A Turning Point for Digital Trade Policy

The expiry of the World Trade Organization e-commerce moratorium and its implications for developing economies

IISD REPORT

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1.0 Introduction

Since 1998, World Trade Organization (WTO) members had regularly renewed a Ministerial Declaration committing them not to impose customs duties (tariffs and other customs-related charges) on electronic transmissions, commonly referred to as the WTO e-commerce moratorium. At the WTO's Fourteenth Ministerial Conference (MC14) in March 2026, members were unable to reach consensus on a further extension. As a result, the multilateral moratorium expired. While this does not mean that countries are likely to immediately begin imposing customs duties, given the practical challenges of doing so, the MC14 expiry still marks an important turning point, as there is no longer a multilateral barrier to the application of such duties on electronic transmissions.

This paper examines what the expiry of the moratorium means, particularly for developing economies. Section 2 traces the origins, renewal, and eventual expiry of the WTO e-commerce moratorium, including developments in the run-up to and following MC14. Section 3 examines the unresolved questions of scope and definition that made the issue difficult to settle multilaterally. Section 4 looks more closely at the main concerns raised in the debate that are particularly relevant to developing economies, including tariff revenue, digital industrialization, and other emerging issues. Section 5 considers what may come next, including the possible fragmentation of commitments across plurilateral, regional, and bilateral arrangements; the practical challenges of operationalizing customs duties; and the implications of growing pressure for broad and permanent commitments outside the multilateral setting.

2.0 The WTO E-Commerce Moratorium: Origins, renewal, and expiry

2.1 The Adoption of the E-Commerce Moratorium

The WTO's e-commerce customs duties moratorium was first adopted on May 20, 1998, at the WTO's MC2 in Geneva (WTO, 1998a). Through the *Declaration on Global Electronic Commerce*, WTO members agreed that they would "continue their current practice of not imposing customs duties on electronic transmissions" (WTO, 1998a). This Ministerial Declaration was significant because it marked the first time WTO members collectively articulated a shared multilateral position on customs duties on electronic transmissions, and on e-commerce overall.

In the same declaration, WTO ministers directed the WTO's General Council to establish a Work Programme on Electronic Commerce (WPEC) to enable members to examine trade-related issues relating to global electronic commerce through a structured program. The WPEC was formally adopted by the General Council on September 25, 1998 (WTO, 1998b). The declaration assigned responsibilities across the General Council and four subsidiary bodies: the Council for Trade in Goods, the Council for Trade in Services, the TRIPS Council (which oversees the Agreement on Trade-Related Aspects of Intellectual Property Rights), and the Committee on Trade and Development. The subsidiary bodies were tasked with examining how the emergence of electronic commerce interacted with existing WTO rules, focusing on issues within their own area of competence. The General Council was assigned a central role, covering cross-cutting issues and conducting periodic reviews. Table 1 provides an overview of the areas of work.

Table 1. Overview of work to be carried out by the WTO General Council and subsidiary bodies under the WPEC

General Council	Tasked with • playing a central role in the whole process and keeping the work programme under continuous review through a standing item on its agenda; • consideration of any trade-related issue of a cross-cutting nature; and • all aspects of the work programme concerning the imposition of customs duties on electronic transmission. Note that further issues could be taken up by any bodies if requested by members, and other WTO bodies should inform General Council of their activities if relevant to electronic commerce.
Council for Trade in Services	Tasked with examining and reporting on the treatment of electronic commerce in the General Agreement on Trade and Services (GATS) legal framework. The issues to be examined include the following: • scope (including modes of supply) (Article I) • Most Favoured Nation commitments (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
Council for Trade in Goods	Tasked with examining and reporting on aspects of electronic commerce relevant to the provisions of General Agreement on Tariffs and Trade (GATT) 1994, the multilateral trade agreements covered under Annex 1A of the WTO Agreement, and the approved work programme. The issues to be examined include • 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; and • classification issues.
Council for TRIPs	Tasked with examining and reporting on the intellectual property issues arising in connection with electronic commerce. The issues to be examined include • protection and enforcement of copyright and related rights, • protection and enforcement of trademarks, and • new technologies and access to technology.
Committee for Trade and Development	Tasked with examining and reporting on the development effects of electronic commerce on the trade and economic prospects of developing countries, notably of their small and medium-sized enterprises and means of maximizing possible benefits accruing to them. Issues could include • challenges to and ways of enhancing the participation of developing countries in electronic commerce, in particular, as exporters of electronically delivered products: the role of improved access to infrastructure and transfer of technology and of movement of natural persons; • the use of information technology in the integration of developing countries in the multilateral trading system; • implications for developing countries of the possible impacts of electronic commerce on the traditional means of distribution of physical goods; and • financial implications of electronic commerce for developing countries.

Source: Author, based on WTO, 1998b.

From the outset, the moratorium was not established as a permanent commitment. Instead, it required periodic renewal, with decisions to extend it typically taken at WTO Ministerial Conferences, which are held approximately every 2 years.

Although the moratorium had generally been renewed at successive Ministerial Conferences, there have been two instances where it temporarily lapsed: at the Seattle Ministerial Conference in 1999 and at the Cancún Ministerial Conference in 2003 (Public Citizen, 2024). In both cases, the lapse did not reflect disagreement over the moratorium itself but was instead a consequence of the broader failure to reach consensus on other negotiated outcomes at those conferences. Following Seattle, the moratorium was retrospectively extended in the Doha Ministerial Declaration in 2001. Following Cancún, it was extended through a subsequent General Council Decision adopted on August 2, 2004 (Montes & Kelsey, 2020).[1]

The legal status of the moratorium is also important to understand. The Ministerial Declarations and Decisions relating to the moratorium were not adopted under any of the listed WTO-covered agreements. In this case, they do not fall under the GATT, the GATS, or the TRIPS Agreement, to which the Dispute Settlement Understanding applies (Montes & Kelsey, 2020). As a result, they are generally understood as a form of soft law: politically significant, but not enforceable through WTO dispute settlement.[2] This means that WTO dispute settlement proceedings could not be initiated, nor could countermeasures be applied, solely on the basis of an alleged breach of the moratorium.

Although renewing the moratorium was not especially contentious in its earlier years, agreement to maintain it became increasingly controversial over time and was subject to growing debate among WTO members. This shift reflected the rising stakes of the issue as digital trade expanded: a commitment that carried little cost in 1998, when few products were traded digitally, came to be seen by several developing countries as having significant implications for tariff revenue and policy space, the concerns set out in Sections 3 and 4. It was reinforced by the moratorium's procedural fragility, as renewal by consensus at each Ministerial Conference made it a recurring point of leverage in wider negotiations. One explicit sign of friction emerged at MC12 in Geneva in 2022, when a group of developing country members, including India, Indonesia, Sri Lanka, Pakistan, and South Africa, threatened to block its extension. Agreement was ultimately secured only in the final days of the conference (Farge, 2022). Since then, the question of whether to maintain the moratorium remained a more visibly debated issue at subsequent Ministerial Conferences.

As a result of the growing contention around the issue, the MC12 Ministerial Decision was the first to include the idea of a sunset clause: members agreed that the current practice of

[1] There could have been a third lapse when MC12 was postponed due to COVID-19. However, this was avoided when WTO members renewed the moratorium through a General Council Decision in December 2019 (WT/L/1079) (WTO, 2019).

[2] Although the moratorium was a soft law construct, it appears to have served as a deterrent, as no WTO member imposed customs duties on electronic transmissions; that said, practical implementation challenges likely played an even greater role in limiting the use of duties. Indonesia was the only WTO member to introduce a specific HS tariff line for certain intangible goods transmitted electronically. Indonesia interprets the moratorium to be limited to duties on the transmission medium, not the value of the content transmitted, so maintains that this measure is consistent with the moratorium (see discussion below).

not imposing customs duties on electronic transmissions would be maintained, but would expire at the latest by March 31, 2024, unless ministers or the General Council decided to extend it (WTO, 2022).[3] The MC13 Ministerial Decision tightened this further, stating that the moratorium and the work programme would expire by MC14 or by March 31, 2026, whichever came earlier (WTO, 2024). Notably, unlike the MC12 language, the MC13 text did not explicitly refer to the possibility of a further renewal.

In parallel to the moratorium extension, WTO members agreed to hold more dedicated discussions on electronic commerce issues as part of efforts to reinvigorate the WPEC.[4] Within these discussions, members also agreed to intensify their work on the moratorium and, importantly, to develop a better understanding of issues relating to its scope, definition, and impact (WTO, 2022). The need to continue these dedicated discussions was reaffirmed in the MC13 Ministerial Decision (WTO, 2024). These reinvigoration efforts can also be seen in the context of the negotiations towards the Agreement on Electronic Commerce, where a provision on customs duties had taken on particular importance, given concerns that the moratorium might not be renewed at the multilateral level, and of growing divisions among WTO members over that plurilateral initiative, which together made keeping e-commerce on the multilateral agenda a strategic priority.

2.2 Developments in the Run-Up to MC14 and the MC14 Turning Point

Despite the lack of a reference to renewal of the moratorium in the MC13 Ministerial Decision, WTO members continued to explore whether a new Ministerial Decision on Electronic Commerce could be adopted to maintain it. In the lead-up to MC14, two types of proposals were tabled as draft texts for a Ministerial Decision on e-commerce that directly related to the moratorium.

The first set of proposals, one submitted by the African, Caribbean and Pacific Group (WTO, 2026f) and another by Brazil (WTO, 2026g) sought to preserve the practice of extending the moratorium on a temporary basis. Both called for the moratorium to be extended until the next Ministerial Conference (MC15), and for work under the WPEC to continue, including through more in-depth discussions on the moratorium. In keeping with past practice, neither proposal included clarification on the definition of what is meant by electronic transmissions. Another proposal, submitted by the United States and a group of co-sponsors (a mix of developed and developing economies) (WTO, 2026e), called for a permanent extension of the moratorium. The submission also notably included a definition of "electronic transmissions," clarifying that the moratorium had a broad scope and definition and was intended to apply to both the carrier medium (e.g., the bits and bytes carrying a downloadable movie) and the content carried within it (the value of the movie itself). The proposal did not refer to the WPEC.

[3] See also Lohani et al., 2026.

[4] Over time, renewal of the moratorium became closely linked to efforts to reinvigorate the WPEC. This linkage afforded leverage in both directions, allowing members to condition their agreement on one instrument upon the disposition of the other.

At MC14, members ultimately could not reach consensus on a Ministerial Decision on the e-commerce moratorium. The primary contention arose between Brazil and Türkiye on one side,[5] who advocated that the moratorium be extended for 2 years similar to past practice, and the United States, which advocated for a longer renewal timeline of nearly 5 years till the end 2030, subject to review and renewal after 4 years, arguing that a longer timeline is needed for business predictability (Ungphakorn & Wolfe, 2026).[6] Because no agreement was reached at MC14, the MC13 Ministerial Decision took effect. The result was the expiry of the multilateral e-commerce customs duties moratorium.

2.3 Developments at the WTO Post-MC14

Following MC14, WTO members have continued to seek convergence on the draft Ministerial Decision on Electronic Commerce, as well as other outstanding decisions not agreed as part of the Yaoundé Ministerial Package.[7] These discussions are taking place at the WTO General Council level, as part of a broader effort to determine whether members can still advance on multilateral agenda items outside a Ministerial Conference setting.

Alongside these multilateral-level discussions, there has also been increased coalition activity among subgroups of WTO members relating to digital trade commitments, including specifically on customs duties on electronic transmissions. The first development took place on March 28, 2026, when a group of 67 WTO members—a subgroup of the 92 WTO members that had participated in the Joint Statement Initiative e-commerce negotiations—announced that they had adopted a pathway to implement the Agreement on Electronic Commerce through interim arrangements, while continuing to pursue incorporation of the agreement under Annex 4 of the WTO Agreement (WTO, 2026d). One of the key rules in the Agreement on Electronic Commerce Article 11 on customs duties, under which the parties commit not to impose customs duties on electronic transmissions among the parties of the agreement; this duty-free treatment would be applied to the carrier medium and content of electronic transmissions and is expected to be maintained on a permanent basis.[8]

The second development concerns a coalition of 23 WTO members (as of May 2026) that announced a Joint Statement on the Moratorium on Customs Duties on Electronic Transmissions. In light of the failure at MC14 to maintain the e-commerce moratorium, the co-sponsors stated that, beginning on May 8, 2026, they would not impose customs duties on electronic transmissions among themselves. As with the Agreement on Electronic Commerce, the statement clarifies that duty-free treatment will be maintained for both the carrier medium

[5] In the May 2026 General Council meeting, Türkiye announced that it will "not stand in the way of consensus on a temporary extension of the e-commerce moratorium as proposed in the annex to the MC14 Chairperson's Summary" (WTO, 2026a).

[6] It is worth noting that members showed flexibility in seeking a middle ground. The United States and its co-sponsors moved away from their preference for a permanent moratorium, while India and South Africa moved away from their insistence on applying the MC13 expiry. Perceptions of where the middle ground lay nonetheless differed, with Brazil favouring a 2-year renewal and the United States a longer timeline.

[7] See WTO, 2026c.

[8] See Jose and Kaukab (2025) for analysis of the Agreement on Electronic Commerce's custom duties article.

and the content of the transmission. The statement also calls on additional WTO members to join the commitment (WTO, 2026b).

These developments matter because they suggest that the debate over customs duties at the WTO is not ending with the lapse of the multilateral moratorium. Instead, the WTO is becoming a forum through which coalitions of WTO members are recommitting to the moratorium, using a wide interpretation of its scope that not all members shared.

3.0 The Unresolved Scope of the Moratorium

Although the 1998 WPEC defined "electronic commerce," neither it nor the 1998 Declaration on Global Electronic Commerce defined "electronic transmissions." This left the scope of the moratorium unclear, and its legal reach consequently uncertain. Members differed over what the commitment covered, including whether it applied only to the transmission itself or also to the content being transmitted, what kinds of online goods, services or other types of digital transmissions fell within its scope, and how it related to existing WTO agreements. Members sought to address these questions through more focused discussions on the scope and definition of the moratorium, including in dedicated discussions held after MC12.

3.1 Competing Interpretations of Scope[9]

A narrow reading, advanced by some developing countries,[10] contended that the moratorium covered only the carrier medium: the transmission itself, or the "bits and bytes," and not the content carried within it. From this viewpoint, the moratorium meant that WTO members could not apply customs duties to the carrier medium, but would still have been able to apply duties to the content carried by the signal (WTO, 2020).[11] In practice, much of the value of an electronic transmission (e.g., a movie downloaded from a streaming application) is in the content, not the transmission itself.

An intermediate reading, found mainly in the trade policy literature, particularly before 2020, treated the moratorium as covering digitized or digitizable products: goods that were once traded in physical form but, due to technological developments and the shift of trade online, were increasingly delivered digitally.[12] From this perspective, the moratorium prevented the application of customs duties on digitized goods, such as e-books, music, films, software, or other products that previously had a physical carrier medium.[13] Under this interpretation, the

[9] The 1998 WPEC (WT/L/274) allocated examination of e-commerce across several WTO bodies, including the Council for Trade in Goods and the Council for Trade in Services, but did not resolve whether electronic transmissions are goods or services. That classification question remains open.

[10] See, for example, a communication from India and South Africa, referring also to the position held by Indonesia (WTO, 2020).

[11] Consistent with this interpretation, Indonesia introduced national tariff Heading 99.01 in 2018 for software and other digital goods transmitted electronically. Although this measure brought such products within Indonesia's customs classification system, the applied customs duty remained at zero. Indonesia is the only WTO member known to have adopted such a measure. For further discussion of its rationale and administration, see WTO, 2023c. More recently, as part of its framework arrangement with the United States, Indonesia committed to eliminate its existing tariff lines for intangible products and suspend related import declaration requirements (The White House, 2025).

[12] This interpretation is advanced by India and South Africa in its communication (WTO, 2020).

[13] In their 2020 submission, South Africa and India highlighted that digitized goods could be categorized under five broad categories: films, printed matter, video games, software, and sound and music, with the potential of expanding as the digital economy grows (WTO, 2020).

moratorium did not cover digitally delivered services, which were generally understood to be governed by members' commitments under the GATS.[14]

A broad reading, advanced by a mixed group of developed and developing economies,[15] holds that the moratorium covered both the carrier medium and all the digital content transmitted through it. Supporters of this view argued that applying the moratorium only to the carrier medium would have rendered it largely meaningless since, unlike physical goods, the economic value of an electronic transmission lay not in the carrier medium (in this case, the telecommunication signal) but in the content it carried. From this perspective, the moratorium covered anything transmitted by telecommunications, including over the Internet. It could therefore be assumed to potentially cover all digitally delivered products, from traditional goods and services to newer forms of transmissions, such as data transactions, data hosting, and digital applications, among others.[16]

These differing interpretations matter because they offer different options for how far a multilateral moratorium—were one to be re-established—would reach into the digital economy, and because questions remain about how the wider interpretation, which has been taken up in the plurilateral initiatives, affects the commitments made and policy space available to members under existing WTO agreements. Whether members decide to pursue a new multilateral moratorium or seek to expand the new plurilateral options, questions of scope and the impact of a moratorium on existing policy space are likely to keep coming up, so they are worth understanding.

3.2 Concerns Regarding Policy Space Under the GATS

A key concern raised by members relates to the possible interaction between a broad moratorium and the flexibilities otherwise available under the GATS.[17] This concern is particularly relevant under the broad interpretation, under which the moratorium is understood to cover digitally delivered services. Many developing countries have made relatively limited market access commitments on the cross-border supply of services, or Mode 1. Some members are worried that a broad interpretation of the moratorium could be treated as a form of commitment to provide market access for services digitally delivered under Mode 1 that goes beyond what they have scheduled under the GATS, indirectly weakening the value of carefully negotiated limitations and exclusions.[18] Another concern

[14] A distinct view, long maintained by the EU, is that electronic transmissions can include the supply of services falling under the GATS. On this reading, the question of customs duties does not arise because services are not subject to such duties.

[15] 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 the United Kingdom (WTO, 2023b).

[16] See, for example, von der Weid et al., 2026.

[17] We focus here on the concerns most frequently raised in the debate, which concern the impact of a wide moratorium on members' GATS commitments, likely because the implications of a moratorium commitment on digital services are more consequential than the implications of a wide moratorium on policy space under the trade in goods agreements.

[18] India, Türkiye, and South Africa have raised concerns about the liberalizing effects of a permanent moratorium. See South Africa's statement in WTO, 2023c.

appears to be that the moratorium might be used to widen members' non-discrimination commitments with respect to services for which they have agreed to provide market access, beyond what they thought they had agreed to (for example, through the argument that applying customs duties to imported digital services is a violation of a member's national treatment obligation on those services). At their heart, these concerns seem to revolve around how a commitment to a broad moratorium would be used to interpret a member's GATS commitments.

Other members take the view that trade liberalization, including of digital services, remains a key objective of the WTO.[19] From this perspective, moving away from a duty-free environment for electronic transmissions and toward new trade barriers in the form of customs duties could undermine the legal predictability and stability that have allowed businesses and consumers to participate in a global digital economy. For proponents of a broad scope, the moratorium is not an excessive constraint on policy space, but an important element of the open and predictable environment that has supported the growth of digital trade. Members in favour of a broad interpretation argue that efforts to classify electronic transmissions as goods, services, intellectual property, or something else altogether, in order to determine which WTO disciplines apply, are unlikely to work well in the digital context.[20] Not only would such efforts be complex in practice, but they could also create opportunities for protectionism.

In light of these different perspectives, many WTO members, including in the run-up to MC14, argued for further discussion of scope and definition. These discussions were seen as necessary not only to clarify what the moratorium covered, but also to better understand the implications that different interpretations could have for members' existing rights, obligations, and policy space under the WTO agreements.

[19] See Canada and Japan's statements in WTO, 2023b.

[20] Linked to this is the thorny issue of whether duties on electronic transmissions can even be imposed at the border, or whether in practice any duties would in fact be imposed in the form of taxation on the consumption of digital services (or revenue from their sale), rendering the duties internal taxation and outside the coverage of WTO disciplines.

4.0 The Development Debate

The contention over the moratorium, however, goes beyond the issues of scope and definition examined in Section 3. For many developing economies, customs duties on electronic transmissions also raise broader development concerns that have grown more pressing as the digital economy has expanded and a larger share of trade has moved online. These concerns are compounded by a deteriorating fiscal backdrop: since the COVID-19 pandemic, many developing economies have faced rising external debt, slowing growth and narrower fiscal space even as demands on public resources, including for industrial policy, have grown (UN Trade and Development, 2025). The moratorium debate therefore needs to be seen against a broader constraint on the capacity of many developing economies to mobilize public revenue and sustain public expenditure. Underlying these concerns is the digital divide: the persistent gap between developed and developing economies in access to, affordability of, and capacity to produce digital infrastructure, technologies, and services. Despite the rapid growth of the digital economy, its gains have been distributed unevenly, and many developing economies participate primarily as consumers rather than producers or exporters of digitally delivered products (Kaukab, 2024).

A first concern relates to the loss of tariff revenues. As trade shifts from physical to digital delivery, products once imported in physical form, and subject to customs duties, are increasingly transmitted electronically, with the result that the associated duties go uncollected. As digitization advances, a widening range of products is expected to follow this path. The concern is particularly acute for developing economies, which tend to rely more heavily on customs duties than developed economies for tax revenue (Banga, 2019; WTO, 2023a). In this case, the issue is, in a small part, the loss of revenue that was once collected (as books moved to eReaders, for example) and, in larger part, the loss of potential revenue that some governments would like to collect from digital services provided across borders. Here, proponents of a broad prohibition reiterate the considerable practical challenges involved in imposing customs duties on electronic transmissions. As examples, these can include identifying the dutiable product, establishing its customs value, determining the moment of importation, applying rules of origin, and designing systems for collection and enforcement in an area where established customs practice offers little guidance.[21] They argue that revenue from digital services can be obtained by taxing their consumption or company profits. Many developing countries, however, lack strong taxation systems and would prefer to charge customs duties if they could.[22]

A second concern relates to digital industrialization. Some developing countries argue that customs duties are a form of industrial policy needed to build domestic productive capacity and move from a position of consuming digital services to producing them. The use of industrial policy has become more common globally, including among developed economies and in digital and frontier-technology sectors. Developed economies, however, generally have

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[21] Some references to practical challenges can be found in Andrenelli & López González, 2019, and Amon & Krummenacher, 2024.

[22] See Kaukab (2024) for an explanation of developing country concerns.

the fiscal capacity to deploy a wider range of instruments, such as subsidies and government procurement, while developing economies often operate with narrower fiscal space. In this circumstance, protective industrial policy options are more realistic; governments would like to use customs duties to provide emerging domestic firms with a period of protection to build competitiveness before facing large, established global competitors—and without it, they risk being displaced before they can mature.[23]

Several counterarguments to these concerns also rest on development considerations. Some economic modelling, using different assumptions to those used to support the revenue arguments, finds that the customs revenue that could be gained is likely to be limited; that non-discriminatory consumption taxes are a more efficient means of raising fiscal revenue; and that the negative welfare effects of imposing customs duties would likely outweigh any fiscal gains. Such duties could raise prices for consumers and increase costs for businesses across the economy, including in traditional sectors that depend on digital inputs. The resulting effects on competitiveness could, in turn, reduce revenue from other tax sources. A related concern is that the administrative complexity and domestic resources required to implement an industrial policy based on taxing intangible products could result in costs that significantly outweigh their potential benefits (Amon & Krummenacher, 2024; Andrenelli & López González, 2019; European Centre for International Political Economy, 2019; Fritz & Evenett, 2022).

It has also been argued that customs duties on electronic transmissions are likely to be viable only for the limited number of economies with domestic or regional markets large enough to sustain protected firms and that an open and predictable environment may better support the investment and technology diffusion on which digital development of a wider range of developing countries depends.[24] Concerns have also been raised about the impact of customs duties on smaller and export-oriented developing economies and for micro, small, and medium-sized enterprises, including women-led enterprises, which could face higher costs and reduced access to export markets under a more fragmented and less predictable set of arrangements (Andrenelli & López González, 2019).

The arguments above are usually examined within the moratorium debate itself, but some commentators suggest that the issue is better understood within the wider political economy of taxing the digital economy, where there are increasing concerns around fairness and the distribution of gains from digital trade. Efforts to reallocate taxing rights under the Organisation for Economic Co-operation and Development/G20 Inclusive Framework have stalled, while unilateral digital services taxes have faced sustained resistance, including the threat and use of trade measures under Section 301 of the United States Trade Act. Some observers therefore argue that developing countries are left with few effective ways to tax the value that large digital firms generate in their economies. On this basis, some caution against converting the moratorium into a permanent commitment, which would foreclose the customs-duty avenue at a point when these other channels are already under pressure (von der Weid et al., 2026). These questions extend well beyond the WTO but are difficult to separate from it.

[23] See South Africa's statement in WTO, 2023a.

[24] See the United States' statement in WTO, 2023a.

Taken together, the range of arguments helps explain why the issue of customs duties on electronic transmissions has become both more significant and more difficult to resolve. Developing countries themselves hold very different positions, depending on their size, economic position, and perspectives on the digital economy and the role of trade liberalization (Kaukab, 2024).

5.0 What Could Come Next? Issues of relevance for developing economies

This section considers key developments that may follow the expiry of the WTO e-commerce moratorium, with a particular focus on their implications for developing economies.

5.1 Fragmentation of the Legal Landscape

With the expiry of the WTO e-commerce moratorium, there is no longer a multilateral rule against the imposition of customs duties on electronic transmissions. Commitments in this area will now be governed by a patchwork of plurilateral, regional, and bilateral trade agreements and arrangements, each with different memberships, legal formulations, applications of exceptions, and understandings of scope and definition (Amon & Krummenacher, 2024).

If countries eventually start applying customs duties, they may also start providing some trading partners with preferential treatment—that is, customs-duty-free access to their market for digital goods and services under new trade agreements. Under this scenario, it will become increasingly important for businesses to understand, as they do for traditional goods and services, which commitments apply and under what conditions, for themselves and for their competitors in the digital space. Navigating this fragmented landscape will require more granular data on the relevant agreements, including their membership, legal formulation, scope, definition, duration, and any conditions attached to duty-free treatment of electronic transmissions. Access to this type of information will be particularly important for smaller developing economies and micro, small, and medium-sized enterprises, which may have more limited capacity to map, monitor, and navigate an increasingly complex web of commitments. More broadly, the administrative demands created by such complexity may exceed the capacity of many countries, particularly—but not exclusively—those in the developing world.

5.2 Regional Approaches as Spaces for Learning

For countries wanting to impose customs duties on electronic transmissions, the practical questions of how to do so are complex. They include questions of scope and definition, classification of digital services within a customs system, likeness considerations, rules of origin, valuation, how to determine the equivalent of importation in the digital context, and a range of questions around the technical execution of how to do this. These administrative complexities are likely to remain significant impediments to implementation in the short and medium terms.

That said, regional trade agreements may become important spaces for working through some of these questions. The African Continental Free Trade Area Digital Trade Protocol offers an early example. Under the Protocol, state parties have committed not to impose customs duties on digital products transmitted electronically and originating from other state parties, subject to the scope and origin criteria set out in the Annex on Rules of Origin. This is significant because it links duty-free treatment to origin criteria, illustrating how regional agreements may begin to develop more detailed approaches to determining which digital products benefit from duty-free treatment and under what conditions.[25]

5.3 Commitments Will Continue to Advance Through Bilateral and Plurilateral Settings

While some countries may eventually implement customs duties on electronic transmissions, efforts to advance a broad and permanent prohibition on such duties are also set to continue. This trend is already visible in the plurilateral arrangements announced by coalitions of WTO members through the Agreement on Electronic Commerce and the Joint Statement on customs duties, both of which embed a broad definition of electronic transmissions. Newer digital economy agreements (e.g. the Digital Economic Partnership Agreement between New Zealand, Chile, Singapore and Korea and the EU-Singapore Digital Trade Agreement) point in the same direction, with broad and permanent customs duties commitments as a standard feature (Burri, 2025).

Major economies may also increasingly use their economic leverage to secure these commitments bilaterally. An analysis by Digital Policy Alert of recent tariff deals signed by the United States with nine trading partners found that the United States has been seeking digital trade commitments from counterparts under the threat of higher tariffs in non-digital areas, rather than in return for reciprocal market-opening commitments of its own. The commitments cover digital services taxes, cross-border data flows, non-discrimination treatment for U.S. digital products or digitally supplied services, cybersecurity, market access conditions, and customs duties on digital services. Several agreements include a permanent commitment by the trading partner not to apply customs duties on electronic transmissions, with a broad definition that applies to both the carrier medium and the content of the transmission (Giardini, 2025).[26]

These bilateral arrangements also raise the question of exceptions. Customs-duty provisions in bilateral, regional, or plurilateral agreements may be subject to the agreement's general or specific exceptions, potentially allowing a party to justify a measure that would otherwise be inconsistent with the obligation, provided the relevant conditions are met. By contrast, members joining the recent WTO Joint Statement moratorium or recent U.S. bilateral framework arrangements that do not incorporate comparable exceptions may be foregoing this element of policy space. The emerging patchwork of commitments may therefore provide differing levels of flexibility across agreements, further complicating assessments of members' policy options.

For developing countries, these developments carry significant implications. Even though the multilateral moratorium has lapsed, bilateral pressure to agree to a broad and permanent

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[25] See Sucker (2025) and Kugler (2024) for more insights on rules of origin for digital services under the African Continental Free Trade Area.

[26] This direction was also signalled explicitly by the United States following MC14. In response to the lapse of the moratorium, the United States indicated that it would work outside the WTO with interested partners on matters relating to the moratorium (Office of the United States Trade Representative, 2026).

prohibition may intensify. Regional arrangements could become a useful space for developing countries to build understanding about how customs duties (and exclusions from those duties) might be operationalized and about the intersection between customs duties on digital services and more traditional services commitments. Lastly, there are clear intersections between the debate about the use of customs duties on electronic transmissions and the taxation of digital services, and it will be important for developing countries to develop coherent policy positions on both issues that best reflect their own industrial policy and development interests.

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