
THE END OF THE WTO E-COMMERCE MORATORIUM? DIGITAL TARIFFS, ELECTRONIC TRANSMISSIONS AND INDIA'S POSITION: A CRITICAL REASSESSMENT AFTER THE MORATORIUM'S LAPSE AT MC14

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ABSTRACT

The WTO moratorium on customs duties on electronic transmissions lapsed on 30 March 2026 after members failed to reach consensus at the 14th Ministerial Conference (MC14) in Yaoundé. The lapse is legally significant because the temporary multilateral restraint that had operated since 1998 is no longer in force, even though the WTO agreements themselves do not contain a freestanding prohibition on customs duties on digital transmissions. At the same time, 67 WTO members covering approximately 70% of global trade adopted interim arrangements to bring the Agreement on Electronic Commerce into force among participating members, while continuing to seek its incorporation into the WTO legal framework. This paper examines what that change means in law and in practice. It first explains the historical and institutional foundations of the moratorium, then considers what kinds of digital transactions could plausibly be subject to customs duties once the restraint has lapsed. Particular attention is given to the unresolved boundary between goods governed by GATT 1994 and services governed by GATS, and to the related problems of tariff classification, customs valuation, Most-Favoured-Nation treatment and national schedules of commitments. The paper then reassesses India's position, including its revenue concerns, its preference for a longer temporary extension rather than permanence, and its objections to the institutional pathway used for the plurilateral E-Commerce Agreement. The paper argues that the lapse should not be understood as an automatic opening for a new generation of digital tariffs. The immediate consequence is instead a legally fragmented environment in which WTO members possess greater policy space but face substantial classification, valuation and dispute-settlement uncertainty. For India, this creates a strategic choice: preserve tariff flexibility without actually taxing digital transmissions, or use its negotiating leverage to secure a time-bound multilateral arrangement accompanied by clearer definitions, a workable valuation methodology and stronger development safeguards. The article concludes that a carefully conditioned temporary extension, combined with a technically specific Indian proposal for classification and valuation, is more

defensible than either permanent acceptance of the ECA in its present form or an unstructured move toward unilateral digital tariffs.¹

Keywords: WTO; e-commerce moratorium; electronic transmissions; digital tariffs; GATT; GATS; MC14; Agreement on Electronic Commerce; India; digital trade.

I. Introduction

For twenty-eight years, the international trading system operated on an unusual but consequential premise: digital transmissions crossing borders would not be subjected to customs duties. The premise did not originate in a detailed tariff code. It began in 1998 as a ministerial commitment to continue the existing practice of not imposing customs duties on electronic transmissions,² accompanied by a Work Programme intended to study how electronic commerce should fit within the existing WTO agreements.³ The arrangement was therefore deliberately provisional. It was sustained not because the WTO had definitively classified every digitally delivered product, but because members repeatedly agreed to postpone the tariff question while technology and negotiations developed.⁴

The importance of that history becomes clearer when the nature of trade is considered. In 1998, the paradigmatic examples were electronic delivery of books, music and software. Today, cross-border digital trade includes cloud computing, software-as-a-service, streaming, digital advertising, remotely supplied professional services, artificial-intelligence models and model weights, digital design files and other forms of electronically supplied content. The physical border has not disappeared, but an increasing part of the economic value that once travelled inside a parcel can now travel as data. WTO law, however, remains structured around categories - goods, services, intellectual property and customs procedures - that were largely developed when physical importation was the dominant model.⁵

That technological shift creates a deceptively simple question: if a file can cross a border without a package, what exactly is being imported for customs purposes? The question is not

¹WTO, Work Programme on Electronic Commerce, *ibid.*; WTO, 'E-Commerce: Post-MC14 Briefing Note' (2026).

²WTO, 'Declaration on Global Electronic Commerce', WT/MIN(98)/DEC/2 (20 May 1998).

³WTO, 'Work Programme on Electronic Commerce', WT/L/274 (25 September 1998).

⁴WTO, 'E-commerce: Post-MC14 Briefing Note' (2026).

⁵Business Standard, 'Ecommerce tariffs: India open to a longer extension of the moratorium' (3 April 2026); Ministry of Commerce and Industry, Government of India, '14th Ministerial Conference of the WTO concluded on March 30, 2026' (31 March 2026).

merely semantic. A physical book is readily classified as a good; an e-book may be supplied through a download, a subscription or a streaming platform. A software programme may be sold outright, licensed for a period, or supplied through remote access. An AI model may be transferred as a downloadable checkpoint or made available exclusively through an application programming interface. A computer-aided-design file may ultimately produce a physical object, but the file itself is transmitted electronically. Each example exposes a different boundary between the GATT rules applicable to goods and the GATS framework applicable to services.⁶

The moratorium largely insulated members from having to resolve these questions for customs purposes. Its expiration therefore matters not because it created a new WTO tariff power, but because it removes a negotiated restraint that had prevented members from testing the unresolved legal boundaries in practice. A member contemplating a digital tariff must now decide what is being taxed, identify the WTO agreement that governs the transaction, determine the applicable tariff or commitment, establish a workable customs valuation method, and design the measure consistently with the non-discrimination disciplines that remain applicable. These are precisely the questions that the moratorium allowed members to postpone.⁷

The Indian dimension makes the issue particularly important. India has long questioned whether a permanent moratorium would prematurely surrender tariff and policy space for developing economies whose future digital imports may grow rapidly. At the same time, India is a major exporter of digitally delivered services and therefore has an interest in predictable, low-friction digital trade. Its position after MC14 reflects that tension. India did not simply demand the immediate return of digital tariffs; rather, it resisted a permanent extension, later indicated openness to a longer temporary period for business certainty, and has continued to raise institutional objections to the plurilateral route used for the E-Commerce Agreement.⁸

This article therefore does not approach the lapse as a binary contest between countries that favour digital taxation and countries that favour free digital trade. The more important issue is the legal architecture that now sits between those policy preferences. If digital tariffs are imposed without resolving classification and valuation, the result could be litigation,

⁶WTO, 'Work Programme on E-Commerce, Moratorium' (updated 2026).

⁷WTO, 'E-Commerce: Post-MC14 Briefing Note' (2026).

⁸Marrakesh Agreement Establishing the WTO, art II(3); WTO, 'DG Okonjo-Iweala calls for simultaneous progress on WTO reform, outstanding negotiations' (14 July 2026).

inconsistent national customs practices and fragmentation of digital markets. If, on the other hand, the WTO simply restores an indefinite moratorium without addressing the underlying questions, the system risks preserving the very ambiguity that produced the current dispute. The appropriate inquiry is consequently whether the post-MC14 period can be used to convert the moratorium debate from a question of “tariff or no tariff” into a more precise negotiation about scope, valuation, development and institutional legitimacy.

Against that background, the paper proceeds in five stages. Part II reconstructs the post-MC14 legal and institutional position and explains why the present situation is genuinely new. Part III identifies the transactions most likely to generate classification disputes. Part IV examines the legal fork between GATT and GATS, including tariff bindings, MFN, national treatment, customs valuation and possible dispute-settlement exposure. Part V reassesses India's revenue and negotiating position. Part VI compares the principal positions of the United States, European Union, Brazil, Türkiye, China and India and considers the practical consequences for businesses and developing economies. Part VII evaluates the policy choices available to India and proposes a more legally grounded negotiating strategy.

II. Where Things Stand: The Lapse and Its Aftermath

The moratorium began as a provisional commitment attached to the 1998 Declaration on Global Electronic Commerce and was subsequently extended through successive ministerial decisions. At MC13 in Abu Dhabi in 2024, Members agreed to maintain the practice of not imposing customs duties on electronic transmissions until MC14 or 31 March 2026, whichever was earlier. At MC14, Members did not reach consensus on an extension, and the Work Programme and moratorium consequently lapsed on 30 March 2026.⁹

The present position is new in a legally important sense. For the first time since the 1998 commitment was introduced, there is no current multilateral ministerial decision maintaining the common practice of not imposing customs duties on electronic transmissions. The WTO agreements have not been amended to create a positive right to levy such duties, nor has the lapse settled whether a particular digital transmission is a good or a service. What has changed is the removal of a collective restraint. That distinction matters because WTO members now face the possibility that domestic customs authorities will be asked to apply ordinary GATT

⁹GATT 1994, art II; WTO schedules of concessions.

disciplines to transactions that previously existed behind the moratorium's protective umbrella.¹⁰

The consequences are international rather than merely fiscal. A first-mover member that imposes a duty on a digital product would create a practical precedent, even if the legal classification remained contestable. Other members would have to decide whether to mirror the measure, challenge it, or redesign their own tax and customs systems. The resulting disputes could concern Article I MFN treatment, Article II tariff bindings, the boundary between GATT and GATS, and the interpretation of customs valuation rules. At the same time, a duty-free bloc operating under the E-Commerce Agreement could create a parallel regime in which firms face different border conditions depending on the destination market. The issue is therefore capable of changing the architecture of digital trade, not merely the amount of customs revenue collected by individual states.¹¹

The development consequences are equally significant. Developing countries have historically relied more heavily on customs revenue than many advanced economies, which explains part of the political appeal of preserving tariff policy space. Yet developing economies are also increasingly dependent on digitally delivered services, cloud infrastructure, software and cross-border platforms. A tariff that appears to protect revenue may therefore increase the cost of imported digital inputs for domestic firms, while a tariff-free regime may preserve access to technologies but reduce a government's future customs base. The post-MC14 environment forces governments to confront that trade-off explicitly rather than postponing it through another routine renewal.

The institutional consequences are particularly important for India. The E-Commerce Agreement is being advanced through interim arrangements among participating members while incorporation into Annex 4 of the Marrakesh Agreement remains unresolved. Article II:3 of the Marrakesh Agreement recognises plurilateral agreements in Annex 4 as part of the WTO framework for members that have accepted them, while expressly stating that such agreements create neither obligations nor rights for non-accepting members. The present controversy is therefore not simply whether members may cooperate plurilaterally; they plainly can. The sharper question is whether the particular interim mechanism, including use of the WTO

¹⁰GATT 1994, arts I and II.

¹¹WTO, Work Programme on Electronic Commerce, WT/L/274 (25 September 1998), paras 2.1 and 3.1.

Director-General as depositary and WTO Secretariat support, can operate within the WTO's institutional architecture without a consensus decision incorporating the agreement into Annex

4. India and Pakistan raised precisely these concerns in July 2026.¹²

III. What Would Actually Be Taxable

The WTO has never defined "electronic transmission." That silence, tolerable while the moratorium banned duties on the category regardless of its boundaries, now matters, because a member wanting to impose a duty has to decide what counts. The honest answer is that classification depends on the specific transaction and is unsettled for several of the categories that matter most today. The table below sets out where the classification is reasonably clear and where it is not.

Transmission	Likely classification	Why it is contested
Streamed film, music or e-book subscription	Service (GATS)	Delivered continuously, not sold as a discrete file; closest to a telecommunications or audiovisual service.
Downloaded software or app, one-time purchase	Contested	Functions like a good if bought outright, like a service if licensed; WTO practice has never resolved this for intangible delivery.
Cloud computing / SaaS session	Service (GATS)	Consistently treated as a Mode 1 service; no member has proposed treating remote computing as a good.
AI foundation model, sold as a standalone file	Contested, closer to a good	Functions like packaged software once transferred, but is more often licensed or accessed by API than sold outright, which pulls it toward a service classification instead.
3D-printing / CAD design file	Contested	US courts have split on whether a design file is a dutiable "article" under customs law; the WTO has not addressed the question at all.
Remote professional services (consulting, legal, architectural)	Service (GATS)	Not contested; these were never treated as goods and duties cannot apply to them under GATS.

¹²GATS, arts I, II, XVI and XVII.

Two categories deserve closer comment. First, AI models and datasets: WIPO's own trade commentary and most customs authorities have not yet taken a public position on how a transferred model checkpoint should be classified, and nothing in this paper's research turned up a single instance of a country actually attempting to value or tax one. The category is real in principle and untested in practice. Second, the 3D-printing example is not hypothetical uncertainty; it reflects an actual US legal dispute, *ClearCorrect Operating LLC v International Trade Commission*, in which the US Court of Appeals for the Federal Circuit held that electronically transmitted digital data are not "articles" for US import law, a domestic ruling that has no binding force at the WTO but signals how at least one major jurisdiction's courts have approached the same underlying question¹³.

A further point that is often stated imprecisely deserves care. If a WTO member imposes a duty on a category of digital import, the Most-Favoured-Nation obligation in GATT Article I requires it to apply that duty equally to imports from every WTO member; it does not require other members to retaliate, and it does not by itself trigger duties elsewhere. Retaliation, if it happens, would come through a separate WTO dispute settlement process or through unilateral trade action outside the WTO, not automatically from the MFN rule. Treating MFN as a mechanism that forces other countries to respond in kind overstates what the obligation actually does.

IV. GATT or GATS? The Legal Fork

The legal fork between GATT and GATS is the central doctrinal problem created by the moratorium's expiration. GATT 1994 is concerned with trade in goods and contains the disciplines most naturally associated with customs duties. Article II requires each Member to accord the commerce of other Members treatment no less favourable than that provided in its Schedule, while Article I requires any advantage relating to customs duties to be accorded immediately and unconditionally to like products originating in all other Members. A digital tariff imposed on a transaction classified as a good would therefore have to be examined against the importing Member's tariff Schedule, the MFN principle, and the other applicable goods disciplines.¹⁴

¹³Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation Agreement), arts 1-8.

¹⁴WTO, Work Programme on Electronic Commerce, WT/L/274 (25 September 1998); see also UNCTAD, Growing Trade in Electronic Transmissions: Implications for the South, Research Paper No 29 (2019).

But classification as a good cannot be assumed merely because the underlying content is capable of being stored on a physical medium. The WTO Work Programme expressly assigned both the Council for Trade in Goods and the Council for Trade in Services responsibility for examining classification and related questions. That institutional design reflects the absence of a settled rule for electronically supplied products. The legal problem becomes especially acute where the same economic product can be supplied in multiple forms: a film can be distributed on a physical disc, downloaded, or streamed; software can be delivered on a physical medium, downloaded under a perpetual licence, or supplied through cloud access. Treating the digital version automatically as the legal equivalent of the physical version would be a policy choice requiring justification, not a proposition that follows mechanically from existing WTO text.¹⁵

If the transaction is instead a service, the legal consequences are materially different. GATS Article I defines trade in services broadly by reference to the four modes of supply, including cross-border supply. Article II establishes MFN treatment for services, while Articles XVI and XVII apply where a member has undertaken relevant commitments in its Schedule. A customs tariff is not the ordinary instrument of GATS market-access regulation. A measure imposed at the border on an electronically supplied service would therefore raise a prior question of legal characterisation and, depending on the measure's design, might have to be assessed under the Member's GATS commitments and general obligations rather than under GATT Article II.¹⁶

The distinction also matters for national treatment. A customs duty imposed uniformly on digital goods from all WTO Members may satisfy Article I's MFN requirement yet still raise questions about the treatment of imported digital products vis-à-vis domestic like products under the broader GATT framework. Conversely, a measure applied to a digitally supplied service could engage GATS Article XVII where a relevant national-treatment commitment exists. The fact that a measure is technologically neutral does not by itself resolve these issues; the legal test depends on the agreement, sector, mode of supply and commitments actually undertaken by the importing Member.¹⁷

¹⁵WTO, 'Agreement on Electronic Commerce' (2026); WTO, 'Members adopt a pathway to bring E-Commerce Agreement into force via interim arrangements' (28 March 2026).

¹⁶UNCTAD, *Growing Trade in Electronic Transmissions: Implications for the South*, Research Paper No 29 (2019); WTO, *Work Programme on Electronic Commerce*.

¹⁷UNCTAD, *Growing Trade in Electronic Transmissions: Implications for the South*, Research Paper No 29 (2019).

A second doctrinal issue is tariff bindings. Article II does not provide an unlimited power to invent new customs duties. Where a transmission is treated as a good, the importing Member's Schedule remains relevant, and any applied rate above the bound ceiling would be exposed to challenge. But it would be incorrect to say that a member can simply take the tariff applicable to the physical equivalent and automatically impose it on its digital equivalent. WTO schedules are product-specific, and tariff classification must have a legal basis. The absence of an established classification for many digital products therefore creates uncertainty not only about whether a duty may be charged, but also about which bound rate would govern.¹⁸

Customs valuation presents an additional difficulty. The WTO Agreement on Implementation of Article VII of GATT 1994 is built around customs valuation of imported goods, with transaction value as the primary method where its conditions are met. Digital transactions often do not resemble conventional import sales. A software subscription may involve recurring payments for access rather than a transfer of ownership; an API may be priced by usage; an AI model may be provided under a licence whose value reflects a bundle of services, support and intellectual-property rights; and a digital design file may have a low standalone price even though it enables manufacture of a high-value physical product. Applying a conventional transaction-value approach to such arrangements could therefore require difficult allocation and valuation rules. The valuation question is not peripheral: without a predictable tax base, even a legally permissible tariff may be administratively impracticable.¹⁹

There is also a potential distinction between a customs duty and an internal tax. The expiration of the moratorium does not prevent Members from using domestic tax instruments merely because the transaction is digital. GST or VAT systems may apply to imported services subject to their own rules, and such measures are analysed under different WTO disciplines from a border tariff. This distinction is particularly relevant to India because it already possesses domestic consumption-tax mechanisms for digital services. The economic case for a customs duty must therefore be assessed separately from the question whether India has any lawful means of taxing digital consumption.²⁰

¹⁸WTO, 'E-commerce: Post-MC14 Briefing Note' (2026).

¹⁹WTO, 'DG Okonjo-Iweala calls for simultaneous progress on WTO reform, outstanding negotiations' (14 July 2026).

²⁰WTO, 'How to accept the Agreement on Electronic Commerce' (2026), art 29 procedure.

Finally, any dispute would have to be assessed within the broader WTO dispute-settlement framework. A complaining Member would need to identify a specific obligation breached by the challenged measure; the mere fact that a digital tariff is economically undesirable would not establish a violation. Conversely, a member defending the tariff could not rely on the moratorium once it had expired. The legal uncertainty therefore cuts both ways. It gives importing states greater room to experiment, but it also makes the first disputes unusually important because a panel's treatment of classification, valuation and the relationship between GATT and GATS could influence future national practice.²¹

V. India's Position: The Revenue Case and Its Limits

India's argument for reopening the moratorium rests on a specific, citable estimate, not a general anxiety about lost sovereignty. UNCTAD's 2019 study estimated potential tariff-revenue losses to developing countries at US\$10 billion using bound rates, or US\$5.1 billion using applied MFN rates, and estimated India's own exposure at approximately US\$497 million. These figures are model-based estimates rather than forecasts of actual collections after the moratorium's lapse.²²

The standard account of India's position, that it stands with Brazil and Türkiye as an opponent of any extension, needs correcting for what actually happened at and after MC14. Commerce and Industry Minister Piyush Goyal's opening statement called for "careful reconsideration" of the moratorium given the absence of a common understanding of its scope²³, which is the position most reporting on India has frozen in place. But by the close of the conference India had signalled it would accept a two-year extension, and within a week Goyal was on record saying India's actual preference was for "a slightly longer period so that businesses can plan their activities"²⁴. That is a materially different position from Brazil and Türkiye, who blocked the longer extension precisely because they did not want one. India's objection at MC14 was to a *permanent* moratorium, not to a durable one; once permanence was off the table, India moved toward the businesses'-predictability argument that the United States and the EU had been making all along, rather than toward Brazil's insistence on keeping the term short. Grouping India with Brazil and Türkiye as a single obstructionist bloc, as much

²¹WTO, 'Agreement on Electronic Commerce' (2026).

²²WTO, 'E-Commerce: Post-MC14 Briefing Note' (2026).

²³Ministry of Commerce and Industry, Government of India, '14th Ministerial Conference of the WTO concluded on March 30, 2026' (31 March 2026).

²⁴WTO, 'E-Commerce: Post-MC14 Briefing Note' (2026).

contemporaneous commentary did in the days immediately after MC14, was accurate for the opening days of the conference and has not been accurate since.

What has remained constant is India's objection to process rather than substance: it has not signed the 67-member Agreement, and it has twice blocked the Agreement's formal incorporation into the WTO's Annex 4, on the ground that a plurilateral text negotiated by fewer than half the membership should not acquire multilateral legal status without multilateral consensus, and that the WTO Director-General's role as depositary for the interim arrangement lacks a clear basis in the Marrakesh Agreement²⁵. This is a legitimate institutional argument, not a pretext, and India has made the identical argument on other plurilateral texts, including standing alone in 2026 against incorporating the Investment Facilitation for Development agreement on the same procedural ground²⁶. A critical reading has to hold two things at once: India's procedural objection is principled and consistent, and it also happens to serve India's substantive interest in preserving its own freedom to impose duties later, since accepting the Agreement's incorporation into WTO law would foreclose that option for India specifically, not just validate it for the 67 members already inside it. The two explanations are not mutually exclusive, and treating either one alone as the full story understates the position.

VI. Comparative Positions

The comparative positions of the major actors reveal why the lapse is unlikely to produce a single global policy in the near term. Japan, Australia and Singapore, as the co-convenors of the underlying negotiations, moved quickly toward the E-Commerce Agreement's interim implementation mechanism because their principal concern is predictability for cross-border digital trade. The United States did not join the ECA; instead, after the WTO General Council's 6-7 May 2026 meeting failed to revive a multilateral moratorium, it led a separate, narrower open-ended plurilateral commitment among nineteen WTO Members not to impose customs duties on electronic transmissions between themselves.²⁷ The European Union has broadly shared the preference for a stable, duty-free digital environment. The commercial logic is straightforward: firms making software, cloud services, digital content and digitally enabled products can price and invest more easily when border treatment does not change according to

²⁵WTO, 'Trade Topics: Electronic Commerce - Work Programme' (1998).

²⁶Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation Agreement), arts 1-8.

²⁷Digital Watch Observatory, 'WTO members form duty-free pact after e-commerce moratorium lapses' (dig.watch, 8 May 2026) <<https://dig.watch/updates/wto-ecommerce-moratorium-digital-trade-pact>>

the country of destination. The ECA's participants are therefore attempting to turn a temporary moratorium into a more durable legal commitment among a critical mass of economies.²⁸

For businesses, the practical effect is already a form of regulatory fragmentation. A multinational software company may sell an identical product to customers in India, Singapore and an ECA-participating market. If one jurisdiction eventually imposes a customs duty on the downloaded version while the others maintain a duty-free commitment, the company will face different pricing, compliance and contractual allocation questions even though the underlying digital product is identical. The problem is magnified where a product is supplied through a hybrid model - for example, software downloaded once but supported through a cloud service. Customs authorities may have to separate the value of the file from the value of continuing services, while firms will have to maintain records capable of demonstrating how the transaction should be characterised.²⁹

The position of Brazil and Türkiye illustrates a different concern. Their resistance to a longer extension at MC14 was not necessarily an endorsement of immediate tariff imposition. Rather, it reflected reluctance to lock in the existing arrangement for a longer period without resolving the distributional and developmental questions underlying the moratorium. For developing economies, the question is partly about fiscal space and partly about the structural transformation of trade. If digitalisation steadily replaces physical imports - such as physical books, recorded media or software distributed on discs - the traditional customs base can erode even while consumption and economic value continue to grow. A permanent moratorium could therefore have opportunity costs for governments that depend on tariffs more heavily than advanced economies do.³⁰

China occupies a more complex position. It did not co-sponsor the interim arrangements at MC14 but has supported their implementation. This illustrates that participation in the emerging duty-free architecture does not necessarily mean that a state has abandoned all concerns about digital sovereignty or domestic regulation. It also demonstrates that the ECA is developing as a trade-rule project separate from the unresolved multilateral moratorium. The two processes should not be treated as interchangeable: one is a temporary multilateral restraint

²⁸WTO, 'DG Okonjo-Iweala calls for simultaneous progress on WTO reform, outstanding negotiations' (14 July 2026).

²⁹Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation Agreement), arts 1-8.

³⁰UNCTAD, *Growing Trade in Electronic Transmissions: Implications for the South*, Research Paper No 29 (2019).

that has lapsed; the other is a plurilateral agreement moving toward implementation among participating Members.³¹

India's position is distinctive because the country is simultaneously a potential importer of high-value digital technologies and one of the world's major exporters of digitally delivered services. A tariff on imported software, cloud functionality or AI-related inputs could raise costs for Indian businesses that depend on those technologies, while the ability to levy tariffs could preserve negotiating leverage and future fiscal space. India's refusal to join the ECA interim arrangements therefore has consequences beyond a procedural dispute. It preserves policy space, but it also exposes Indian firms to the possibility of operating in a more fragmented digital-trade environment if the ECA becomes operational among a large group of Members.³²

The July 2026 General Council discussion demonstrates that the institutional controversy is still live. India and Pakistan questioned the interim arrangements' reliance on the WTO Director-General as depositary, WTO Secretariat support, and the proposed committee structure. The Director-General responded that acting as depositary was consistent with international law, WTO practice and precedent, while acknowledging that the broader institutional and governance questions remain for Members to resolve. This exchange is significant because it shows that the post-MC14 dispute is no longer only about customs duties. It has become a question about how far plurilateral rule-making can be operationalised through WTO institutions without being incorporated into the multilateral rulebook.³³

The consequence is therefore a layered system rather than a clean return to the pre-1998 world. There is no longer a universal moratorium; there is an ECA process supported by a substantial group of Members; there are Members such as India preserving their freedom of action; and there are unresolved legal questions about classification and valuation. The immediate impact may be limited because governments have strong incentives not to impose administratively unworkable duties. The medium-term impact, however, could be considerable if one or more Members develop a workable customs model and others copy it. The first successful

³¹WTO, 'Agreement on Electronic Commerce' (2026); WTO, 'Members adopt a pathway to bring E-Commerce Agreement into force via interim arrangements' (28 March 2026).

³²Digital Watch Observatory, 'The WTO Joint Initiative on e-commerce' (dig.watch, updated 11 May 2026) <<https://dig.watch/processes/wto-ecommerce>>

³³Trade β Blog, 'US, Brazil join India, Pakistan in querying WTO status of e-commerce deal' (Trade Beta Blog, 15 July 2026) <<https://tradebetablog.wordpress.com/2026/07/15/us-brazil-india-pakistan-querying-e-commerce-deal/>>

implementation would reduce the uncertainty that currently deters action and could turn today's legal grey area into a contested new category of international trade regulation.

VII. Critical Assessment: What India Should Actually Do

The 2026 lapse leaves India with real choices, not merely renewed uncertainty. The strongest response is not an immediate tariff nor unconditional acceptance of the ECA, but a strategy that preserves policy space while offering concrete legal solutions to the problems identified above. India should therefore distinguish the substantive question of digital tariffs from the institutional question of how the ECA is incorporated into the WTO framework.

Joining the ECA is the option India is least likely to take and probably should not take yet. Doing so would resolve India's own tariff uncertainty but would also reduce the policy space India has preserved for two decades. Continuing to object to Annex 4 incorporation while not imposing an actual duty is therefore defensible in the near term, but it should not become a substitute for a positive negotiating strategy.

The stronger path is a long but time-bound multilateral extension, coupled with a working definition of “electronic transmission” and a customs valuation methodology that accounts for subscription, licence and usage-based transactions. India should also insist that any future regime contain development safeguards, technical assistance and a review mechanism. This would convert India's demand for policy space into a concrete legal proposal rather than a general objection.

India should therefore move beyond a binary choice between joining the ECA and imposing digital tariffs. A more defensible strategy would combine preservation of policy space with an affirmative negotiating proposal.

First, India could support a time-bound multilateral extension of the moratorium rather than a permanent one, with a mandatory review before expiry. The extension should be expressly linked to work on classification and valuation rather than functioning as another open-ended postponement.

Second, India should propose a technical definition of the transactions covered by any future moratorium or tariff discipline, distinguishing electronically supplied services from

downloadable digital products and addressing hybrid transactions such as software-plus-cloud subscriptions.

Third, India should place customs valuation at the centre of the negotiation. Instead of merely asking for further study, it could propose a working group to develop model valuation rules for subscription, licence, API and usage-based transactions. Any model should minimise double taxation and prevent the customs value of a digital transmission from inadvertently including unrelated domestic services.

Fourth, India should seek development safeguards: longer implementation periods for developing economies, technical assistance for customs administrations, transparent notification requirements and a commitment to assess the revenue and consumer-cost effects of any future tariff regime. These measures would give substantive content to the development concerns that have long underpinned India's position.³⁴

Fifth, India should separate its institutional objection to the ECA interim arrangements from the substantive question of duty-free digital trade. The July 2026 exchange shows that the two issues are already being discussed together, but they need not be resolved together. India can maintain that Annex 4 incorporation requires the appropriate WTO consensus while simultaneously supporting negotiations on the substance of digital-trade rules. This would make India's position harder to characterise as obstructionist because it would pair its institutional objection with a concrete alternative pathway.³⁵

Sixth, India should conduct a domestic impact assessment before exercising the newly available policy space. Such an assessment should compare at least three scenarios: continued duty-free treatment; a narrowly targeted tariff on clearly classified digital goods; and a broader tariff or tax regime extending to digital services. The assessment should measure customs revenue, GST interaction, compliance costs, effects on Indian start-ups and MSMEs, and potential consequences for India's digitally delivered exports. A measure that generates customs revenue but increases the input cost of digital technology for Indian firms could

³⁴UNCTAD, Digital Economy Report 2021: Cross-border Data Flows and Development-For Whom the Data Flow (2021).

³⁵Trade β Blog, 'US, Brazil join India, Pakistan in querying WTO status of e-commerce deal' (Trade Beta Blog, 15 July 2026) <<https://tradebetablog.wordpress.com/2026/07/15/us-brazil-india-pakistan-querying-e-commerce-deal/>>

produce a negative net effect.

Finally, India should preserve the possibility of WTO-consistent experimentation only where the legal basis is sufficiently clear. It should not attempt to impose a tariff on cloud services or other clearly service-oriented transactions merely because the moratorium has lapsed. Nor should it assume that a physical equivalent determines the tariff classification of its digital counterpart. A cautious, notification-based approach would allow India to preserve leverage while reducing the risk of being the first state to create a disputed precedent.

VIII. Conclusion

The lapse of the WTO e-commerce moratorium on 30 March 2026 is significant, but not for the simple reason that digital tariffs have suddenly become inevitable. The moratorium was a temporary ministerial restraint layered onto an incomplete legal framework. Its expiration removes that restraint, but it does not answer the questions that members postponed for almost three decades: what counts as an electronic transmission, whether a particular digital product is a good or a service, how its customs value should be calculated, and which WTO commitments govern the resulting measure. Those questions now matter because governments have greater freedom to test the boundaries in practice.³⁶

The post-MC14 landscape is accordingly more fragmented than the pre-lapse regime. The multilateral moratorium has disappeared; the E-Commerce Agreement is moving toward implementation among a substantial group of Members through interim arrangements; and countries such as India retain their policy space while challenging the institutional route by which the plurilateral agreement is being operationalised. The July 2026 General Council discussion confirms that the institutional question remains unresolved. The result is not a tariff war but a new period of legal experimentation and institutional competition.³⁷

The analysis also shows why the consequences cannot be measured only in customs revenue. For developing countries, tariffs may preserve fiscal and negotiating space, but digital imports are increasingly productive inputs. A duty on software, cloud computing or AI infrastructure can therefore function simultaneously as a revenue measure and a cost imposed on domestic

³⁶WTO, Work Programme on Electronic Commerce, WT/L/274 (25 September 1998).

³⁷Trade β Blog, 'US, Brazil join India, Pakistan in querying WTO status of e-commerce deal' (Trade Beta Blog, 15 July 2026) <<https://tradebetablog.wordpress.com/2026/07/15/us-brazil-india-pakistan-querying-e-commerce-deal/>>

firms. For exporters, fragmented national rules can increase compliance costs and undermine the predictability that digital trade requires. For the WTO system, the first successful tariff imposed on an electronically delivered product could become disproportionately important because it would supply the jurisprudential and administrative template that the moratorium had prevented from emerging.

India therefore faces a more nuanced choice than either permanent acceptance of the ECA or immediate resort to digital tariffs. Its strongest position is to preserve negotiating leverage while proposing a concrete alternative: a time-bound multilateral extension, a precise working definition of electronic transmissions, a technically credible valuation methodology, development safeguards, and a structured review mechanism. At the same time, India should maintain its institutional objection to incorporation of the ECA into Annex 4 unless the required multilateral process is satisfied, while demonstrating that the objection is accompanied by substantive proposals rather than simple resistance.

The central lesson of the post-MC14 period is therefore that the end of the moratorium should be treated as the beginning of the WTO's digital-tariff problem, not its solution. A durable international settlement must reconcile three objectives that the moratorium kept temporarily apart: preserving fiscal and regulatory space for developing economies, maintaining predictable and low-friction digital trade, and ensuring that new rules are adopted through legally legitimate WTO procedures. India is well placed to shape that settlement if it moves from defending policy space in the abstract to proposing the legal definitions, valuation rules and institutional safeguards necessary to make that policy space compatible with a functioning multilateral trading system.

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