Fact Sheet: WTO Moratorium on Customs Duties on Electronic Transmissions

What is the Moratorium?

The World Trade Organization's Moratorium on Customs Duties on Electronic Transmissions (the "Moratorium") prohibits members from imposing customs duties on "electronic transmissions." While the term "electronic transmissions" is undefined, the Moratorium in essence implies that countries are forbidden from imposing import taxes on business-to-consumer and business-to-business transactions that take place across borders over the Internet. The Moratorium therefore encompasses cross-border trade in a range of digital goods and services, including software; digital movies, music, and video games; and online legal, banking or business consultancy services.[1]

How the Moratorium Works in Practice: Offline v Online

In the offline world:

- Seller of video games based in Country A and customer in Country B → Video game exported from Country A to B (e.g. on a disk) → Country B can impose import taxes on the import of the video game
- Goods manufacturer in country A exports factory parts to Country B → Country B can impose import taxes on the import of the factory parts

In the online world:

- An order is placed between seller of video games based in Country A and customer in Country B → Video game downloaded by customer in Country B → Country B cannot impose import taxes on the transaction due to the Moratorium
- Seller of printing schematics based in Country A sells design to factory owner in Country B → Design delivered online and 3-D printed in Country B by the factory owner → Country B cannot impose import taxes on the transaction due to the Moratorium

The Moratorium was first introduced in 1998 at the WTO's Second Ministerial Conference as part of a Global Declaration on E-Commerce.[2] The aim of the Moratorium at the time was primarily to enable the growth of the fledgling e-commerce and digital trade sector. The Moratorium has subsequently been renewed every two years (with brief exceptions from 1999-2001 and 2003-2004).

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[1] Note, there is a lack of consensus on whether the Moratorium covers services or not.

[2] The Geneva Ministerial Declaration on global electronic commerce, WTO, May 25, 1998, https://www.wto.org/english/tratop_e/ecom_e/mindec1_e.htm

Since the onset of the Moratorium, the global e-commerce sector has changed significantly. Digital trade has grown from less than USD 1 trillion in 1995 to over USD 5 trillion in 2018.[3] A number of products that were previously traded in physical form have now become digitized. While the physical trade in goods would have been subject to customs duties, digital trade, due to the Moratorium, is not. Further, the benefits of the increase in digital trade have not always been evenly distributed around the world.

This has brought renewed focus on the policies and regulations that undergird the digital trade ecosystem. In particular, the renewal of the Moratorium has faced increasing opposition from developing countries. Notably, in November 2021, India and South Africa submitted a detailed opposition to renewal of the Moratorium highlighting the negative impact of the Moratorium on economic development.[4]

Nevertheless, at the subsequent Twelfth WTO Ministerial Conference held in Geneva, Switzerland in 2022 (MC12), negotiators agreed to renew the Moratorium for a period of two years (i.e., until 2024).[5]

Why is the Moratorium Contentious?

Countries have adopted varied positions on the Moratorium, though in general, one sees a cleavage between the views of developed and developing countries. These differences arise for a number of reasons, of which some are as follows:

(a) The lack of clarity over the scope of the Moratorium:

The absence of a clear definition of what constitutes an "electronic transmission" has created confusion over the scope of the Moratorium. This issue is important given the fast-changing nature of technology, with a variety of new goods being provided digitally, and in particular, the advent and development of the 3-D printing industry. An inability to tax goods previously traded physically and now (or in the future) traded digitally could pose a significant threat to countries' industrial and digital policies, while also reducing their tax revenues.

Some contend that the phrase "electronic transmission" covers digital transmissions in their entirety, implying that all goods and services exchanged over the Internet would be brought within the purview of the Moratorium. Others, however, contend that the phrase applies only to the transmission of signals and not the content itself. Further, it is argued that the inclusion of all services under the Moratorium would vitiate terms of the General Agreement on Trade in Services (GATS), which provides a certain

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[3] Javier Lopez Gonzalez, Silvia Sorescu and Pinar Kaynak, *Of bytes and trade: Quantifying the impact of digitalisation on trade*, OECD, April 18, 2023, https://one.oecd.org/document/TAD/TC/WP(2022)11/FINAL/en/pdf

[4] Governments of India and South Africa, *Moratorium on customs duties on electronic transmissions: Need for clarity on its scope and impact*, Communication to the WTO Work Programme on Electronic Commerce, November 2021, https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W833.pdf&Open=True

[5] Governments of India and South Africa, *Moratorium on customs duties on electronic transmissions: Need for clarity on its scope and impact*, Communication to the WTO Work Programme on Electronic Commerce, November 2021, https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W833.pdf&Open=True

degree of flexibility to developing countries in liberalizing their service sectors. Thus, it is argued that parties should be free to tax the content of electronic transmissions.[6]

(b) Taxation of the digital economy, revenue loss and opportunity cost of the Moratorium:

One of the most important reasons that countries have opposed the Moratorium is on account of the inability of many (usually developing countries) to appropriately tax the digital economy.

Various studies indicate that developing countries have foregone huge quantities of revenue from their inability to tax cross-border transactions in the digital economy.[7] This is largely as developing countries are net importers of digitized goods and services. Notably, in 2017, 76% of digitized product exports were from developed countries, with another 18% from China. Thus, only about 5% of such exports come from other developing countries.[8] Studies therefore show that developing countries lose a significant quantity of revenue, which they would otherwise be able to generate by imposing customs duties on electronic transmissions.[9] For example, a 2022 study estimates that during the period between 2017 and 2020, developing countries and Least-Developed Countries (LDCs) lost USD 56 billion in tariff revenue. Of that number, USD 48 billion was lost by the developing countries and USD 8 billion was lost by the LDCs.[10] Many developing and least-developed countries continue to rely on customs duties for a significant part of their revenues.[11] Further, revenues from the ever-increasing digital trade pie can be used to support domestic infrastructure development, reduce the digital divide, reduce debt, and more.

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[6] Ibid.

[7] See for example, Karishma Banga and Alexander Beyleveld, *Are trade rules undermining taxation of the digital economy in Africa?*, ICTD Working Paper 181, February 2024, https://www.ictd.ac/publication/are-trade-rules-undermining-taxation-of-the-digital-economy-in-africa/; Rashmi Banga, *WTO Moratorium on Customs Duties on Electronic Transmissions: How much tariff revenue have developing countries lost?*, South Centre, Research Paper 157, June 2022, https://www.southcentre.int/wp-content/uploads/2022/06/RP157_WTO-Moratorium-on-Customs-Duties-on-Electronic-Transmissions_EN.pdf; Rashmi Banga, *Growing trade in electronic transmissions: Implications for the South*, UNCTAD Research Paper No. 29, February 2019, https://unctad.org/system/files/official-document/ser-rp-2019d1_en.pdf; Rashmi Banga, *Rising Product Digitisation and Losing Trade Competitiveness*, UNCTAD, 2017, https://unctad.org/en/PublicationsLibrary/gdsecidc2017d3_en.pdf

[8] Rashmi Banga, *Growing trade in electronic transmissions: Implications for the South*, UNCTAD Research Paper No. 29, February 2019, https://unctad.org/system/files/official-document/ser-rp-2019d1_en.pdf

[9] Rashmi Banga, *Growing trade in electronic transmissions: Implications for the South*, UNCTAD Research Paper No. 29, February 2019, https://unctad.org/system/files/official-document/ser-rp-2019d1_en.pdf and https://www.wto.org/english/tratop_e/ecom_e/wkmoratorium29419_e/rashmi_banga.pdf

[10] Note that this loss is calculated based on the estimated revenue that would be generated by applying standard tariffs to 49 digitised products. Rashmi Banga, *WTO moratorium on customs duties on electronic transmissions: how much tariff revenue have developing countries lost?*, Research Paper 157, South Centre, June 3, 2022, https://www.southcentre.int/wp-content/uploads/2022/06/RP157_WTO-Moratorium-on-Customs-Duties-on-Electronic-Transmissions_EN.pdf

[11] For example, countries such as Andorra, Bermuda, Togo, Guinea, Liberia, Maldives and Vanuatu rely on tariffs for 20-30% of their tax revenue (with a number of other developing countries in the 10-20% range).World Customs Organisation, WCO Annual Report 2019-2020, https://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/annual-reports/annual-report-2019_2020.pdf

The loss of these revenues would additionally represent a massive opportunity foregone for developing countries.

On the other hand, a number of studies also seek to show that the revenue loss faced by developing countries is either low (in comparison to overall government revenues), or that the benefits of the Moratorium outweigh the costs (including in view of lower revenues generated as a consequence of lower economic growth caused by trade barriers).[12] These frequently, however, fail to address the imbalanced impact of the Moratorium between developing and developed countries.[13]

It is also argued that instead of imposing customs duties, countries could seek to apply taxes such as Value Added Tax (VAT) or Goods and Services Tax (GST) under their domestic regulations. However, countries may find it challenging to impose and collect income taxes on tax technology companies who do not physically operate within their jurisdictions. Thus, an inability to impose customs duties on electronic transmissions can result in foreign companies evading any fiscal liability.

(c) Sovereignty, industrial policy and digital policy related concerns:

Developing countries frequently point to the need to maintain their sovereignty to pursue industrial and digital policy in an attempt to promote the development of domestic enterprises, aid employment generation, and regulate unwanted imports. Historically, customs duties have been imposed even by developed countries to protect domestic industry and enable them to become internationally competitive. Thus, developing countries see customs duties as a strategic policy tool to build their nascent digital sectors.[14] Since most SMEs primarily target domestic markets, they do not benefit from the absence of duties on cross-border transactions.[15] Developed countries on the other hand seek to enhance their ability to access markets in the Global South (as pointed out previously, 76% of digitized exports come from developed countries) and thus point to the overall benefits of increased trade in increasing welfare.

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[12] See for example, Tibor Hanappi, Adam Jakubik et al., *Digital Trade for Development*, OECD, UNCTAD, World Bank, WTO, IMF, December, 2023, https://www.wto.org/english/res_e/booksp_e/dtd2023_e.pdf; Andrea Agnelli and Javier Lopez Gonzalez, *Electronic transmissions and international trade: shedding new light on the moratorium debate*, OECD Trade Policy Papers No 233, November 13, 2019, https://www.oecd-ilibrary.org/trade/electronic-transmissions-and-international-trade-shedding-new-light-on-the-moratorium-debate_57b50a4b-en; Andrea Agnelli and Javier Lopez Gonzalez, *Understanding the potential scope, definition and impact of the WTO e-commerce moratorium*, OECD, September 26, 2023, https://one.oecd.org/document/TAD/TC/WP(2023)6/FINAL/en/pdf; Hosuk-Lee Makiyama and Badri Narayan, *The economic losses from ending the WTO moratorium on electronic transmissions*, ECIPE, No 3/2019, https://ecipe.org/wp-content/uploads/2019/08/ECI_19_PolicyBrief_3_2019_LY04.pdf

[13] Governments of India and South Africa, *Moratorium on customs duties on electronic transmissions: Need for clarity on its scope and impact*, Communication to the WTO Work Programme on Electronic Commerce, November 2021, https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W833.pdf&Open=True

[14] D. Ravi Kanth, *North countries "shown the mirror" at WTO on e-com moratorium*, Third World Network, September 21, 2023, https://www.twn.my/title2/wto.info/2023/ti230911.htm

[15] Ibid.

How Does the Moratorium Affect Consumers?

Proponents of the Moratorium point to how it has created a "stable and predictable" environment for the development of digital trade.[16] By reducing the costs of trade, consumers are able to access digital goods and services at lower prices.[17] This not only helps end-users, but could also promote growth of local industries that are reliant on foreign components.[18]

On the other hand, the Moratorium raises significant questions, particularly for developing countries. First, the extent to which the Moratorium affects the availability of intermediate components (that may be used in domestic industries) is unclear. Increased bandwidth usage over the last decade has been on account of increased access to services such as video on demand, social media, online gaming, and more.[19] None of these are intermediate inputs for industries in developing countries, and taxing such products will have no impact on domestic producers (it may in fact encourage domestic production of similar content). Second, developed countries impose tariffs on products from developing countries (such as agricultural or textile products) for a variety of reasons, including to protect domestic industry and to avoid adverse balance of payments situations.[20] It appears hypocritical to then disallow developing countries from imposing tariffs on digital goods when they may have similar concerns. Finally, by promoting and protecting domestic producers of digital goods, consumers may have access to a wider range of potentially more relevant offerings.

What is the state of play?

The WTO's Thirteenth Ministerial Conference (MC13) will be held in Abu Dhabi, UAE, in February 2024, where countries will be asked to decide whether to renew the Moratorium, and possibly whether this should be made permanent. Should no decision to renew the Moratorium be taken by March 31, 2024, it will expire.

As with the MC12, one can expect a significant amount of resistance to renewal of the Moratorium from developing countries, primarily on account of the loss of government revenue arising from the inability to appropriately tax e-commerce transactions, and the restriction of policy space for developing countries to craft their digital policies in accordance with their needs.

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[16] Tibor Hanappi, Adam Jakubik et al., *Digital Trade for Development*, OECD, UNCTAD, World Bank, WTO, IMF, December, 2023, https://www.wto.org/english/res_e/booksp_e/dtd2023_e.pdf

[17] Ibid.

[18] Ibid.

[19] Mark Sweney, *Squid Game's success reopens who pays debate over rising internet traffic*, The Guardian, October 2021, https://www.theguardian.com/business/2021/oct/10/squid-games-success-reopens-debate-over-who-should-pay-for-rising-internet-traffic-netflix

[20] Note, for example, high tariffs applied by the United States to clothing (particularly baby clothing), shoes, and steel imports. Refer to the Harmonised Tariff Schedule, https://hts.usitc.gov/, and Dre Desilver, *US Tariffs tend to vary a lot, but the highest duties tend to be on imported clothing*, Pew Research Centre, March 2018, https://www.pewresearch.org/short-reads/2018/03/28/u-s-tariffs-vary-a-lot-but-the-highest-duties-tend-to-be-on-imported-clothing/

These efforts will be opposed by developed countries, who may point to the need to continue the Moratorium while developing alternate avenues to reform the international taxation system as it pertains to the digital economy, including through efforts proposed under the G20/OECD's Inclusive Framework on Base Erosion and Profit Shifting, particularly its so-called two-pillar solution to address the tax challenges arising from the digitalisation of the economy, which among other things, requires all signatories to repeal and refrain from digital service taxes and other similar measures.[21]

This effort represents a historic and long overdue step to allow greater taxation rights for developing countries but has also been criticized for lacking international consensus, with critics calling for the United Nations to take a greater role in developing an international framework for tax cooperation.[22] In this respect, it is notable that in 2021 the UN revised Article 12B of its model tax convention to expand the ability of market jurisdictions to tax income from digital services.

Conclusion

The inability to impose tariffs on electronic transmissions implies that developing countries, that are net importers of digital services and products, stand to lose revenues that could be put towards development goals and other activities.

Importantly, the renewal of the Moratorium could stifle competition in the digital economy (particularly from smaller domestic companies). This problem is only likely to be exacerbated with the increasing digitization of all forms of trade and the cross-sectoral scope of many big technology companies. Thus, a renewal of the Moratorium, which keeps prices low in the short term, is likely to harm consumers in the medium to long run by consolidating the market power of big technology companies.

While the overall benefits and disadvantages of the Moratorium are still debated, it is clear that the Moratorium does limit the ability of governments to craft industrial policy in a manner that may benefit their citizens and spur domestic growth of the digital sector. In the absence of any real progress on reform of the international taxation regime applicable to global digital companies, signing onto an agreement that renews the Moratorium appears unwise given the unclear scope and contested benefits.

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[21] OECD, *Statement on a two pillar solution to address the tax challenges arising from the digitalisation ofthe economy*, July 1, 2021, https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf

[22] Anna Isaac, *UN agrees global tax rules resolution giving developing nations greater say*, The Guardian, November 23, 2022, https://www.theguardian.com/world/2022/nov/23/un-agrees-global-tax-rules-resolution-giving-developing-nations-greater-say; European Parliament Resolution of June 15, 2023, on lessons learned from the Pandora Papers and other revelations, https://www.europarl.europa.eu/doceo/document/TA-9-2023-0249_EN.html; Alex Cobham, *A draft UN tax convention building momentum*, March 10, 2022, https://taxjustice.net/2022/03/10/a-draft-un-tax-convention-building-momentum/

Even if the Moratorium is not extended, this does not in itself imply that countries will immediately start imposing duties on every e-commerce transaction. If imposing customs duties on electronic products will be ineffective and counter-productive, then countries won't impose such duties. So there is no reason why a prohibition should be imposed through WTO agreements.

Further Reading:

1) Rashmi Banga, *Should digitally delivered products be exempted from customs duties?*, UNCTAD, July 2020, https://unctad.org/news/should-digitally-delivered-products-be-exempted-customs-duties
2) Governments of India and South Africa, *Moratorium on customs duties on electronic transmissions: Need for clarity on its scope and impact*, Communication to the WTO Work Programme on Electronic Commerce, November 2021, https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W833.pdf&Open=True
3) Rashmi Banga, *WTO Moratorium on customs duties on electronic transmissions: How much tariff revenue have developing countries lost?*, South Centre, Research Paper No. 57, 2022, https://www.econstor.eu/handle/10419/270382
4) Simon Roberts and Pamela Mondliwa, *Policy Brief 1: Note on WTO moratorium on Electronic Transmissions*, Industrial Development Think Tank, https://static1.squarespace.com/static/52246331e4b0a46e5f1b8ce5/t/5f295e0df5778d4d469730c0/1596546574985/IDTT+3+Policy+Brief+1+WTO+Moratorium+on+Electronic+Transmissions.pdf
5) Ravi Kanth Devarakonda, *WTO's E-commerce Moratorium: Will India Betray the Interests of the Global South Again?,* The Wire, February 14, 2024, https://thewire.in/trade/wtos-ecommerce-moratorium-india-us