

The WTO E-Commerce Moratorium: Border Taxes and Digital Trade Governance in the Age of Artificial Intelligence

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The upcoming WTO Ministerial in Cameroon may focus significantly on making the customs duties Moratorium on digital products permanent. However, it is still unclear which products are included under this Moratorium. This policy brief argues that the primary beneficiaries are likely to be US and Chinese AI monopolies, which could dominate the global market while avoiding border taxes. Such a measure would deprive other countries of essential tax revenues from AI, which is expected to play a crucial role in both cross-border value flows and national economies. This situation threatens national economic sustainability and, consequently, political sovereignty.

Towards the end of the 1990s, material goods such as books and music/video CDs, which were subject to customs duties on import, began to be streamed across borders over the Internet. Importing countries expressed concern about the potential loss of customs duty revenue, as the general principle states that if a product is subject to duties in one form, it should also be subject to similar duties in another form. During the 1998 WTO Ministerial meeting, members agreed that this was a novel and emerging phenomenon and decided to implement a temporary moratorium on customs duties for what became known as “digitalizable goods.” The official term mentioned in the text, however is “electronic transmissions.” This “E-commerce Moratorium” has since typically been extended from one Ministerial to the next. Currently, it is scheduled to end after the upcoming WTO Ministerial in Yaounde, Cameroon, 26–29 March 2026.

The US is approaching this Ministerial with a top priority of making the E-commerce Moratorium permanent. However, opposition to the Moratorium is weakening among the developing countries due to intense tariff-related pressures and other threats from the Trump administration. Notably, Indonesia, hitherto a prime opponent of the Moratorium,

signed a deal with the US agreeing to make it permanent. As evident from the reports on Indo-US trade deal discussions, India also seems to be under intense pressure to concede. The Yaounde Ministerial will find this issue centre-stage, with intense negotiations and threats likely dominating the proceedings.

The Matter of the Moratorium

The precise language of the Moratorium states that members will “continue their current practice of not imposing customs duties on electronic transmissions”. However, there is considerable confusion regarding the term “electronic transmissions” and the specific customs duty moratorium it applies to. This lack of clarity is unusual; typically, treaty texts are meticulously drafted to eliminate ambiguity through definitions, explanations, and footnotes. In this case, however, the central subject of the agreement is obscure. Meanwhile, all members acknowledge that the meaning of “electronic or e-transmissions” is not well defined.

Developing countries have long argued that the definitions need clarification first. However, the US and its allies do not engage

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with this reasonable course of action. If this raises suspicions about their real motives, it underscores the point of this policy brief: that the Moratorium permanence is a proposal in bad faith. Unfortunately, developing countries have been unable to oppose this. A major reason has been their inability to understand the US's real intention, rooted in the AI world of the future, where by far the main value flow across borders will be AI, and AI power is hyper-concentrated in the US (and China). The duties in the Moratorium text are meant to be interpreted by the US in the near future as possible border taxes on AI flows. They seek to preempt any such possibilities through this Moratorium.

The ongoing debate surrounding the definition of e-transmissions lacks clarity. A key question is whether this term refers only to the mode of transmission or also includes its content. Indonesia has consistently noted that they interpret e-transmissions to pertain solely to the mode. If that is the case, it would only involve telecommunication and networking services that transmit data. When considering the content of 'e-transmissions', another question arises: Does it only encompass 'digitalizable goods'—such as digital content that can also exist in physical forms, like books and music CDs—or does it also include digital services, which would cover areas like artificial intelligence? This is where the main issues and potential misunderstandings lie.

Historically, the Moratorium emerged in relation to the issue of "digitalizable goods," where its meaning and interpretation should be understood in good faith, unless something else is explicitly stated. However, the US is unwilling to acknowledge that the Moratorium pertains only to "digitalizable goods," nor will it propose additional definitions or clarifications on the topic. This behaviour raises suspicion.

On the other hand, developing countries themselves do not know what to say or do about definitions and clarifications on the subject matter of the Moratorium. They have, in good faith, stuck to the original 'digitalizable goods' intent and interpretation, while also being increasingly suspicious that there is more to it. However, they too have shown no real intent to clarify the coverage of the Moratorium,

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even while opposing it — a process that seems weakened now.

A Crisis of Clarity and Strategic Positioning in Developing Countries

There are several reasons why developing countries lack the motivation to clarify language around digital services. First, they often might not fully understand the implications of the discussions, especially regarding US interests in cloud and AI. Second, they hope that by avoiding clarification, the focus will remain on the original concept of "digitalizable goods," despite this not being mentioned in the Moratorium text. Third, some key developing countries, such as India, with significant digital services exports, fear that discussions may lead to taxation. Fourth, many developing countries lack the necessary facts, data, and arguments to engage effectively and explore and examine this issue in its real emerging contexts. They might focus on the short-term benefits of digital and AI technologies, rather than appreciating the emerging structural digital challenges.

Much of the value in the digital economy is undervalued or not valued at all, as data, while called the 'new oil', is given no value on paper. Many digital services are free, or are mischaracterised as IP royalty transfers. Meanwhile, the AI world is still in the formative stages, with AI majors sinking a lot of capital. The real flows of super-enormous value to AI superpowers will be in the future, but not too

distant a future. All these factors have muddied the Moratorium context.

The WTO Secretariat documents¹ related to the Moratorium have argued that, even though not the normal tradition, customs duties can also apply to services. The WTO's 1998 Work Program on E-commerce² mentions customs duties as an agenda item for its forum in services. While these arguments may be questionable, they highlight how the implications of the Moratorium can and might be addressed.

The Limits of the “Digitalizable Goods” Approach

The entrenched belief among nations opposing the Moratorium that it solely concerns digitalizable goods is becoming counterproductive. The Trump administration's unyielding pressure forces countries to prioritise immediate concerns like agriculture and manufacturing, leading some, including Indonesia, to reconsider their stance on the Moratorium. Countries like India, Brazil, and South Africa may soon face similar pressures unless they address the serious implications of AI.

In bilateral and multilateral trade agreements, the US and allies are broadening the definition of customs duties to include “customs duties, fees, or other charges,” indicating a shift toward including digital services alongside goods. These agreements refer to ‘digital products,’ encompassing both goods and services. Many definitions in bi-/pluri-lateral agreements explicitly include digital services. A 2023 text of the Joint Statement Initiative (JSI) on E-commerce at the WTO had a footnote that “customs duties include fees or other charges of any kind imposed on or in connection with importation or exportation”. This footnote is omitted in the final 2024 text, where a negative provision is added instead that it does not include internal taxes, fees, etc. (leaving the real question of external or border taxes on services deliberately vague). Nonetheless, the Moratorium will focus on interpretations related to digital services, as indicated by statements from the US and key global industry groups.³

“Digitalizable goods” in any case is no longer such a meaningful category, as software is now

integral to all digital products, including AI. Even AI models can be transferred to external drives and run locally, suggesting they could also be seen as digital goods! Everything digital is a digital service today, other than, of course the hardware, which gets covered under WTO's IT agreements. Even streaming movies (Netflix) and songs (Spotify) will be considered as services per established definitions, including at the WTO.

With no authoritative WTO or trade deals text using the term “digitalizable goods,” it now solely appears in the documents by developing countries⁴ and pro-South analyses. This is discordant and distracting, even if the approach was useful in earlier stages. We should either include it in the Moratorium texts or abandon this obscure and obsolete term and instead focus on the real issue of digital services. The term “digitalizable goods” should only be used in its limited context of *actual* substitutability with physical goods, rather than as the overarching subject matter of the Moratorium.

In the past, many developing countries made liberal commitments on Computer-Related Services (CRS) under the General Agreement on Trade and Services (GATS), which includes data-based services and data-processing services that encompass AI. These countries now argue that AI was not around at the time of commitments, making it exempt. This may be a viable argument; however, with AI's rapid advancement, it is unclear why many are willing to walk into the E-commerce Moratorium trap, which could involve border taxing AI. The argument of “we did not think about AI” would not hold, as digital services, including AI, are e-transmissions and will be treated as much in relation to the Moratorium.

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AI is Hyper-Concentrating Wealth and Power Globally

For the US, the Moratorium is for the AI future, as no customs duties are currently imposed on the so-called “digitalizable goods.” Developing countries should consult digital/AI economy experts, as soon as AI would not just be embedded in every economic and most social activities, but firms and economies would also be re-organizing themselves over AI platforms. As per the current trajectories, almost all of such foundation AI will be owned by the US, and China. UNCTAD’s 2019 Digital Economy Report estimated that 90% of the capitalisation of the world’s top 70 platform companies lies within the US and China. This was pre-AI. AI is even more super-concentrated, and we may be looking at nearly 100% of top 10 AI platforms owned by the US and China. Developing countries need to locate the Moratorium discussions and their positions considering this scenario.

UNCTAD estimates (2017)⁵ of revenue losses from the Moratorium rely on a projected market of \$139 billion of digitalizable goods. The Information Technology Industry Council (a US industry group), while welcoming the last extension of the E-commerce Moratorium, stated that it “keeps the door open for the global flow of digital services” (emphasis added), which it put at \$4 Trillion (in 2024).⁶ The US industry seems quite clear that the Moratorium is about digital services, not “digitalizable goods.” UNCTAD elsewhere estimates the global AI market alone to reach \$4.8 trillion by 2033,⁷ which may be an underestimate. The AI economy is growing at nearly 20% every year, meaning it doubles in less than four years.

Since AI is in an entrenching phase, one may not look so much at the actual AI services flows, revenues, and profits, as at the capitalisation figures, which project the future. AI-related stock currently makes up nearly one-third of the total US stock market, which is almost all owned by the Seven Sisters of American

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technology – Apple, Microsoft, Nvidia, Amazon, Google (Alphabet), Meta (formerly Facebook), and Tesla.

For developing countries like India, who are hoping to capitalise on the lower value chain, the tech market growth brings challenges. The AI market is not just expanding, but is heavily concentrated with the foundation AI owners, threatening India’s exports of business-processing services and software coding sectors. Experts predict that software coding may soon not be a viable career in the near future. Lately, India has made great progress in the Software-as-a-Service (SaaS) sector, becoming the world’s 3rd largest SaaS provider. Last month, however, in an event called SaaSocalypse, \$1 trillion was wiped off the US stock market in a single day, with a new AI release by Anthropic.⁸ It underscores how foundation model owners will vertically integrate the applications and SaaS market as well in every sector, leaving little for independent SaaS providers. India’s IT Nifty Index consequently plunged by one-fifth in February 2026. Digital/AI value chains, and developing countries’ likely future position in them, therefore have to be examined completely anew, discarding the past lenses.

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Border Taxing AI

All of this requires a fundamental re-look at the world’s future digital and AI scenario. The least that one can do at this stage is not to give up the right to border tax digital/AI services. Even Big Tech leaders like OpenAI’s Sam

Altman and Tesla's Elon Musk, who should otherwise be embarrassed by such projections of wealth concentration in their hands, speak about taxing AI profits for universal basic income schemes to offset job losses and wage depression due to AI.

However, the question for developing countries (as also for the EU, and other non-US/China countries) is: While the US and China might as well super-tax their AI super-corporations for universal basic income and other welfare schemes, what would they do? Whom would they tax, and how; with almost all top foundation AI corporations in the US or China?

Dr Kai-Fu Lee's – the ex head of Google China, ex-President of Microsoft Research Asia, ex-Co-chair of the Artificial Intelligence Council of the World Economic Forum, and the author of books on AI's geo-economics – speech in 2017, presciently projects the scenario that this policy brief bases its argument upon:

So if most countries will not be able to tax ultra-profitable A.I. companies to subsidize their workers, what options will they have? I foresee only one: Unless they wish to plunge their people into poverty, they will be forced to negotiate with whichever country supplies most of their A.I. software – China or the United States – to essentially become that country's economic dependent, taking in welfare subsidies in exchange for letting the “parent” nation's A.I. companies continue to profit from the dependent country's users. Such economic arrangements would reshape today's geopolitical alliances.⁹

Making the Moratorium permanent will forever open a key door towards this scenario. Developing countries must pay heed. Developing nations must terminate and bury the Moratorium in Yaounde, creating space for their own digital industrialisation, and also be able to border-tax the soon-to-be all-pervasive foreign AI. There is no option for developing countries but to take all possible steps,

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including border measures, to develop their own digital and AI industry, as they did during their early industrialisation. They cannot afford to seek trade-offs on the existentially important Moratorium issue. Perhaps, countries can try an interesting experiment during the Ministerial discussions: Propose to footnote the Moratorium text to not cover digital/AI services.

Endnotes

- ¹ <https://bit.ly/3OWgfAo>
- ² <https://bit.ly/4cHMWLT>
- ³ <https://bit.ly/4r1b2iW>
- ⁴ <https://bit.ly/40kZ9yx>; <https://bit.ly/4b03bme>; and <https://bit.ly/3N6UDRm>
- ⁵ <https://bit.ly/4sCnRqn>
- ⁶ <https://bit.ly/3N6UDRm>
- ⁷ <https://bit.ly/40EHBhb>
- ⁸ <https://bit.ly/4ddNAkh>
- ⁹ The digital trade chapter of the US-Mexico-Canada Agreement. <http://bit.ly/46SfWwz>

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