# The E-Commerce Moratorium: The looming threat of tariffs for digital trade

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**I've never heard of the Moratorium – what is it?** The E-Commerce Moratorium is a longstanding agreement among members of the World Trade Organization not to impose tariffs (taxes paid at the border) on digital trade. Its full name is the "Moratorium on the imposition of Customs duties on electronic transmissions". Until recently, it has not had much of a profile outside of specialised trade circles – trade over the internet has always taken place without any tariffs, so it has been a largely theoretical issue.

**Why is it in the news now?** The Moratorium was first agreed by WTO members in 1998 and has been renewed periodically since then. It was last rolled over at the 13th WTO Ministerial Conference (MC13) in February 2024 – but, under strong pressure from some WTO members, specific wording signals its termination at the next Ministerial Conference in 2026, MC14, or by 31 March that year.

**So does that mean it will end in 2026? What would happen then?** WTO members could still agree to extend the Moratorium in 2026 – but this would have to be negotiated, and needs to be done by consensus. Several WTO members (including India, Indonesia, South Africa and Brazil) currently strongly oppose the continuation of the Moratorium. If the Moratorium were removed, countries would not *necessarily* take action to impose tariffs – but they *could.*

**Why should I be worried – what does it apply to?** This is tricky: the wording of the Moratorium is ambiguous and countries have their own views on how it is defined and what it implies.

**Definitions: What are we talking about?**

There is no agreement on how to define "electronic transmissions". Some argue that the Moratorium is limited to the kinds of "digitisable goods" that were once only able to be traded physically, for example in a book, CD or DVD, such as e-books, streamed movies or music, or software downloads. Others suggest that the Moratorium (and its removal) could apply to *any* digitally-delivered service – affecting many more products and companies.

At present, there are no tariffs on any kind of digital trade – if you sell e-books, film, music, videogames, software, or other services over the internet to customers in other markets, you do not pay a tariff.

*Note that this issue is not the same as:*
*i) physical goods sold via e-commerce platforms, such as buying a gadget on Amazon, paying tariffs (this is allowed)*
*ii) digital services attracting GST or VAT in some markets (this is also already allowed)*
*iii) tech companies paying tax.*

**Who would apply tariffs, and at what level?**

If the Moratorium were to be removed, the outcome could vary significantly by country.

Some countries might decide to impose tariffs – but whether they do so in 2026 or later, the level at which they might set any tariffs, the products/services to which they would apply them, and the basis for doing so (including how they would determine the "origin" of the transmission), are not clear.

What this means in practice is that the removal of the Moratorium will create a more unpredictable operating environment for businesses engaging in digital trade.

It is also likely to mean that in some markets, exporters face new tariffs.

However, many countries will *not* apply tariffs, regardless of what happens with the Moratorium – many do not see it as good policy, and have made legally-binding commitments in existing FTAs not to do so.

**Why are some countries keen to remove the Moratorium?** Some WTO members are concerned that they are missing out on a potentially valuable revenue stream from digital trade, although authoritative research by the OECD and others shows that this is a misconception: the share of potential government revenues foregone is tiny, and in any case, such a policy would not factor in the downsides, including for overall economic growth and small businesses, which would far outstrip any revenues that could be collected.

> **Case study: Indonesia**
> In January 2023, Indonesia introduced new procedural rules to implement a requirement to complete an import declaration for the importation of digital products – Minister of Finance Regulation 190/PMK.04/2022 (MOF 190/2022). Intangible goods such as software, operating systems and digital tools are covered by the new regulation, although the full scope is not clear (for example, whether or not software updates for machines and devices are included). Authorised importers must be registered and complete a customs declaration. Currently, applicable tariffs are zero, but this may change if the Moratorium is removed.

**What are the next steps?** Many countries (including New Zealand), international institutions, thinktanks and business groups are very worried about the potential end of the Moratorium. Many issued statements, position papers and evidence-based research in the lead-up to MC13.

There are negotiations underway in Geneva at present involving a subset of WTO members to negotiate a new plurilateral agreement on digital trade – the "E-Commerce Joint Initiative". Participants in this process are aiming to include a permanent Moratorium on the use of tariffs in digital trade – but any final deal may not include this provision, or may not include countries that want to impose tariffs. These negotiations are due to conclude mid-2024.

There is also a process in the WTO to build out WTO members' understanding about the impact of the Moratorium and its removal, ahead of MC14. However, ultimately the decision to negotiate the extension of the Moratorium is a political one – and positions have become firmly entrenched.

**How many New Zealand FTAs include the Moratorium?** A number of New Zealand FTAs include a provision in which the Parties agree *not* to impose Customs duties, and this provision is *not* linked to the outcome of the WTO process. These FTAs include agreements with Singapore, Thailand, Taiwan, the United Kingdom and the European Union, as well as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (including Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, the UK and Viet Nam) and the Digital Economy Partnership (including Chile, Singapore and Korea). These commitments will continue, regardless of what happens in the WTO. In other cases, provisions tie the imposition of Customs duties to whatever may happen in the WTO, including in New Zealand FTAs with the Association of Southeast Asian Nations, and with China.

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