



Economic Laws Practice: Client Alert, WTO Mini-Ministerial (New Delhi)

WTO Alert
March 14, 2018

Mini-Ministerial Meeting

International trade is going through a phase of uncertainty. At the recently concluded 11th World Trade Organization (“WTO”) Ministerial Conference, WTO members were unable to agree on how to move forward on new-age issues such as Electronic Commerce (“E-Commerce”) and Investment Facilitation.

To break this deadlock, the Government of India has taken a pragmatic step of organizing an informal WTO Ministers’ gathering on 19-20 March 2018 in New Delhi. The objective is simple: facilitating exchange of views on the agenda for negotiations at the WTO. Invitations to participate have been sent to over 50 WTO members.

Businesses play a pivotal role in shaping these discussions. After all, WTO rules have been negotiated to promote and expedite trade of goods and services. The Government of India is now seeking inputs from the Indian Industry.

Investment-Facilitation

Proponents of investment facilitation at the WTO believe that future rules will improve the transparency and predictability of investment measures. The proposals submitted by proponent countries – including India’s largest trading partner, United States – consist of streamlining administrative procedures, enhancing international cooperation, information sharing, and exchange of best practices.

Opponents argue that the WTO does not have the negotiating mandate to discuss investment facilitation. Till now, the India’s position has been aligned with this group. India’s primary concern is that these discussions may open market access discussions as well as Investor-State Dispute Settlement (“ISDS”).

The questions to which the Government of India seeks inputs and views of the businesses are:

1. Does your firm support negotiations on Investment Facilitation?
2. Will your firm be in favour of measures that might help enhance the spillover effects of foreign investment on the domestic economy?
3. Does India need to re-visit its approach of opposing Investment Facilitation discussions at the WTO? This will best be answered being mindful of the fact that India is already undertaking significant autonomous reforms and liberalization, and that the objective of India’s FDI policy framework is to lay down a transparent, predictable and easily comprehensive policy.
4. Does your firm consider discussions on Investment Facilitation to be aligned to “*Make in India*” and “*Ease of Doing Business*” policies?
5. If applicable, kindly mention your reasons for opposing discussions to Investment Facilitation negotiations. Identify your broad concerns, for example, possible increase in capital dumping?

E-Commerce

E-Commerce has been discussed at the WTO since 1998. However, prior to the Ministerial Conference in Buenos Aires, Argentina, in December 2017, efforts were made by some WTO members – including China, European Union and Pakistan – to secure a negotiating mandate on issues such as cross-border data flows, server localization, technology transfer, source code and consumer protection.

While these efforts failed, a joint statement on electronic commerce was issued by 69 WTO Members. This joint statement states that proponents will “initiate exploratory work together toward future WTO negotiations on trade-related aspects of electronic commerce. Participation will be open to all WTO Members and will be without prejudice to participants’ positions on future negotiations.” In effect, this means that negotiations in E-Commerce will be commencing through the plurilateral

route.

India opposes discussions on E-Commerce. However, the Government of India is assessing its current stance. Businesses are likely to gain in some areas while losing others from binding rules at the WTO. Adopting any future approach to negotiations should best be determined by the overall assessment of gains and losses. To make such an assessment, businesses should consider responding to the some of the following questions:

1. What, in your opinion, is the vision of Indian industry about the opportunities that might arise from the growing digital economy?
2. What are the constraints that might prevent the Indian industry from benefiting from the digital economy in the future?
3. Can some of these constraints be addressed through binding rules at the WTO?
4. Can you share insights regarding any assessment that your firm may have undertaken on specific areas in which it can gain from binding rules on E-Commerce?
5. What are your firms views on free flow of data across borders? Do you consider this to significantly benefit your business strategy? In the alternate, explain why restrictions to free flow of data would benefit you.

Next steps

Would you want to know more about how these issues are likely to affect your business? Do you consider your business being affected by these disciplines? Do you anticipate increased competition from foreign players because of these disciplines? Would you want to proactively participate in the shaping of global rules? Write to us with responses to these questions or queries you may have along with your name and designation at corpcomms@elp-in.com.

Your views are important in shaping the negotiating position of the Government of India.

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