



WORK PROGRAMME ON ELECTRONIC COMMERCE

MORATORIUM ON CUSTOMS DUTIES ON ELECTRONIC TRANSMISSIONS

Communication from Australia; Canada; Chile; Costa Rica; European Union; Hong Kong, China; Japan; Korea, Republic of; Norway; Peru; Singapore; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; and United Kingdom.

The following communication, dated 7 July 2023, is being circulated at the request of the above-mentioned delegations.

This submission seeks to support further discussions under the dedicated sessions of the Work Programme on Electronic Commerce, on scope, definition, and impact of the moratorium on customs duties on electronic transmissions (the "moratorium").

1 INTRODUCTION

1.1. Since the 12th WTO Ministerial Conference, Members have engaged in a constructive reinvigoration¹ of the work under the Work Programme on Electronic Commerce² with a particular focus on its development dimension, as well as intensifying discussions on the issues specific to the moratorium.

1.2. This work is conducted through dedicated sessions which provide a unique opportunity to deepen the understanding of Members' views on key issues, including those related to the needs of developing Members, the challenges they face, the opportunities presented by digital trade, and sharing best practices.

1.3. In support of the dedicated sessions on the moratorium, the co-sponsors wish to reiterate through this communication their well-established understanding of the scope and definition of the moratorium. This Communication also provides further evidence on the benefits of the moratorium and the negative implications if the moratorium is not renewed.

1.4. The co-sponsors are looking forward to continued constructive engagement and active discussions related to the moratorium, as well as the development dimension of electronic commerce. As Members continue to intensify discussions on the moratorium, the co-sponsors reaffirm the importance of basing these discussions on evidence and facts, including inputs from other relevant international organizations, academia, and the private sector. The following is presented without prejudice to the respective positions of co-sponsors with regards to the specific issues referred to in the communication.

2 SCOPE AND DEFINITION OF THE MORATORIUM

2.1. Since 1998, WTO Members have periodically taken decisions to continue their practice of not imposing customs duties on electronic transmissions. There is a widespread understanding that the moratorium applies to all electronic transmissions, including their content. If the moratorium does not cover content, this would imply that the moratorium would have been intended to only prevent

¹ Including through WT/GC/W/855/Rev.2

² This is in line with the relevant MC12 Ministerial Decision WT/MIN(22)/32

the imposition of customs duties on telecommunication signals. This would effectively render the moratorium meaningless, given the common understanding that the value of a telecommunications signal is not the signal itself but the content it carries.

2.2. While no specific definition of "electronic transmissions" is attached to the relevant ministerial decisions, it is commonly understood to cover anything transmitted by telecommunications, including over the internet, and from emails and software to digital music, blueprints, movies, and video games.

2.3. The moratorium does not cover physical goods (e.g., clothing or books ordered from an online platform), which may be subject to applicable import tariffs. Nor does the moratorium limit the application of internal taxes (e.g., Goods and Services Taxes (GST) or Value Added Taxes (VAT)), as the moratorium is only concerned with customs duties. In several FTAs, participants have explicitly included language clarifying that internal taxes are not part of the scope of the equivalent discipline.

2.4. Looking at FTAs of both developed and developing Members,³ the practice of not imposing customs duties on "electronic transmissions" is a standard feature of most e-commerce chapters and/or digital economy agreements. To our knowledge, none of the existing agreements applying to e-commerce specify that the moratorium applies only to the electronic transmission as carrier medium, i.e., excluding content. There are a variety of approaches to the way that FTA moratorium provisions are drafted.⁴ Regarding content, some trade agreements/provisions specify that deliveries by electronic means are considered to be the provision of services while others refer to digital products. Even though these approaches may differ, they similarly result in the content of the electronic transmission not being subject to customs duties.

3 BENEFITS OF THE MORATORIUM AND THE IMPACT OF POTENTIALLY IMPOSING CUSTOMS DUTIES ON ELECTRONIC TRANSMISSIONS

Benefits of the moratorium

3.1. The benefits of the moratorium for businesses around the world, including in developing-country Members and Least Developed Countries (LDCs), are significant. This is particularly the case for micro, small, and medium-sized enterprises (MSMEs), which are the lifeblood of the global economy. The moratorium reduces the cost of engaging in trade, for instance with respect to transport costs which can amount up to 30%,⁵ increases access to knowledge and digital tools such as software, and facilitates participation in global and regional value chains.⁶ This reduces the barriers to MSMEs' participation in international trade, provides businesses with legal certainty, and facilitates investment decisions. These benefits enable new opportunities for businesses and greater consumer options. Furthermore, the ability to trade online, without customs duties, has created an environment in which women entrepreneurs have been able to operate in a more streamlined and flexible manner.

Economic and consumer impacts of potentially imposing customs duties on electronic transmissions

3.2. The imposition of customs duties on electronic transmissions would have important adverse consequences for the global digital economy, increasing operating costs for exporters and leading to higher prices for consumers, as demonstrated by several studies.

3.3. In 2019, a study by the European Centre for International Political Economy (ECIPE) modelled the potential impact of imposing customs duties on electronic transmissions in India, Indonesia, South Africa, and China. The study found that the imposition of custom duties on electronic

³ TAPED database, version of June 2022. Out of 105 agreements containing an e-commerce chapter, 100 feature a provision related to the non-imposition of electronic transmissions.

⁴ Burri and Polanco, (2019): "Digital Trade Provisions in Preferential Trade Agreements: Introducing a New Dataset", *Journal of International Economic Law*

⁵ Andrenelli and López González (2019): "Electronic transmissions and international trade - shedding new light on the moratorium debate", *OECD Trade Policy Papers*, No. 233, OECD Publishing, Paris

⁶ Global Industry Statement on the WTO Moratorium on Customs Duties on Electronic Transmissions (2021)

transmissions would increase prices and reduce consumption, which would in turn slow GDP growth and shrink tax revenues.⁷

3.4. ECIPE estimated that widespread imposition of customs duties on electronic transmissions would result in annual GDP losses of USD 10.6 billion for developing countries globally, which would significantly outweigh any additional tariff revenue.⁸ Comparatively, the Organisation for Economic Co-operation and Development (OECD) estimates that foregone revenue due to the moratorium is relatively low, representing only 0.08% – 0.23% of overall government revenue on aggregate for developing countries.⁹

3.5. More recently, at a WTO Work Programme on Electronic Commerce workshop on 1-2 June 2023, UNCTAD highlighted the importance of considering the likely negative impact of any customs duties on electronic transmissions on consumers. Indeed, research indicates that companies will generally pass on the cost of any customs duties imposed by charging higher prices to domestic consumers, rather than cover the burden of those customs duties. Additionally, the OECD found that even if all goods that could be digitised, were digitised and digitally transmitted, removing tariffs on such trade would increase consumer welfare by USD 940 million, outweighing the associated revenue losses and providing an overall net welfare increase of USD 73 million. These results indicate that a discontinuation of the moratorium would diminish consumer welfare.¹⁰

3.6. Indeed, the cost of imposing customs duties on electronic transmissions would unduly fall on consumers and small producers in importing countries, which could be expected to decrease demand for digitally traded goods and services and undermine economic welfare.¹¹ The consequence of this for developing countries would be particularly negative as such inputs can substantially improve productivity and competitiveness. Likewise, companies in developing countries, including LDCs, would be harmed by the imposition of customs duties on their digital transmissions elsewhere. Moreover, a report funded by Enhanced Integrated Framework (EIF)¹² outlines the benefit of the moratorium for LDCs, including the potential long-term benefits of not imposing customs duties on electronic transmissions, by reducing uncertainty.

3.7. Additionally, the International Chamber of Commerce (ICC) Working Group on E-commerce found that the imposition of customs duties would lead to a decline in domestic output and productivity and an increase in unemployment and inequality.¹³ Another report by the Global Trade and Innovation Policy Alliance (GTIPA) affirmed that retaining the moratorium "fosters certainty and predictability for both domestic digital economic activity and global production networks and supply chains".¹⁴

3.8. As many WTO Members have already committed to the practice of not imposing customs duties on electronic transmissions in their preferential trade agreements,¹⁵ or undertaken other commitments that affect their ability to levy tariffs on electronic transmissions, the absence of the moratorium could lead to the imposition of different rates of customs duties in different jurisdictions,

⁷ Andrenelli and López González (2019): "Electronic transmissions and international trade - shedding new light on the moratorium debate", OECD Trade Policy Papers, No. 233, OECD Publishing, Paris

⁸ Hosuk-Lee Makiyama, Director of ECIPE (European Centre for International Political Economy) and Fellow of London School of Economics and Badri Narayanan, PhD, Associate Professor at University of Washington, Consultant at McKinsey Global Institute, UN ESCWA, FAO, Commonwealth Secretariat and GTAP Research Centre. "The Economic Losses from Ending the WTO Moratorium on Electronic Transmissions". ECIPE Policy Brief No 3/2019

⁹ Andrenelli and López González (2019): "Electronic transmissions and international trade - shedding new light on the moratorium debate", OECD Trade Policy Papers, No. 233, OECD Publishing, Paris

¹⁰ Andrenelli and López González (2019): "Electronic transmissions and international trade - shedding new light on the moratorium debate", OECD Trade Policy Papers, No. 233, OECD Publishing, Paris

¹¹ ICC & ITC (2023): Joint Policy Brief – Moratorium on Customs Duties on Electronic Transmissions: What is really at stake?

¹² https://www.wto.org/english/tratop_e/devel_e/ldc_s4_olarreaga_1.pdf

¹³ <https://www.iccgermany.de/wp-content/uploads/2021/03/iccissuesbrief2-moratorium-1.pdf#:~:text=The%20moratorium%20has%20enabled%20digital%20trade%20to%20flourish%2C,and%20medium-sized%20enterprises%20%28MSMEs%29%2C%20to%20access%20new%20markets.>

¹⁴ [https://itif.org/publications/2020/10/26/gtipa-perspectives-importance-e-commerce-digital-trade-and-maintaining-wto-e/.](https://itif.org/publications/2020/10/26/gtipa-perspectives-importance-e-commerce-digital-trade-and-maintaining-wto-e/)

¹⁵ [TAPED database](#), version of June 2022

which would further increase fragmentation, and in turn create market inefficiencies, trade diversion and deepening of the digital divide.

Impact on businesses, in particular MSMEs, of potentially imposing customs duties on electronic transmissions

3.9. The imposition of customs duties on electronic transmissions could negatively affect all businesses, and in particular those in developing countries, in terms of their ability to increase domestic value added in exports. Digital technologies create new growth opportunities for firms in developing countries, including MSMEs, by allowing them to become exporters. Furthermore, the growing use of digitally delivered foreign business services increases export competitiveness, and access to such business services is most important for lower-middle-income and lower-income countries.¹⁶

3.10. For all businesses, including women entrepreneurs, access to digital tools which are interoperable with businesses in other countries or access to digital components of production processes may be key to enabling participation in regional and global value chains. In addition to increasing the direct cost of participation, imposing customs duties on electronic transmissions would likely result in tracing and notification requirements in order to comply with customs duties obligations that would add further costs, as well as amounting to a significant practical or administrative burden. This dual burden is likely to have a deterrent effect on domestic businesses and foreign investment.

3.11. Regarding the protection of nascent digital businesses, economic evidence outlined above suggests that attempts to protect businesses by imposing discriminatory taxation on foreign imports are counterproductive. Where businesses are protected against competition from imports, they will have less ability or incentive to innovate, and there will be less downward pressure on domestic prices, harming business users and consumers by reducing choice and the quality of products, and increasing prices.

3.12. The impact on digital businesses is particularly acute. Digital businesses typically do not operate in a vacuum but are highly interdependent with other digital businesses, often relying on inputs from different sources across borders. For instance, a software developer of an application designed for use on a mobile operating system may need access to application programming interfaces (APIs) and software development kits (SDKs) in order to interoperate with other applications and the mobile operating system. Imposing customs duties on those digital inputs would create a cost disadvantage for the software developer, increase prices for local consumers, and reduce the developer's chances of developing an export business, which may be necessary in order for them to scale up sufficiently to grow. The imposition of customs duties on electronic transmissions is therefore more likely to exacerbate, rather than address, the digital divide.

Impacts on women entrepreneurs of potentially imposing customs duties on electronic transmissions

3.13. Digital Trade is a tool with immense potential for women's economic empowerment. The use of digital platforms and digital financial services can help bridge the gender divide by providing women entrepreneurs with greater access to markets, knowledge, and more flexible working arrangements. The pandemic has in fact helped to boost South Asian women entrepreneurs into the digital economy, allowing them to reach across national boundaries to establish partnerships and target new customers, overcoming travel and trade restrictions, according to the World Bank.¹⁷

3.14. At the same time, women-owned SMEs continue to face many of the same barriers as other SMEs but these are compounded by the other issues unique to women. Studies have shown that current tariffs on tangible goods disproportionately impact women, particularly in developing countries, both through the products that women export and the products they consume.¹⁸ These

¹⁶ Andrenelli and López González (2019): "Electronic transmissions and international trade - shedding new light on the moratorium debate", OECD Trade Policy Papers, No. 233, OECD Publishing, Paris

¹⁷ Fruman (2021): "COVID-19 propels South Asian women entrepreneurs into the digital economy", World Bank Blog, <https://blogs.worldbank.org/endpovertyinsouthasia/covid-19-propels-south-asian-women-entrepreneurs-digital-economy>

¹⁸ "Women and Trade" Joint WTO and World Bank report, 2020

conclusions, while measured for physical goods, could be relevant for the possible imposition of customs duties for electronic transmissions. Further research is required to better understand the effects of potentially imposing customs duties on electronic transmissions specifically on women entrepreneurs.

4 ALTERNATIVE MEANS OF REVENUE COLLECTION

4.1. Members' concerns regarding revenue loss can be mitigated via internal taxation measures (e.g., VAT or GST). A growing number of Members apply such taxation measures also to digital transactions. This has been illustrated in multiple interventions at the WTO when discussing the moratorium. In the session of 5 July 2021 of the WTO Structured discussions of the Work Programme on Electronic Commerce, several delegations, including Australia, the European Union and Switzerland, presented their national experience in the imposition of internal non-discriminatory taxes on electronic transmissions.

4.2. Another example is the implementation in 2020 by Singapore of an Overseas Vendor Registration (OVR) regime to impose GST on overseas suppliers.¹⁹ Through this OVR regime, all low-value goods and remote services²⁰ (i.e., digital and non-digital services) supplied to Singapore consumers are subject to GST – regardless of whether the suppliers are local or overseas. In Singapore's experience, this has helped level the playing field between local and overseas suppliers as well as ensure the resilience of the GST system in a growing digital economy. Taking reference from similar OVR regimes in other jurisdictions and the international VAT/GST guidelines of the OECD was helpful, as well as extensive industry consultations and early notification of the OVR regime, which further eased the implementation and effective collection of GST.

5 GUIDING QUESTIONS FOR DISCUSSION:

- What are Members' own FTA practices and experiences related to the application of the non-imposition of customs duties on electronic transmissions?
- What are the potential implications for businesses, particularly MSMEs, and consumers, should Members impose customs duties on electronic transmissions?
- Can Members share their experiences and best practices in levying non-discriminatory consumption taxes on emerging digital trade transactions?
- Can Members share the feedback they have received from their domestic industry regarding the moratorium?

¹⁹ Prior to the change, GST was chargeable on services only where the supplier was in Singapore.

²⁰ In Singapore's context, remote services are defined as any service where there is no necessary connection between the physical location of the recipient and place of physical performance at the time of performance of the services supplied to consumers in Singapore. Examples include sale of e-books, online streaming services and distance learning classes.