluated at the WTO.

**PART – III**

**Current State of Play**

4. Without prejudice to the outcome at MC-11, there is little doubt that e-Commerce and its various facets will gain increasing importance at the WTO and will thereby impact international trade and regulatory environments in different countries. Therefore, it will be in Pakistan’s best interest to firm up a considered stance, based on its own national interest as well as keeping in view the realities of the modern multilateral trading environment.

5. The current state of affairs at the WTO is that Members seem to be divided along three lines. *First*, those that want rules or negotiations or some element of rule-making whether assessment or preparation or discussion on rules at some stage after discussions. *Second*, those that want more formalized, horizontal and crosscutting discussion without resort to any kind of rules or negotiations. *Third*, those that want to continue the existing discussions under the mandated work program and not formalizing a new working group as the current one is enough, and do not want any new rules or negotiations or discussions on rule-making.

**III.1. Summary of Proposals**

6. Since the current focus of the various proposals and discussions on e-Commerce at the WTO have currently boiled down to the proposals tabled at the WTO in view of MC-11, it may be worthwhile going through the main points of the current proposals. They are expected to provide the minima of future discussions and guide the course of future deliberations. They are also expected to narrow down areas of discussions and engagement on e-Commerce for the future. A summary is given below for ease of understanding.

|  |  |  |
| --- | --- | --- |
| **No.**  | **Proposal**  | **Main Points**  |
| 1. | JOB/GC/137 dated 6 October 2017Proposal by Russia  | 1. **Draft Ministerial Decision**.
2. To establish a **Working Group on E-Commerce** to provide a horizontal forum for discussion on e-Commerce and its development.
3. The group will discuss the possibility of **developing international rules** on e-Commerce.
 |
| 2. | JOB/GC/138 dated 6 October 2017Proposal by Japan & Others  | 1. **Draft Ministerial Decision**.
2. To establish a **Working Group on E-Commerce** to conduct an evaluation of **whether clarification or strengthening of existing WTO rules is necessary**.
3. The group will report results of evaluation to the General Council (GC) and **without delay commence rule-making negotiations**.

[**Note: Proposal has been merged in JOB/GC/156, hence superseded**] |
| 3. | JOB/GC/140 dated 16 October 2017Proposal by EU & Others  | 1. **Draft Ministerial Decision**.
2. To establish a **Working Party on E-Commerce** to conduct preparations for and **carry out negotiations** on trade related aspects of e-Commerce on the basis of proposals by members **no later than 31 March, 2018** (**immediately**).
 |
| 4. | JOB/GC/139 dated 10 October 2017Proposal by Costa Rica  | 1. **Draft Ministerial Decision**.
2. **No rule-making proposed**.
3. To establish an **E-Commerce for Development Agenda**.
4. **6 main issues** for dialogue: ICT infrastructure and Services; Trade Logistics; Payment Solutions; Legal, Regulatory Framework; E-Commerce Skills Development and Technical Assistance; Access to Finance.
5. The Agenda shall **identify priority needs of developing countries** and leverage the relevant expertise of international bodies such as the ITC, UNCTAD and the World Bank (WB).

[**Note: Proposal has been merged in JOB/GC/156, hence superseded**]  |
| 5. | JOB/GC/142 dated 19 October 20171st Proposal by China  | 1. **Elements** that Members **may** consider in their discussion in MC-11 **without a formal draft declaration language**.
2. **No rule-making** proposed.
3. The elements are **moratorium** on customs duties, facilitating **cross border e-Commerce**, promotion of **paperless trading**, building on the work by UNCITRAL for **e-signature etc**., enhancing existing **transparency requirements**,
4. May explore further outcomes for **development and cooperation**.
 |
| 6. | JOB/GC/150 dated 10 November 20172nd Proposal by China  | 1. **Draft Ministerial Decision**.
2. **No rule-making** proposed.
3. Build upon and reinvigorate the work already mandated under the **Work Programme on Electronic Commerce, 1998** (WPEC 1998) and hold **Dedicated Discussion** of the GC or at a body to be agreed upon by all members.
4. **Focused horizontal discussions** in parallel with respective decisions under the GC.
5. GC to take up trade-related e-Commerce **elements** acceptable to members.
6. GC to emphasise the **development dimension** on the Work Programme, particularly through Committee for Trade and Development (CTD).
7. Examine **opportunities for** MSMEs, studies, trainings etc.
 |
| 7.  | JOB/GC/149 dated 08 November 2017Proposal by Singapore  | 1. **Draft Ministerial Decision**.
2. **No rule-making** proposed.
3. Build upon and invigorate the work already mandated under the **WPEC 1998** and hold **Dedicated Discussion**s focused on the areas already identified.
4. WPEC 1998 mandates the Council for Trade in Goods (**CTG**), Council for Trade in Services (**CTS**), Council for TRIPS (**TRIPS Council**) and **CTD** to work with regard to e-Commerce issues under their respective areas of work.
5. Does not provide specific topics or elements but suggests **enhancing the method of work** of the Dedicated Discussions / Sessions.
6. GC to hold **periodic reviews** on a bi-annual basis to assess the progress and consider any **recommendations on possible measures** related to e-Commerce in **next MC**.
 |
| 8. | JOB/GC/152 dated 14 November 2017Proposal by Bangladesh  | 1. **Draft Ministerial Decision**.
2. **No rule-making proposed.**
3. To continue work under the **WPEC**.
4. Instructs the **CTG**, **CTS**, **TRIPS** **Council** and **CTD** to **conclude discussions** already assigned. These bodies to **report to GC in July 2018** with any appropriate **recommendations** for future action, which shall be assessed by GC to **examine development of e-Commerce *vis-à-vis* SMEs especially in LDCs** including through fair competition at the global level.
5. **Duty free and quota free access** to all goods and services from all **LDCs** that are **delivered via e-Commerce platform directly from LDCs** suppliers shall be provided by developed countries and those developing countries that declare themselves in a position to do so.
 |
| 9. | JOB/GC/153 dated 20 November 2017Proposal by India  | 1. **Draft Ministerial Decision**.
2. **No rule-making proposed**.
3. To continue work under the **WPEC** based on the existing mandate and guidelines in the relevant WTO bodies.
4. GC to hold periodic reviews based on the reports submitted by WTO bodies and report to next MC.
 |
| 10. | JOB/GC/155 dated 21 November 2017Proposal by the African Group  | 1. **Draft Ministerial Decision**.
2. **No rule-making proposed**.
3. To continue work under the **WPEC** based on the existing mandate and guidelines in the relevant WTO bodies.
4. GC to hold periodic reviews based on the reports submitted by WTO bodies and report to next MC.
 |
| 11. | Work Programme on E-Commerce (JOB/GC/156) dated 21 November 2017Proposal by Costa Rica, Japan & Others  | 1. **Draft Ministerial Decision**.
2. To establish a **Working Group on E-Commerce**.
3. To **assess whether the clarification or strengthening of the existing WTO rules is necessary**.
4. To **assess the priority needs of developing countries and LDCs** with respect to development of infrastructure for e-Commerce, enabling services and technical assistance and capacity building.
5. Examine opportunities, challenges, and barriers for access to e-Commerce by MSMEs.
6. Working Group to hold its first meeting no later than 31 March, 2018 (**immediately**)
7. Working Group to report to GC with any recommendations for action in 2019 (**after one year**).

[**Note: This proposal replaces Japan and Costa Rica’s earlier proposals, i.e. JOB/GC/138 & JOB/GC/139**]  |

**III.2. Views of the Mission**

7. As mentioned above, the Mission has prepared a detailed paper on e-Commerce encompassing various aspects internationally as well as with regard to Pakistan. With regard to e-Commerce and the WTO, it states that e-Commerce may be the engine to growth in the 21st century. As traditional forms of trade slow down, e-Commerce continues to grow across the world at double-digit rates. As the WTO moves from a paradigm of focusing on goods to services and the attention is turned to global standards, certification and harmonization of regulations, e-Commerce is likely to take center stage in the debates. Furthermore, discussions on globally compatible payments systems, globally compatible remittances system, consumer protection, buyer protection, e-Commerce-specific dispute settlement are likely to come under debate. The WTO is increasingly moving towards a paradigm of discussing e-TFAs in the future and Pakistan needs to be prepared to address these issues in a way that maximizes its return in the process. This would require input from all the relevant stakeholders in order to draft a coherent negotiating strategy which will help us with a range of e-Commerce-related aspects of different agreements.

**III.3. Views of State Bank of Pakistan**

8. The various proposals on e-Commerce at the WTO have been frequently shared by MoC with the e-Commerce stakeholders from all the Working Groups. So far, only State Bank of Pakistan (SBP) has shared its detailed and valuable views on all elements and concluded that the scope for digital products, its checks and balances, transfer of information, security risk, privacy / consumer protection, and the economic structure of Pakistan may be reviewed / considered before entering into FTAs etc. with other countries.

**III.4. Views of Ministry of Commerce**

9. A brief analysis of the above proposals is that the EU proposal wants rule-making negotiations to start immediately, while the earlier Japanese and Costa Rican proposals have been superseded by their joint later proposal (JOB/GC/156) wants it to start within one year, whereas the Russian proposal suggests exploring the possibility of initiating it without mentioning any time limits. On the other hand, the Chinese, Singaporean and Bangladeshi proposals do not advocate rule-making negotiations. The 1st Chinese proposal presents certain elements that members may consider and is the only one that does not offer a draft Ministerial Decision. The 2nd Chinese, Singaporean and Bangladeshi proposals want more focus to be put on issues already mandated under the WPEC 1998 and also have developmental provisions, albeit in varied terms. The Bangladeshi proposal, however, wants duty-free and quota-free access to all goods and services from all LDCs that are delivered via e-Commerce platform directly from LDCs suppliers to be provided by developed countries and those developing countries that declare themselves in a position to do so

10. It is important to add that in view of such a polarised scenario on e-Commerce, some members, including Brazil, have informally floated the idea that members may strike a compromise and form a single platform on the basis of work done so far for cross-cutting discussions on various issues without going into negotiations on rule-making. Therefore, the brief analysis above notwithstanding, Pakistan may also be open to being part of any future single platform for cross-cutting discussions on e-Commerce providing opportunity for exploratory discussions to address the needs of developing countries, while maintaining a firm stance against rule-making, whether multilateral or plurilateral. MoC also believes that Pakistan’s approach towards the discussions and proposals at the WTO should be focused from a *developmental* aspect, which encourages growth, as opposed to restricting it through rule-making.

**PART – IV**

**Recommendations**

11. Based on the above analysis of the proposals and views and comments thereon, with the understanding that discussions and proposals on e-Commerce will continue to be made at the WTO beyond MC-11, following are the recommendations of the Working Group.

**IV.1. On Matters of Policy**

IV.1.1. As a matter of policy, Pakistan may maintain a stance that is focused on the developmental aspect of, and is opposed to rule-making on, e-Commerce, whether multilateral or plurilateral;

IV.1.2. As a matter of policy, Pakistan may oppose the establishment, nor be part, of any forum, by whatever name called, that has or may have the mandate of entering into negotiations on rule-making on e-Commerce;

**IV.2. On Merits of Proposals**

IV.2.1. Pakistan may, keeping in view the ground realities at the WTO and assessment on merits, support a current or future proposal that is focused on the developmental aspect and improvement of developing countries, is beneficial to Pakistan, and is in line with the policy stated above;

IV.2.2. Pakistan may, keeping in view the ground realities at the WTO, support a proposal the Singaporean proposal (JOB/GC/149) as long as it is beneficial to Pakistan, and is in line with the policy stated above;

IV.2.3. Pakistan may oppose the Bangladeshi proposal (JOB/GC/152) of duty free and quota free access to all goods and services from all LDCs that are delivered via e-Commerce platform directly from LDCs’ suppliers, due to, *inter alia*, its probable negative implications on Pakistan’s economy, diversion of investments from Pakistan to LDCs, including Bangladesh, negative impact on Pakistan’s exports of goods and services and growth of Pakistan’s e-Commerce industry;

**IV.3. On Future Discussions**

IV.3.1. Pakistan may oppose any proposal on e-Commerce that provides for preferential treatment of LDCs over developing countries, including Pakistan, keeping in view its possible or probable negative implications on Pakistan;

IV.3.2. Pakistan may, keeping in view the ground realities at the WTO, also be open to being part of any future single platform for cross-cutting discussions on e-Commerce providing opportunity for exploratory discussions to address the needs of developing countries, including Pakistan, as long as it is beneficial to Pakistan and is in line with the policy stated above.

IV.3.2. Pakistan may continue to engage and lead the Friends of E-Commerce for Development and make useful leverage of its position in the group to influence discussions and policies that are focused on the developmental aspect and improvement of developing countries, is beneficial to Pakistan, and is in line with the policy stated above.

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