



## Unpacking the WTO MC13 Decision on the Work Programme on Electronic Commerce

By Vahini Naidu \*

### ABSTRACT

The 13th Ministerial Conference (MC13) of the World Trade Organization (WTO) adopted a decision that marks a pivotal shift in the operational framework of the Work Programme on Electronic Commerce (WPEC) of the organisation. This Policy Brief examines how this Decision can enhance the trajectory of the e-commerce discourse within the WTO, elaborates on its implications and makes recommendations aimed at facilitating developing countries' engagement in the WPEC.

**KEYWORDS:** Work Programme on Electronic Commerce (WPEC), 13th Ministerial Conference (MC13), World Trade Organization (WTO), Moratorium on customs duties on electronic transmissions

*La 13e Conférence ministérielle (CM13) de l'Organisation mondiale du commerce (OMC) a adopté une décision qui marque un tournant dans le cadre opérationnel du Programme de travail sur le commerce électronique (WPEC) de l'organisation. Ce rapport sur les politiques examine comment cette Décision peut améliorer la trajectoire du discours sur le commerce électronique au sein de l'OMC, développe ses implications et formule des recommandations visant à faciliter l'engagement des pays en développement dans le WPEC.*

**MOTS-CLÉS:** Programme de travail sur le commerce électronique, 13e Conférence ministérielle (CM13), Organisation mondiale du commerce (OMC), Moratoire concernant les droits de douane sur les transmissions électroniques

*La 13ª Conferencia Ministerial (MC13) de la Organización Mundial del Comercio (OMC) adoptó una decisión que marca un cambio fundamental en el marco operativo del Programa de Trabajo sobre el Comercio Electrónico (WPEC) de la organización. Este informe sobre políticas examina cómo esta Decisión puede mejorar la trayectoria del discurso sobre el comercio electrónico dentro de la OMC, elabora sobre sus implicaciones y formula recomendaciones destinadas a facilitar la participación de los países en desarrollo en el WPEC.*

**PALABRAS CLAVES:** Programa de Trabajo sobre el Comercio Electrónico, 13ª Conferencia Ministerial (MC13), Organización Mundial del Comercio (OMC), Moratoria sobre la imposición de derechos de aduana a las transmisiones electrónicas

### KEY MESSAGES

- The MC13 decision expands on the scope of the WTO WPEC, enhances IGO collaboration and formalises the dedicated discussions process.
- WTO Members must clearly define the relationship between the dedicated discussions and the General Council. The added complexity of multiple discussion channels risks complicating and potentially hindering the development of actionable recommendations to MC14.
- The acknowledgment of "digital industrialization" marks a significant milestone for developing countries. Active and substantive engagement on this critical issue is essential moving forward.
- The scope and scale of cross-border trade under the moratorium on customs duties on electronic transmissions remain unclear after more than two decades. Members should consider developing a list of digitizable products traded under the moratorium and disclosing data on cross-border electronic transmissions. Doing so will improve transparency, build trust and accountability, and aid in making well-informed policy decisions within the digital economy.

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## Extension of the e-commerce moratorium

Trade Ministers adopted a [Decision](#) on the Work Programme on Electronic Commerce (WPEC) at the World Trade Organization's (WTO) Thirteenth Ministerial Conference (MC13), which took place from 26 February to 2 March 2024 in Abu Dhabi, United Arab Emirates. Much like the last two ministerial conferences, it was expected that the renewal of the time-bound moratorium on customs duties on electronic transmissions would be contested by [India and Indonesia](#), and [South Africa](#). They were joined by Brazil and Pakistan at the MC13 who sought to bring an end to the 'temporary' moratorium which was routinely renewed at ministerial conferences and has been in place cumulatively for more than twenty-two years since 1998, with two notable exceptions. There was no moratorium in place between 4 December 1999 to 13 November 2001 because a Seattle Declaration was not adopted; and between 15 September 2003 to 31 July 2004 because a Cancun Ministerial Declaration was not adopted. WTO Members did not introduce measures to levy customs duties on electronic transmissions during the period (two years and nine months) where no moratorium was in place.

During the intensive negotiations overseen by the Facilitator in small group meetings at the MC13, four textual options were considered.

1. To reinvigorate the WPEC and maintain the moratorium until the Fourteenth Ministerial Conference (MC14). This option provided for a review of the decision then;
2. To reinvigorate the WPEC and maintain the moratorium until MC14. This option explicitly spelt out that the WPEC and moratorium "will expire on that date";
3. To reinvigorate the WPEC only. On the moratorium, the option was to remain silent (implying termination) or language that Members agree to terminate the moratorium;
4. Members agree to terminate both the WPEC and moratorium.

The negotiation challenges presented by the aforementioned options proved to be complex for WTO Members. To agree to terminate the moratorium would alter the dynamic of positive consensus decision-making according to the Marrakesh Agreement because instead of requiring WTO Members' consensus to continue with the moratorium for two more years (as was the case for all previous decisions), the decision would permit the moratorium to continue unless all Members agreed to terminate it. This approach would have resulted in more discussions thereby prolonging the urgency by some Members to secure the continuation of the moratorium. It would also have implications for the 12th Ministerial Conference ([MC12 Ministerial Decision](#)) on the WPEC in which the morato-

rium would, at the latest, end on 31 March 2024, unless Ministers or the General Council took a decision to extend. If the decision remained silent on it, then the time-bound moratorium would have come to an end as proposed by India and Indonesia. [Fifty-eight WTO Members](#) disagreed with this, strongly advocating for the continuation of the moratorium until MC14 including Australia, China, European Union (comprising of 27 WTO Members), Japan, New Zealand, Singapore, Switzerland, and the United Kingdom. Interestingly, despite its pivotal role in shaping the original [1998 Geneva Ministerial Declaration on Global Electronic Commerce](#), declaring in two seemingly innocuous lines "that Members will continue their current practice of not imposing customs duties on electronic transmissions," the United States did not join the proposal. This is notable because the US has been a [leading advocate](#) for a permanent moratorium and stands to gain (and has gained) significantly from a duty-free cyberspace.

As the negotiations unfolded in Abu Dhabi, the possibility of reaching outcomes on agricultural reform and fisheries subsidies dwindled, shifting the spotlight on the WPEC. Under immense pressure, and with minutes to spare before the closing session, consensus was reached to reinvigorate the WPEC and moratorium. The extension of the moratorium until MC14 was celebrated as a significant achievement by WTO pundits and big business, while the newly adopted ministerial decision broadened the scope of the WPEC's activities. These developments marked important, albeit potentially complex steps forward in the discussions on e-commerce in the WTO, raising certain questions about how the future of work in the WPEC will be carried out. The following section examines the relevance of the MC13 decision and provides a brief commentary of its implications.

## Interpreting the MC13 Decision

### Paragraph 1

"We agree to continue to re-invigorate the work under the Work Programme on Electronic Commerce, based on the mandate as set out in WT/L/274, and with particular focus on its development dimension, taking into account the economic, financial and development needs of developing and least-developed country Members."

### Comment:

Preserves the 1998 mandate under the comprehensive WPEC in [WT/L/274](#) with a specific emphasis on the development dimension. According to the 1998 WPEC, the issues to be examined by the Committee for Trade and Development (CTD) include: a) effects of electronic commerce on the trade and economic prospects of developing countries, notably of their small- and medium-sized enterprises (SMEs), and means of maximizing possible benefits accruing to them; b) challenges to and ways of enhancing

the participation of developing countries in electronic commerce, in particular as exporters of electronically delivered products: role of improved access to infrastructure and transfer of technology, and of movement of natural persons; c) use of information technology in the integration of developing countries in the multilateral trading system; d) implications for developing countries of the possible impact of electronic commerce on the traditional means of distribution of physical goods; e) financial implications of electronic commerce for developing countries.

## Paragraph 2

“We welcome the constructive engagement in the Dedicated Discussions which included the exchange of experiences and submissions on several e-commerce-related topics and agree to deepen such discussions on e-commerce-related topics as identified by Members building on work from previous Dedicated Discussions. We agree to hold further discussions and examine additional empirical evidence on the scope, definition, and the impact that a moratorium on customs duties on electronic transmissions might have on development, and how to level the playing field for developing and least-developed country Members to advance their digital industrialization.”

### Comment:

Expands the WPEC formally by reaffirming the ‘Dedicated Discussions’ process which is an additional activity that was brought under the auspices of the General Council (GC) since January 2023. This was a process established and convened by the ‘Facilitator’ of the WPEC and the Moratorium who was appointed by the GC Chair in 2022.

a. While it is not explicitly stated, it may be presumed that the Dedicated Discussions will be convened under the auspices of the GC (as Paragraph 4 of the Decision instructs the GC to hold periodic reviews on the WPEC) as they have been done in the past.

b. The Dedicated Discussions cannot legally substitute the tasks already assigned under the 1998 WPEC (WT/L/274) due to its reaffirmation in Paragraph 1 in which work is expected to be reinvigorated in the respective WTO bodies i.e., Committee on Trade and Development (CTD), Committee on Trade in Goods (CTG), Council for Trade in Services (CTS), and Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council), with a focus on development. However, if the momentum and Members’ interests in 2023 is anything to go by, the Dedicated Discussions are likely to overshadow the work in the relevant WTO bodies. There are more than 350 pages of reporting under the Dedicated Discussions held in 2023. There is a clear risk, at least in practice, that the Dedicated Discussion process will become the focal point for discussions on “several e-commerce-related topics”.

c. This new Dedicated Discussion activity or process specifically spells out the examination of ‘additional empirical evidence’ on the scope, definition, and the impact of the moratorium on development. It is partially a variation of the proposals by the African, Caribbean and Pacific (ACP) Group and Australia *et al.* It is still not clear what is meant by “additional empirical evidence” in this context. Presumably it is an undertaking to look at more data and research, indicating an evidence-based approach to the discussions, where decisions or conclusions will be informed by factual and empirical data rather than assumptions or theoretical models based on disputed methodologies on the subject matter in the past. Nevertheless, significant gaps in Members’ understanding of the e-commerce landscape persist, particularly regarding the scope and scale of cross-border trade under the moratorium on customs duties on electronic transmissions. This situation presents a valuable opportunity for Members to collaborate on enhancing the methods for collecting and disclosing data related to trade in cross-border electronic transmissions. The WTO Secretariat along with some Members and potentially other intergovernmental organisations (IGOs) as per Paragraph 3 are likely to be interested in conducting further analysis on the moratorium. It is critical that it is Member-driven, analyses conducted under the WPEC are prepared in an objective and balanced manner, with clearly defined parameters, and are peer-reviewed.

d. It will be important to clarify upfront the relationship between the Dedicated Discussion process and the formal intervention of the GC.

i. First, WT/L/274 specifically states that, “All aspects of the work programme concerning the imposition of customs duties on electronic transmission shall be examined in the General Council.” It also lists the CTG as the competent body to examine “customs duties and other duties and charges as defined under Article II of GATT 1994” as they relate to the relevant provisions of the General Agreement on Tariffs and Trade (GATT) 1994, the multi-lateral trade agreements covered under Annex 1A of the WTO Agreement; and the CTS to examine customs duties as it relates to the General Agreement on Trade in Services (GATS) legal framework. In practice this now means that there are four different streams established under the 1998 and now expanded 2024 WPEC in which discussions on the moratorium can take place i.e., CTG, CTS, GC, and the Dedicated Discussion. It is worth pointing out that the CTD mandate in WT/L/274 is also expansive and the moratorium could be considered in that WTO body too.

ii. Second, to what extent will the Dedicated Discussions venture into other topics, especially if they are not of a cross-cutting nature? A plain reading of Paragraph 2 opens up the door for a Member to include *any* issue in the Dedicated Discussion regardless of whether it is cross-cutting or listed in WT/L/274. While this Paragra-

ph lists two separate issues that will be discussed in the Dedicated Discussions, it also agrees to deepen discussions on e-commerce-related topics, a term that is not yet fully understood or agreed in the WTO but that is likely to be of an interdisciplinary nature and could be extraordinarily expansive in scope. E-commerce-related topics could encompass a wide range of subjects connected to the buying, selling, and exchanging of goods and services over the Internet including cybersecurity, emerging technologies, Fintech, and Internet governance issues to name a few.

iii. This is the first time an informal Facilitator-led process has become so entrenched in the WTO. It is important for Members to clarify whether the Dedicated Discussions and GC WPEC process will revert to being conducted by the GC Chair proper? While it is not uncommon for facilitators to be part of bridge-building exercises in the WTO, a grey area exists where the activities of appointed facilitators (who are different from formally elected chairpersons subject to WTO Rules of Procedure) go largely undocumented and informal. The same applies to ‘friend of the chair’ arrangements which were used to facilitate dedicated discussions under the WPEC in the past. It would be critical to clarify formally and put on record that the accepted conduct and rules of procedures for the GC and its subsidiary bodies’ Chairs would also apply *mutatis mutandis* to facilitator-led processes.

e. An important addition in the context of the examination of the moratorium is the focus on ‘development’. This suggests a concern for how the moratorium might affect economic growth, technological advancement, policy development and overall societal progress in developing countries. This will be an important discussion for developing countries to participate in. Overall, Paragraph 2 seems to have been crafted as a backstop or measure of last resort to placate those developing country Members challenging the moratorium to ensure that more empirical evidence is considered in the WTO before Members make any future decisions regarding the continuation of the moratorium if read with Paragraph 5 on its termination.

f. A new substantive element is the reference to “digital industrialization”, a term that was advanced robustly by the [African Group](#) (comprising of 44 WTO Members at the time) in the WTO as early as 2017. Mainstreaming this term in WTO parlance is a positive achievement and it will be important for developing countries to establish specific themes around digital industrialisation to stimulate discussion and advance work in this area. The reference to “level the playing field” carries ambiguous implications. It could refer to equalizing tariffs or the restrictiveness of digital policies. Alternatively, it might signify developing countries striving to access similar opportunities, resources, and policy tools that have enabled developed countries to advance their digital economies. The latter involves addressing policy and regulatory gaps to promote access to

technology for industrial upgrading, investment in human capital, digital and data infrastructure, and regulatory frameworks that protect and promote data and digital sovereignty, and States’ support for the development of the domestic digital industry, amongst other things.

### Paragraph 3

“We take note of the workshop held under the Work Programme with different intergovernmental organizations. In that regard, we call for continued collaboration with them. We agree to engage on the main trade-related challenges faced by developing and least-developed country Members in the development of their digital economy, including the need for training and technical assistance, and, as a priority, identify gaps in support of addressing the digital divide, including for micro, small and medium-sized enterprises to realize the potential of the digital economy.”

### Comment:

The drafting that takes note of a ‘workshop’ with different IGOs can be very vague for those with no direct knowledge of it. The [workshop](#) in question was convened on 1-2 June 2023 and the IGOs that presented and with which continued collaboration under the WPEC is to take place include: United Nations Trade and Development (UNCTAD), Organisation for Economic Co-operation and Development (OECD), International Telecommunication Union (ITU), International Trade Centre (ITC), World Bank, World Customs Organization (WCO) and United Nations Commission on International Trade Law (UNCITRAL).

A question is whether the reference to “them” bars other IGOs active in the area of e-commerce/digital trade from collaboration with WTO Members under the WPEC. Another reading might suggest that continued collaboration would be with “different intergovernmental organizations”, not necessarily the IGOs listed above/from the workshop. Considering the context in which this language was formulated during MC13, it appears that the intention was to limit participation to IGOs, i.e. organisations that have WTO Members as members but to keep out non-governmental organisations or ‘other stakeholders’, such as the International Chamber of Commerce, Big Tech firms, the World Economic Forum or other civil society organisations. In other words, the intention was not necessarily to limit collaboration to the IGOs that participated in the June 2023 workshop but not to include other stakeholders who are more forthright in advancing and lobbying for their commercial interests.

The issues discussed at the workshop included consumer protection in e-commerce, digital divide, moratorium, and legal and regulatory frameworks. The second sentence of this paragraph does not link the mandate to address the ‘main trade-related challenges faced by developing and least-developed country Members’ with that of the

IGO collaboration, but given its placement in the same paragraph it may be presumed that one of the drafters' objectives was to ensure that the continuous IGO collaboration will extend to further engagement on specified issues, training and technical assistance, and identifying gaps in support of narrowing the digital divide notably for Micro, Small, and Medium Enterprises.

One notable observation is the expansion of the language in this WPEC to include a reference to the 'digital economy' in this Paragraph and 'digital industrialization' in Paragraph 2. This implies an acceptance by Members that the WPEC is going beyond e-commerce issues (buying, selling, and exchanging of goods and services over the internet) to include digital economy issues (economic activities that use digitized information and knowledge as key factors of production e.g., digital services, digital technologies, digital infrastructure, role of data, amongst others).

#### **Paragraph 4**

"We instruct the General Council to hold periodic reviews on the Work Programme, including based on reports that may be submitted by the relevant WTO bodies, with a view to presenting recommendations for action to the next Session of the Ministerial Conference."

#### **Comment:**

This is standard reference in previous WPEC ministerial decisions on progress reports. This decision, just like that made at MC12, omits the timelines for the progress reports. In the past, it specifically mentioned that the July and December GCs would submit these progress reports. The omission of dates does not seem to have any major implication.

There is a new addition, however, that will have implications. It states that "recommendations for action" to MC14 can be made through these progress reports. This may be interpreted to mean that it is keeping the option open to negotiate for an extension of the moratorium and/or WPEC which are expected to terminate in accordance with Paragraph 5 or to lay the building blocks for a negotiation mandate as a recommendation e.g., to advance the Joint Statement Initiative on E-commerce through this expanded WPEC.

#### **Paragraph 5**

"We agree to maintain the current practice of not imposing customs duties on electronic transmissions until the 14th Session of the Ministerial Conference or 31 March 2026, whichever is earlier. The moratorium and the Work Programme will expire on that date."

#### **Comment:**

It grants a moratorium on customs duties. The exact duration of the moratorium depends on when the MC14 will be held, or two years and one month (from the date of the decision i.e., 1 March 2024), ending on 31 March 2026, whichever date is earlier.

The last line clarifies the collective decision that the moratorium and the WPEC will conclude/terminate on the specified date.

While this does not preclude the possibility of negotiating and establishing a new moratorium and making recommendations to the MC14 (Paragraph 4 above), it does create a direct connection between the continuation of the WPEC and the moratorium's continued existence. This linkage is regrettable, especially when considering the exploratory nature of the WPEC, which, despite extensive discussions, has failed to yield any action-oriented proposals or recommendations in more than twenty-two years. This is particularly stark against the backdrop of the moratorium's cost, which could provide additional fiscal revenue of more than \$10 billion globally, 95 per cent of which would go to developing countries according to [UNCTAD](#). This discrepancy highlights the disproportionate nature of the ongoing linkage between the moratorium and the WPEC's outputs.

It is important to point out that even if the WPEC was discontinued, it would not prohibit Members from making submissions to the GC and other relevant bodies in view of the relationship between existing WTO agreements and e-commerce.

One additional consideration is whether the reports contemplated in Paragraph 4 which can make recommendations to the MC14 will lay the groundwork for the termination of the moratorium and WPEC or put in place a framework to start multilateral negotiations on e-commerce/digital trade. It will ultimately be up to the membership to define, by consensus, how these issues will be addressed.

### **Conclusions and way forward**

1. It is argued that this MC13 Decision has altered the bedrock of the WPEC to now include a new process (dedicated discussions), enhanced collaboration with IGOs, and expansion of issues that may be discussed and therefore mainstreamed in the WTO. Together, these are likely to influence the trajectory of the discussions through which recommendations for action could be made to MC14.

2. Developing country Members should not only participate actively in discussions under the WPEC but should also take a strategic approach by submitting thematic pa-

pers and proposals that focus on issues particularly relevant to their economic and developmental contexts. This proactive engagement will ensure that their unique challenges and perspectives are adequately considered and addressed.

3. It is important for WTO Members to define the relationship between the dedicated discussion and GC. The introduction of an additional process to discuss the moratorium involves certain risks. Scattering the discussions among various WTO bodies and processes within the WPEC may complicate the pursuit of substantive recommendations to MC14, turning it into a complex, perhaps evasive, endeavour.

4. To facilitate the gathering of empirical evidence as outlined in Paragraph 2, Members may consider:

a. Developing a list of digitizable products falling under the moratorium. The scope, definition and impact of the moratorium can only be appropriately understood if there is a common understanding on what is covered and traded under the moratorium. As the global economy shifts

towards digital platforms, having a well-defined list of digitizable products is essential for capturing the scope and scale of the digital economy in trade statistics and for informed policymaking.

b. Disclosing and publishing data on cross-border transmissions involving trade transactions between, and to digital platforms. For instance, WTO Members, particularly those who are net exporters of electronic transmissions, should consider making public the volume of cross-border electronic transmissions over a defined period, the total revenue from cross-border digital transactions to gauge the economic impact of electronic transmissions, geographical information like origin and destination of these transmissions, and Internet traffic data. Such measures would enhance transparency and accountability in data transmission processes and transactions, building trust and accountability among Members and aiding in informed policymaking.

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