Why Should WTO Members Support Extension of the WTO Moratorium on Customs Duties on Electronic Transmissions?

Countries around the world have benefited from an unprecedented period of growth and innovation powered by the software-enabled digital economy. Through software, the rapid seamless global exchange of data and ideas has engendered economic opportunities for countries all over the world, growing economies, creating jobs, and raising living standards.

The World Trade Organization (WTO) Moratorium on Customs Duties on Electronic Transmissions (Moratorium), which has facilitated that economic growth, is up for renewal in the coming months. WTO Members should vote in favor of an extension. No country will benefit from an end to the Moratorium, but those countries that choose to impose customs requirements on electronic transmissions will suffer the most.

Why Does the WTO Moratorium Matter?

The Moratorium is an agreement not to impose customs duties on cross-border electronic transmissions. Some countries have begun, or are considering, imposing customs duties and requirements on those transmissions, including enterprise software solutions. While imposing such duties may sound appealing, it is ultimately a self-defeating step that will reduce those countries' competitiveness, undermine their exports, and hurt their consumers and workers.

A country that levies such duties is increasing its own industries' costs of accessing a wide array of technologies and data sources that are critical to growth and innovation, business operations, and the transfer of technology.

This includes:

- productivity-enhancing software solutions;
- scientific, research, and other publications; and
- manufacturing data, blueprints, and other operational information.

Self-imposed restrictions on enterprise software solutions will hinder economic development. These and other transmissions are necessary for industries to compete in the marketplace, invest in the future, and hire workers locally.

The Economic Damage to Countries Imposing Customs Duties on Software & Other Electronic Transmissions Could be Severe

Countries should be wary of the claim that they would benefit by imposing customs duties on software and other electronic transmissions. According to a study recently published by the European Centre for International Political Economy (ECIPE), gross domestic product (GDP) losses would dwarf the value of customs duties collected by 160 times for Indonesia, 49 times for India, and over 25 times for South Africa, when the risk of retaliatory or corresponding duties imposed by other countries is taken in to account.[1] The impacts on these countries' digital exports of film, music, publications, software, and other types of electronic transmissions could be severe. Across even just a handful of developing countries, ECIPE estimates the annual GDP losses at US$10.6 billion.

[1] Makiyama and Narayanan, The Economic Losses From Ending the WTO Moratorium on Electronic Transmissions (August 2019), available at: https://ecipe.org/wp-content/uploads/2019/08/ECI_19_PolicyBrief_3_2019_LY04.pdf

Imposing Customs Duties on Software & Other Electronic Transmissions Will Hurt Local Industries and Economies

In today's global marketplace, companies seek to gain an edge by integrating software and other emerging technologies at every stage of the production and value chain. Data-enabled software innovations, which are most often electronically accessed via cloud computing, are connecting suppliers, manufacturers, and service providers around the world, while accelerating efficiencies relating to product design, engineering, production, logistics, marketing, and servicing. Software is the tool that drives these efficiencies.

Local industries need cross-border access to best-in-class software and data. By imposing customs requirements on local industries, countries will hurt their own future economic growth and competitiveness. Faced with higher software costs, local industries will become less competitive vis-à-vis their foreign competitors – threatening both domestic and export market sales. Furthermore, as customs duties would impose an unnecessary burden on industries operating in those countries imposing them, they would also undermine those countries' attractiveness as a destination for investment and R&D.

Countries that Impose Customs Duties on Software & Other Electronic Transmissions Face Significant Legal Exposure

At a time of ongoing WTO digital trade negotiations and uncertainty in the global trading system, countries should be careful not to create unnecessary legal exposure for themselves by imposing customs duties or other requirements on electronic transmissions. Some have discussed the imposition of duties on digital services provided via the cloud or remote access or the imposition of such duties exclusively on foreign enterprises. These scenarios raise serious questions regarding both differential treatment and the scope of Member authority to impose tariffs on services.

The nature of electronic transmissions, which often consist of data packets transiting multiple servers in multiple jurisdictions, makes country of origin determinations difficult – if not impossible. Finally, for those seeking to use the World Customs Organization (WCO) to negotiate these tariffs or to address related legal questions, it is important to recall that the WCO's mandate is limited to enhancing the effectiveness and efficiency of Customs administrations – not tariff negotiations or determinations of the WTO consistency of such tariffs.

Conclusion

For the foregoing reasons, WTO Members should vote in favor of an extension of the Moratorium.