



## WORK PROGRAMME ON ELECTRONIC COMMERCE

### MORATORIUM ON CUSTOMS DUTIES ON ELECTRONIC TRANSMISSIONS: NEED FOR A RE-THINK

#### *Communication from India and South Africa*

The following communication, dated 12 July 2018, is being circulated at the request of the delegations of India and South Africa.

## 1 BACKGROUND

1.1. The realities prevailing in 1998, when WTO Members agreed for the first time to the temporary moratorium on customs duties on electronic transmissions, have changed significantly during the subsequent two decades. These changes necessitate a re-examination of the implications of the temporary moratorium, particularly from the development perspective.

1.2. While there is no definitive estimate of the volume of cross-border electronic transmissions, it is likely that the volume of such transmissions has increased manifold over the past two decades. Further, until a few years ago, electronic transmissions were mainly used to deliver digitalised products, such as e-books, music and a variety of services.

1.3. With increasing diffusion of additive manufacturing technology through 3-D printing, electronic transmissions have now acquired an additional salience in manufacturing physical products. Both these trends are likely to become more prominent in the near future, thereby bringing electronic transmissions closer to the centre-stage of national economies. This compels a rethink of the role of the temporary moratorium on customs duty on electronic transmissions.

1.4. As more products, which are presently traded in physical form, get digitalised and delivered through electronic transmissions, the moratorium on customs duties would result in higher revenue loss.

## 2 ISSUES OF INTEREST AND CONCERN

2.1. An analysis by UNCTAD suggests that it would mostly be developing countries, which would suffer loss in customs revenue, if the temporary moratorium on electronic transmissions is made permanent.<sup>1</sup>

2.2. Further, a moratorium on customs duties on electronic transmissions could imply that customs duties are not imposed on products exported in digitalised form, even if the bound rate on the same product, if it is delivered in the physical form, is not zero. Thus, a moratorium on customs duties on electronic transmissions could in effect undermine the existing schedule of tariff concessions of WTO Members. Given the fact that the average bound tariffs of developing countries are considerably higher than those of developed countries, a moratorium on customs

<sup>1</sup> Rising Product Digitalisation and Losing Trade Competitiveness, UNCTAD.

duties on electronic transmissions could significantly alter the negotiated balance of rights and obligations.

2.3. In this regard, a related issue which merits careful consideration is the scope of the e-commerce moratorium. While the WTO Ministerial Declaration and subsequent decisions apply the moratorium to 'electronic transmissions', there is no agreed definition nor common understanding amongst the Membership of what is covered under 'electronic transmissions'.

2.4. The above are issues of critical importance to most, if not all developing countries, given the role of development and industrial policies in the digital age.

### **3 WAY FORWARD**

3.1. In accordance with the 1998 Work Programme on Electronic Commerce which has been reaffirmed at MC11, we request Members to examine all the above-mentioned and other issues related to the imposition of customs duties on electronic transmissions in the General Council.

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