



RIS Discussion Paper # 324

E-Commerce Moratorium at WTO: Evolution, Status and Way Forward

G D Lohani, Amit Kumar and
Alaknanda Mishra



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E-Commerce Moratorium at WTO: Evolution, Status and Way Forward

G D Lohani, Amit Kumar and Alaknanda Mishra*

Abstract: The moratorium on customs duties on electronic transmissions, first adopted by the World Trade organization (WTO) in 1998 as a temporary measure for a short duration, has been regularly extended and now stands at a critical juncture. This discussion paper examines the moratorium's evolution from its origin to current debates while analysing the stakes. It critically assesses divergent perspectives, including those of developed countries advocating for permanence, and of developing nations like India, South Africa and Indonesia, emphasising policy space and development asymmetries. The paper evaluates empirical claims about tariff revenue losses, explores the practical feasibility of imposing customs duties on digital products, and examines the potential tension between trade predictability and policy space autonomy. By analysing three possible future scenarios: complete lapse, continued temporary extension, or permanence and their legal, economic, and development implications, this paper illuminates India's strategic interests and options in the forthcoming MC14 at Yaoundé in Cameroon and beyond.

Keywords: E-Commerce Moratorium, WTO Ministerial Conference (MC14), Digital Economy, Electronic Transmission, Policy Space

1. Introduction

The Declaration on Global Electronic Commerce, which established a temporary moratorium on customs taxes on electronic communications, was endorsed by member nations at the WTO's Second Ministerial

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Conference in Geneva in May 1998. WTO members would “continue their current practice of not imposing customs duties on electronic transmission”, according to the statement. This was a short-term solution meant to give members a forum to debate any trade-related matters pertaining to international electronic commerce that that policymakers were grappling regarding this nascent sector that had every potential to transform international commerce¹. At that point e-commerce was in its infancy; online retail was experimental, streaming services did not exist, and the notion that software, films, music, and books could be routinely delivered electronically seemed more promise than reality. The moratorium was conceived against this backdrop with the intention of avoiding potential trade disruptions to a fast-emerging sector while members decided to work on addressing issues such as scope, definition, and classification challenges (whether electronic communications should be classified as services under GATS or as products under GATT). Members had determined that General Council would revisit this declaration on global e-commerce when reporting to the third session (MC 3). The decision to extend it would be made by agreement, taking into consideration the advancement of the work program that was to be institutionalised.²

The conditions that originally justified the moratorium have changed dramatically, as digital trade grew from less than US\$ 1 trillion in 1998 to over US\$ 16 trillion by 2025 with digitally delivered services alone representing 56 per cent of global services exports. Physical products like CDs, books, and software have shifted to digital delivery,³ a transformation rapidly accelerated by COVID-19, which added 1.5 billion new internet users between 2018 and 2022, including a record surge in the pandemic’s first year.⁴

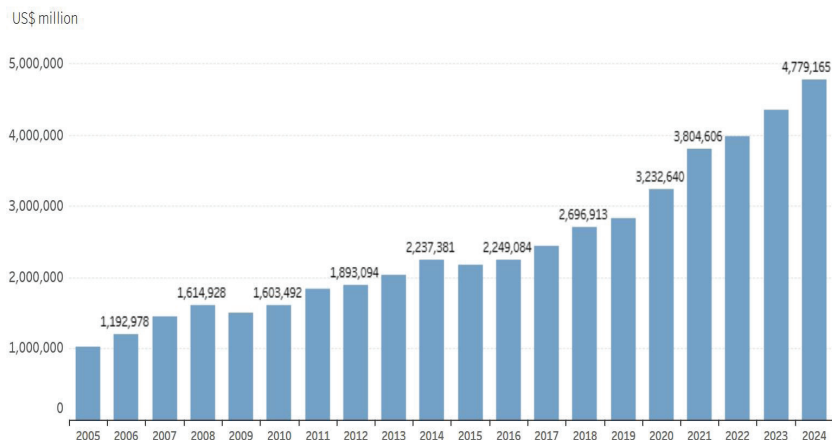
E-commerce has expanded exponentially over the years. However, this growth has not been evenly distributed. Developed countries, with advanced digital infrastructure and established big technology firms, dominate global e-commerce. Developed nations now hold more than 75 per cent of these exports⁵ while developing countries are facing serious constraints in digital infra, technology, skill set and finance. This asymmetry lies at the heart of contemporary debates. While

the moratorium has been renewed at subsequent WTO Ministerial Conference in 2001, 2005, 2009, 2011, 2013, 2015, 2017, 2019, 2022, 2024 (and with the exception of the period 1999-2001, and 2023-2005) each renewal has become progressively more contentious. Opposition from developing countries, particularly in recent years, has intensified around three core concerns: the lack of clarity regarding what scope of application of moratorium, that is whether it applies to act of transmission or to content of transmission too; if it applies to content whether it applies to digitized goods alone or to digitally delivered service too; the potential foregone tariff revenue, and most critically, the erosion of policy space as customs duties constitute an important tool for providing a level playing field for nascent and growing young domestic industry in this sector in the developing countries.

The most recent renewal of the moratorium was approved during the Thirteenth Ministerial Conference (MC13) held in Abu Dhabi in March 2024. Ministers could reach a consensus on renewal of moratorium only after protracted negotiations that extended into the final hours of the conference. It was agreed to extend the moratorium only until the Fourteenth Ministerial Conference on March 31, 2026, or whichever is earlier. The moratorium will expire on that date⁶. Thus, moratorium was explicitly tied to a sunset clause, creating unprecedented urgency about its future. The declaration also required more discussions and analysis of additional empirical data regarding the definition, extent, and potential effects on the development of moratorium on customs duties on electronic transmissions, as well as how to level the playing field for developing and least-developed countries to advance their digital industrialisation.⁷

The reasons for and against an e-commerce embargo are well-defined. The majority of wealthy nations who support the moratorium, consisting of the United States, the European Union, and Japan, have argued that the moratorium has created a stable, predictable environment essential for digital trade to flourish, benefiting small and medium-sized enterprises (SMEs) through low-cost global market access and preventing the imposition of duties that would increase the costs of consumers. They cite studies suggesting that any revenue foregone

**Figure 1: Digitally Delivered Services Exports
(World, 2005-2024)**



Source: WTO trade dataset.

from the moratorium is minimal (below 0.33 per cent of overall government revenue on average) and would be offset by economic losses if customs duties were imposed.⁸

Opposing this view, India, Indonesia and South Africa, joined by an expanding coalition of developing countries, contest that the moratorium fundamentally disadvantages nations lacking advanced digital industries. They emphasise that the definitional ambiguity around “electronic transmissions”(ET) has led to scope creep without explicit negotiation, potentially encompassing not just the carrier medium but also digitised content, which in themselves difficult to categorized either goods or services. Regarding the income implications, they cite the research from the United Nations Conference on Trade and Development (UNCTAD), which estimates that poor nations may lose out on billions of dollars in tariff revenue each year.⁹

The debate transcends revenue calculations. India and South Africa emphasised in their joint submissions to the WTO, “*this is not just a revenue issue but a policy space issue*”¹⁰. Most developing countries argue likewise.

As digitalization continues to reshape the architecture of global trade, the latest WTO Secretariat estimates reveal not only the accelerating expansion of digitally delivered services but also their growing structural significance within the world economy.

The data demonstrate a sustained and steep upward trajectory in digitally delivered services exports from 2005 to 2024, with global values rising from just over US\$ 1 trillion to nearly US\$ 4.8 trillion (Figure 1). From a digital trade perspective, this trend reflects the deepening integration of data-driven services into the global economy and underscores the increasing centrality of cross-border digital transactions in shaping contemporary trade flows¹¹. As digital trade expands, the issues of scope and classification of ET, in the context of moratorium, are getting vexed with ever increasing stakes that add to the concerns of developing countries.

2. Background and Evolution of the E-Commerce Moratorium

2.1 Origins of the Moratorium (1998) - MC2

The Declaration on Global Economic Commerce, which was adopted by WTO members in May 1998, acknowledged the swift expansion of electronic commerce and agreed to maintain the current practice of not imposing customs duties on electronic transmissions while assigning the General Council the task of developing a thorough Work Programme on its trade-related aspects.¹² The WTO General Council then established the Work Programme on Electronic Commerce (WPEC) in September 1998 to direct WTO bodies in investigating a broad range of issues, from customs duties and services to development implications linked to electronic commerce, and to report back on progress.¹³

The WPEC mandated various WTO bodies to explore how existing agreements apply to e-commerce while recognizing the evolving and uncertain nature of digital trade. The following WTO bodies (Box 1, 2, 3 and 4) were specifically mandated under the Work Programme to undertake this examination:

Box 1: Council for Trade in Services¹⁴

The Council for Trade in Services shall examine and report on the treatment of electronics commerce in the GATS legal framework. The issues to be examined shall include:

- scope (including modes of supply) (Article I);
- MFN (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.

Box 2: Council for Trade in Goods¹⁵

The Council for Trade in Goods shall examine and report on aspects of electronic commerce relevant to the provisions of GATT 1994, the multilateral trade agreements covered under Annex 1A of the WTO Agreement, and the approved work programme. The issues to be examined shall 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.
- classification issues.

Box 3: Council for TRIPs ¹⁶

4.1 The Council for TRIPs shall examine and report on the intellectual property issues arising in connection with electronic commerce. The issues to be examined shall include:

- protection and enforcement of copyright and related rights;
- protection and enforcement of trademarks;
- new technologies and access to technology.

Box 4: Committee for Trade and Development ¹⁷

5.1 The Committee on Trade and Development shall examine and report on the development implications of electronic commerce, taking into account the economic, financial and development needs of developing countries. The issues to be examined shall include:

- effects of electronic commerce on the trade and economic prospects of developing countries, notably of their small- and medium-sized enterprises (SMEs), and means of maximizing possible benefits accruing to them;
- challenges to and ways of enhancing the participation of developing countries in electronic commerce, in particular as exporters of electronically delivered products: role of improved access to infrastructure and transfer of technology, and of movement of natural persons;
- use of information technology in the integration of developing countries in the multilateral trading system;
- implications for developing countries of the possible impact of electronic commerce on the traditional means of distribution of physical goods;
- financial implications of electronic commerce for developing countries.

The WPEC was not intended as a negotiating mandate, but rather as an exploratory and informative framework. Its main goal was to improve members' comprehension of the trade-related aspects

of electronic commerce, especially in view of conceptual ambiguities and the then-rising stage of digital trade. The development was not anticipated by the work of new binding rules but instead sought to facilitate discussions over concerned WTO bodies while allowing members to assess economic, legal, and development implications as digital trade evolved.

2.2 Evolution Through Subsequent Ministerial Conferences (MCs)

While WTO Members had agreed in While WTO Members had agreed in 1998 (MC 2), to temporarily continue their then practice of “not imposing customs duties on electronic transmissions” (Moratorium or NICDET, it has been extended periodically by consensus at all subsequent WTO Ministerial Meetings (Since 1998), except the meetings at Seattle (1999-MC3) and Cancun (2003-MC5) where there were no outcomes. Thus, moratorium has survived for almost three decades now, through periodic extension, with brief periods of pause.

In the interim, during the Eleventh Ministerial Conference in Buenos Aires, on its side lines, 71 WTO members launched a Joint Statement Initiative (JSI) on e-commerce. The original plan was to investigate trade-related issues of e-commerce in tandem with the International Work Program. Nevertheless, the JSI subsequently proceeded with the discussions to create e-commerce regulations, including on the moratorium. While proponents saw the JSI as a practical solution to multilateral impasses, concerns persist about inclusiveness and its alignment with existing WTO mandates¹⁸. It has also been argued that creation of this parallel track in plurilateral format has diluted the interest of members in multilateral discussions and primary and only interest of some members may only be in securing renewals of moratorium.

At the Twelfth Ministerial Conference (*MC 12*), held in Geneva in 2022, members had agreed to better understand the moratorium’s implications for developing countries’ revenues and policy. However, leading up to the Thirteenth Ministerial Conference, members continued with differing views on renewal: proponents highlighted benefits for

digital trade, while opponents raised concerns over its ambiguity, loss of policy space, moratorium not serving the intended purpose, and potential revenue losses. Discussions also covered the digital divide, consumer protection, and regulatory frameworks to shape future decisions¹⁹.

Though opinions remained divided, members worked towards strengthened their discussions on the moratorium in the lead-up to the Thirteenth Ministerial Conference. Many members argued that the moratorium should be extended to maintain a stable environment for digital trade, while others expressed reservations about its definition, extent, and income. Ministers received conflicting ideas pertaining to the Work Programme and moratorium reflecting different point of view.

Eventually another temporary extension was agreed to in MC 13, albeit some serious challenge and with a specific sunset date that is now approaching as WTO moves closer to MC 14.

2.3 Towards MC 14 in Yaoundé

As MC 14 approaches, the United States along with a few other members have brought in a fresh proposal²⁰ for making the moratorium permanent through a broad declaration.

On the other hand, ACP group, in its latest submission²¹, has demanded a comprehensive discussion, under the WPEC, including on development related aspects involved in E-Commerce, bridging digital divide, financing the digital infrastructure, taxation etc. while proposing a temporary extension of the moratorium till the next MC.

Based on the discussions at the WTO, the following three options are available to WTO Members: first, allow the moratorium to lapse as per the decision in MC 13; second, extend the Moratorium and make it permanent; third, extend the moratorium till next the next session of the Ministerial conference or for two years. An informed choice of option requires comprehensive analysis of issues and implications. Clarity about the definition of electronic transmissions, agreement on the moratorium's parameters, and a thorough comprehension of its effects are all essential.

3. Key Issues and Debates

3.1: Conceptual ambiguity-scope and classification issues

Despite existing for almost three decades, the e-commerce moratorium remains ambiguous in scope and legal effect, making it difficult to evaluate its economic, legal, and development consequences.

(a) Scope of electronic transmission (ET)

The precise extent and application of the WTO e-commerce embargo are unclear due to the lack of a specific definition for electronic transmission. The 1998 WTO ruling and its further extensions just state that customs taxes should not be imposed on ‘electronic transmissions’ without specifying what that encompasses, leaving open questions such as whether it only covers the carrier, or the content sent too (like software or digital media), and if digitally delivered services fall within the scope moratorium. In the first place it is difficult to categorise ET as good or services. They may have attributes that may be akin to good in certain cases (for example downloadable e-books), and services in other cases. Accordingly, the issues as to on which kind of ETs customs duty could be imposed in absence of the moratorium also becomes equally relevant. This lack of an agreed definition means the concept could extend to a broad and evolving set of digital transactions, from online delivery of digitised products and services to potentially other data flows as technologies like 3D printing and other innovations emerge, which is precisely why many developing countries insist on a clearer, negotiated definition rather than repeatedly renewing a broadly phased moratorium²². The issue was to be examined under the WPEC which specifically mandated various WTO bodies to assess how e-commerce fits within existing agreements. In particular, classification question being central to determining applicable disciplines under GATT or GATS remained contested. The lack of clarity around moratorium continues to complicate efforts to clarify members’ rights and obligations in the context of digital trade.

(b) If applies to content: whether it covers goods only or covers both goods and services

As the moratorium prescribes for non-imposition of customs duty on ET, understanding the scope of applicability of customs duty may be a relevant factor in this debate. As per the definition in the World Customs Organization (WCO) framework “*customs duties*” means the duties laid down in the customs tariff to which goods are liable on entering or leaving the customs territory. Also, it could be argued that in terms of its commonly understood ambit, included under the WTO Agreements, customs duties evidently apply exclusively to goods. The term “customs duties” is mentioned in Article II of GATT 1994, its application is on “products”. The GATT is an Agreement mentioned in Annexure 1A of the Marrakesh Agreement, and it is a “Multilateral Agreements on Trade in Goods”. The term customs duty has not been used in the context of services and not mentioned in GATS. Logically, this understanding limits the applicability of moratorium to digitised products that has attributes of goods and are capable of being classified under HS nomenclature even if it is argued that moratorium applies to content besides the carrier. These ambiguities have prompted a call by developing countries for a clearer definition and scope of the moratorium.

3.2 Policy Space Concerns by Developing Countries

The developing countries have also expressed concerns relating to conceding the policy space that constraints development of capacity for digital trade and providing level playing field to their infant industry in this sector. Developing countries have argued that digital divide is widening, digital trade capacities are getting more and more concentrated, and ever-expanding digital trade and growth in technology such as 3D printing is making them vulnerable as developing countries face the increasing challenge of lack of access to technology, technical know-how, infrastructure, finance, skill set gap and other resources.

Developing nations will need to expand their digital skills and infrastructure in order to be competitive in the digital age.

Developing nations are still having difficulty building their information and communications technology (ICT) infrastructure and increasing their internet accessibility, while developed nations are investing enormous sums of money in digital technologies like robotics, artificial intelligence, big data analytics, and 3D printing. Manufacturing output is one area where this widening digital gap is evident. In wealthy nations, the usage of digital technology and digital content in terms of value contributed by the digital services is increasing far more quickly than in poor countries (UNCTAD, 2017).

Developing nations contend that customs duties are a crucial tool in the toolbox that should be used in accordance with each nation's strategic goals in the pursuit of industrialisation, especially those that wish to advance digital industrialisation by giving their nascent and emerging digital industries fair competition.²³

India (along with South Africa) has emphasised the need to re-examine the 1998 moratorium on customs duties on ET, arguing it no longer aligns with the current digital trade landscape. This stance is a result of developing nations' worries that preventing duty-free treatment will restrict policy options for digital industries.²⁴ Tariffs are among the best policy instruments for accomplishing these goals, as demonstrated by the development experiences of almost every nation on the planet. It is argued that the tariffs are a tried and tested policy tool for supporting infant and even mature industries. All successful economies have arrived at higher levels of development because they started off first giving domestic industries the protection through tariffs to grow and gain competitiveness. Developed nations have used customs taxes to defend their industries and make them more competitive globally. Giving the developing world a comparable opportunity is simply fair. As a result, maintaining the authority to apply customs taxes becomes a crucial goal in and of itself. Additionally, they contend that the lift lifting of the moratorium does not imply that Members would implement universal customs duties. In the age of industry, policy space is crucial, and it must be used properly for domestic digital

industrialisation and the creation of local jobs.²⁵ Moratorium impedes their ability to employ customs taxes as a fiscal and regulatory weapon, which¹⁶ causes resistance in their policy space.²⁶

Policy space argument need to be seen from the perspective of the growth of E-Commerce Sector which has expanded exponentially over the years and continue to expand at a rapid pace. This is best explained with the facts and figures relating to the US economy. As per a very recent study by the Harvard Business School (sponsored by Amazon, Google, and Meta), the share of digital economy in the US GDP has grown from 11 per cent in 2020 to 18 per cent in 2024. During this period the value of digital economy doubled to almost US\$ 5 trillion. Employment in this sector in the US grew 12X faster than the overall US economy. Creator economy grew by 7.5 times since 2020 to US\$ 500 billion. Media ad spending has grown 10 times. E-Commerce grew by more than 7.5 per cent compounded rate while in general retail sale grew by 2.5 per cent. New areas of growth have emerged rapidly in digital economy.²⁷

As per WTO According to WTO study, digitally delivered services that is, services rendered over computer networks, such as remote consulting services and streaming games are an emerging source of development, making up 12 per cent of all global trade in commodities and services and 54 per cent of worldwide services exports in 2022.²⁸

With rapid growth of e-commerce, and digital trade, and emerging newer areas of growth that are capital, skill and technology intensive, the policy space issue assumes significantly higher importance.

3.3 Developing Countries' Concerns Relating to Revenue Loss

Discussions around the WTO moratorium are part of broader debates, such as studies by UNCTAD. The arguments there have centered on the claim that the prohibition The main point of contention there has been that poor nations have suffered significant losses in tariff income as a result of the ban on customs taxes on electronic communications. As per an UNCTAD study Developing nations may have lost an estimated

US\$ 8 billion in potential tariff revenue in 2017 on account of E-commerce moratorium. The UNCTAD study arrived at this figure based on the estimated global volume of trade in goods that shifted to digitised form in 49 HS heading. Developing countries like Thailand, India Mexico and Nigeria have been identified as suffering significant tariff losses. Yet another study estimates According to yet another research, the moratorium cost developing nations and LDCs US\$56 billion in tariff income between 2017 and 2020, of which US\$48 billion went to the former and US\$8 billion to the latter.²⁹ These studies have also highlighted that advent and expansion of 3D manufacturing technologies the revenue loss would substantially increase.

These studies extend support to this argument that the moratorium leads to tariff revenue losses for developing countries and interferes with their right to use customs duties as a regulatory and fiscal tool, thus creating resistance in their policy space. Luxury digital imports like films, music, and video games are major highlights of this category. The voices supporting these arguments say that this position becomes difficult, especially during times of fiscal stress, as seen during the COVID-19 pandemic, when governments were burdened with additional domestic revenue sources. Hence, the position of these countries is that the continuation of the moratorium deprives developing and least developed countries of vital public income³¹. This loss of tariff revenue can be seen in the form of economic cost as well as a constraint on fiscal space, specifically in the case of developing countries. This fiscal impact has contributed to the growing call, especially among developing members, to reconsider or end the moratorium in order to preserve sovereign taxing rights over digital imports³¹. This concern is especially pronounced for developing countries, which generally maintain higher bound tariff rates. Furthermore, the moratorium may continue to grant industrialised nations duty-free access to emerging and LDC markets. Economic growth, jobs, and sustainable development would all suffer as a result (South Africa & India)³² and (Indonesia)³³.

Proponents of the WTO e-commerce moratorium, however, argue that customs duties on ET would yield minimal and uncertain revenue

while causing significant economic harm. They claim that since services are the primary component of digital trade, customs charges on electronic communications are ineffective and unfeasible. Trade stability, predictability, and innovation-friendly circumstances are promoted by upholding the moratorium, trade stability, predictability, and innovation-friendly conditions are fostered, allowing countries, especially developing ones, to reap long-term benefits in productivity and investment instead of depending on uncertain border tariffs. They emphasize that the moratorium indirectly increasing public revenue through economic growth rather than border duties. Proponents also argue that reduced trade costs and increased participation in global value chains offer more significant economic advantages to developing countries than potential tariff revenues, particularly in light of enforcement difficulties and that the moratorium benefits MSMEs by lowering trade costs and promoting global integration, expanding domestic tax bases. According to this view, any marginal tariff revenue would be outweighed by losses in productivity, investment, and consumer welfare.

In this context, OECD contributions, while questioning the analysis by UNCTAD on potential revenue loss, argue that the benefits of the Moratorium outweigh the costs and that UNCTAD may have overestimated the revenue loss.³⁴ The proponents have argued that revenue concerns of developing countries could be addressed by through imposition of non-discriminatory domestic taxes like GST/VAT. However, that internal taxes have a different function and are not a substitute for customs charges.

3.4 Uneven gains of E-commerce Growth

Developing countries (India, South Africa, and others) have, however, argued that benefit of e-commerce moratorium have been uneven³⁵. Developing countries have gained little as digital divide widens, e-commerce capacity gets concentrated, the MSMEs in developing not able to face competition from global e-commerce giants, brick and mortar stores getting shut down, and other emerging challenges.

Additionally, it is claimed that when evaluating the overall electronic transmission trade, proponents only take into account digitizable commodities with characteristics that fall within the moratorium's purview and get to the conclusion that trade in these things is still minimal. However, while calculating the impact of the moratorium on exports, particularly those of SMEs, the proponents' contradictory take into account the embargo's expanded reach, which includes services and data flow in order to magnify the breadth. As a result, they doubt the veracity of supporters' claims.³⁶

3.5 Lack of Tangible Progress in WPEC - Contentious Issues Remaining Unresolved; and Advent of JSI on E-Commerce

The WPEC required that WTO bodies explore the relationship between e-commerce and other WTO agreements, with the General Council playing a key role in reviewing the programme and assessing the temporary moratorium on customs duties for electronic transmissions. The two instruments are interconnected, with both being renewed at each ministerial conference. As per the MC13 decision the moratorium and the WPEC will expire simultaneously, either at MC14 or by March 31, 2026, whichever comes first.

Even though there have been some discussions in WTO under WPEC, in a facilitator led process, the assigned regular Committees and Councils have not made much progress on the specific issues before them in terms of the WPEC. As these critical issues thus remain unresolved, the basis of renewal of e-commerce moratorium rests in the proponent's argument that the moratorium promotes legal certainty and trade predictability, enabling digital market growth and customs duties on electronic transmissions would be complex to of the Marrakesh Agreement, the consensus eludese³⁷.

In challenging India's opposition of moratorium, India is often cited as one of the biggest exporters of IT/software services to impress upon the potential adverse implication to India if moratorium is lifted, even while the issues around the scope of moratorium, whether it

covers transmission, goods or services, and whether moratorium has increased commitment only for developing countries (though initial argument was that it was not altering any commitment or obligation of members) are yet to be resolved, including under the WPEC discussions, despite repeated reiteration by countries like India, South Africa, and Indonesia. It is seriously arguable if moratorium cover the services in the first place, considering that the prohibition is on imposition of customs duty (supra). Because of this, WTO service obligations under the General Agreement on Trade in Services (GATS) are intrinsically asymmetric and designed to permit varying degrees of commitment depending on a nation's capabilities, degree of development, and particular economic interests. Keeping these critical issues unresolved is adding to the concerns of the developing countries. This may, however, be tactical on part of the proponents of the moratorium.

While lack of progress in the discussion in WPEC has thus remained a cause of concern for most developing countries. In the interim, a parallel track plurilateral discussion, in E-commerce JSI, amongst its 91 members has added another layer to the existing complexities. JSI negotiations have highlighted uncertainty about how any final e-commerce agreement would be incorporated into the WTO's legal structure. While many JSI participants support integrating the outcome formally into the WTO system, possibly as a plurilateral agreement under Annex 4, which would require consensus of all members in accordance with Article X.9 of the Marrakesh Agreement, the consensus eludes³⁸. The stabilized text of the Joint Statement Initiative (JSI) on e-commerce does more than simply acknowledge the existing WTO moratorium; it effectively reinforces and embeds it within the new agreement. Notably, the JSI text provides an explicit and all-encompassing definition of "electronic transmission" for the purposes of commitment for non- imposition of customs duty that includes the content being transmitted, an issue that remains unresolved since 1998 in the multilateral setting in the context of E-Commerce moratorium on ETs.

4. WTO Members' Recent Position on Moratorium

As stated earlier in the paper, the US along with certain other members (Costa Rica, Ecuador, Guatemala, Paraguay) have in recent submission made a pitch for making the moratorium permanent. Making E-Commerce moratorium permanent finds strong support in Developed countries members. The US, the EU, UK, Japan, Canada, Australia, New Zealand have been strongly advocating in favour of permanent moratorium making a pitch on the grounds as stated earlier in the paper. Certain developing countries like China, Chile, Singapore, Korea, Malaysia, Saudi Arabia and UAE also support for a permanent moratorium.

The US has in particular has also pushed aggressively for the moratorium in its policy statements³⁹. and bilateral reciprocal trade deals, particularly with the developing countries like Indonesia⁴⁰ and Malaysia⁴¹.

On the other hand, the ACP Group has made a submission for renewed discussion on key issues and in the interim temporary extension of moratorium till the next Ministerial Conference. A large number of LDC countries are part of ACP and therefore LDC as a group would align with ACP.

Developing countries like Brazil, Nigeria, Türkiye and certain others have been expressing concern on E-Commerce moratorium and remain cautious towards any proposal to make the moratorium. The position of India, South Africa and Indonesia is as stated earlier in this paper. However, Indonesia has entered into reciprocal trade agreement recently under which it may be under an obligation to support moratorium.

72 out of 91 members of JSI on E-Commerce supported the text⁴² for its inclusion in Annex 4 of the Marrakesh Agreement. As these members have committed themselves to Permanent moratorium in JSI, they would also support the permanent moratorium in multilateral forum. Some of the remaining 19 members of JSI precisely have concerns over the moratorium, e.g., Brazil, Nigeria, Indonesia. This makes it evident that consensus would elude on any proposal for a permanent moratorium.

5. Moratorium at MC 14, Likely State of Play and India's Options

Given the current scenario, theoretically there are three possible outcomes. One, the moratorium lapses as per the decision in MC 13(*supra*); two, moratorium is made permanent; three, moratorium is extended temporarily again till next MC as has been proposed by the ACP group.

Practically, the second outcome is unlikely. A number of members would be highly hesitant to make moratorium permanent. This is also evident from the fact that even a number of JSI members do not support a permanent moratorium on ET. Members discussions in the WPEC in last two years have not brought out anything concrete or favourable in support of making the moratorium permanent. With its scope remaining unclear, commitment remaining vague, enforceability remaining questionable in absence of comprehensive rules, and global trading environment remaining uncertain, it is highly unlikely that Member could have consensus, more so as the concerns over moratorium have been increasing with exponential growth of E-commerce.

In case of no decision, first outcome is automatic as expiration date for moratorium has already been set in MC 13 decision that was taken by consensus.

Going by the state of play, the continued interest in developing countries for discussing the issues involved and WPEC, it is likely that the third possible outcome gets highest traction. However, it would require a consensus for reaching to this decision. In MC 13, consensus for a temporary extension had proved very difficult and extension could only be secured with hectic effort at the fag end of the conference.

Though moratorium has been extended routinely in past, its renewal has come with difficulties recent MCs. In MC 14, Members may strive for a decision that compels better discussions on issues of specific concerns, particularly to developing countries. If members opt for third possible outcome, developing countries may insist for certain conditions and asks for a temporary extension rather than a routine decision. In this context it

would also be interesting as to how members deal with the proposal on JSI on E-Commerce. India has argued in recent discussions that WPEC is the forum for deliberation of E-Commerce issues. These discussions in the WPEC should lay the ground for rulemaking in multilateral forum, rather than creating parallel non-multilateral track.

Another possibility, which is not unforeseeable, is that the way WTO reform discussions are unfolding, including as regards the negotiating function, decision making in WTO and the prioritisation of issues, all issues before the ministers in MC 14 get subsumed in the WTO reform discussions (member may seek clarity in these fundamental issues before taking decision on any specific agenda).

Multilateral negotiations are all about give and take after all.

6. Way Forward

Given the prevailing complexity and varied stances, a pragmatic way forward for India may lie in careful consideration of the following points concerning the E-Commerce moratorium:

Developing a clear internal understanding, upon careful analysis, as to what are the overall implication for India if moratorium lapses. This may require assessing the policy space requirement as e-commerce grows, including the need for providing level playing field to our upcoming industry, the future scenarios in E-commerce and digital trade, and securing our interest in global trade. These discussions may not be possible at the time available till MC unless we have already made some progress. However, some quick and meaningful analysis may help in shaping up and leading the discussions in WTO. The extensive discussion may be pushed to post MC14, the ground for which has to be laid in MC14 upon taking specific directions/guidance from Ministers during the conference.

In case the traction is towards temporary extension, on what terms would the developing countries like to negotiate it, including institutionalizing concrete discussions in the multilateral forum? What could be the tradeoff here?

What direction/guidance could be taken from Ministers (MC) for effective, concrete and meaningful discussions under WPEC if it survives?

Impact and interplay with discussions on JSI on E-Commerce: Has JSI on E-Commerce adversely impacted the prospects of multilateral discussions on the sensitive issues concerning E-Commerce? More so, considering the clear understanding that WPEC was to discuss fundamental issues, before any attempt towards rule making. If yes, how could this issue be effectively raised?

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