

Customs Duties on Software and Other Digital Exports – A Threat to Growth and Innovation

The United States and many other countries around the world have benefited from an unprecedented period of growth and innovation powered by the software-enabled digital economy and supported by the World Trade Organization (WTO) Moratorium on Customs Duties on Electronic Transmissions (Moratorium) – an agreement among WTO members not to impose customs duties on cross-border electronic transmissions.

Today, that growth and innovation is threatened as countries are considering terminating this agreement and imposing – for the first time ever – customs duties on software, music, film, and other digital products and services transmitted electronically over computer networks. Such duties jeopardize US jobs and exports.

US policymakers should encourage countries to vote in favor of an extension of the Moratorium and should resist efforts to negotiate these issues at the World Customs Organization (WCO), which lacks the mandate to set such duties.

Why Does the WTO Moratorium Matter?

Customs duties on electronic transmissions would impact a wide range of US digital exports – potentially including subscription or streaming services for music, film, and publications; cloud and other remote software services; app updates and software security patches; data used in manufacturing plants; and a broad catch-all category of “other digital products.”

Some countries have even begun, or are considering, imposing customs duties and requirements on cross-border electronic transmissions. For example, in 2018, Indonesia issued Regulation No.17/PMK.010/2018 (Regulation

17), which amends the Indonesian Harmonized Tariff Schedule to add Chapter 99: “[s]oftware and other digital products transmitted electronically.” The measure has never been fully implemented, but if the Moratorium is terminated this could very well change.

If implemented around the world, measures imposing customs duties on electronic transmissions would have an immediate impact on the global economy – harming not only American digital exporters and workers, but also local industries, workers, and consumers in the implementing countries.

The United States Stands to Lose Jobs and Exports Across Digital Industries if Countries Impose these Duties

Software contributes \$1 trillion to US Gross Domestic Product (GDP) and employs over 10 million Americans in jobs that pay more than two times the national average wage. Ending the Moratorium and imposing customs duties on electronic transmissions of software would jeopardize this economic prosperity. Additional impacts exist for American film, music, and other digital exports too.

Regulation 17 purports to cover a wide array of categories, classified in Indonesia’s tariff schedule between subheadings 9901.10.00 to subheading 9901.90.00, including “multimedia (audio, video or audiovisual)”; operating system software; application software; “support or driver data, including design for machinery system”; and a broad catch-all category covering “other software and digital products.”

Countries Imposing Customs Duties Face the Greatest Economic Risks

Countries imposing these duties have the most to lose: Such duties put at risk those countries' global competitiveness, exports, jobs, and consumer welfare. For example, a country that levies such duties would increase its own industries' costs of accessing critical technologies and data, including productivity-enhancing software solutions; scientific, research, and other publications; and manufacturing data, blueprints, and other operational information.

Local industries need cross-border access to best-in-class software and data. 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 local industries, they would also undermine those countries' attractiveness as a destination for investment and R&D.

Estimated trade impacts are striking. According to a study recently published by the European Centre for International Political Economy (ECIPE), gross domestic product (GDP) losses would exceed 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

Countries Imposing Customs Duties Also Face Legal Risks

Countries imposing such duties on electronic transmissions would also create unnecessary legal risk for themselves. Some countries 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 WTO Member authority to impose tariffs on such 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. Additionally, for those seeking to use the 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.

Is There Another Way?

Discussions are underway among countries at the Organization for Economic Cooperation and Development (OECD) to reach a multilateral agreement to address the challenges to the international tax system posed by an increasingly digitized global economy. Any such internal taxes would need to be applied on a neutral and non-discriminatory basis, consistent with WTO and other international obligations.

Conclusion

We respectfully ask the US government to encourage countries to vote in favor of an extension of the Moratorium and to resist efforts to improperly negotiate these issues at the WCO.

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