NO. 2024-17, MARCH 2025
ISSN: 2086-8154

Economic Research Institute for ASEAN and East Asia

Policy Brief

Rethinking ASEAN's Approach to a Moratorium on Customs Duties for Electronic Transmissions

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The World Trade Organization's moratorium on customs duties for electronic transmissions, in effect since 1998 and recently extended until March 2026, remains a topic of contention. Supporters highlight its significance in promoting global digital trade, while critics raise concerns about potential revenue losses and ambiguity in its scope. For ASEAN, the moratorium carries critical implications due to varying levels of economic development and digital readiness across its Member States (AMS). While some AMS favour a permanent ban in line with existing preferential trade agreements, others voice concerns about its potential developmental and industrial repercussions.

This policy brief analyses the economic impact of the moratorium, examines the differing perspectives within ASEAN, and reviews global trade practices related to electronic transmissions. It concludes with actionable policy recommendations for the Digital Economy Framework Agreement (DEFA), emphasising the need for clear guidelines, inclusivity, and alignment with international norms to support a resilient and equitable digital economy in the region.

Key Messages:

- The WTO moratorium on customs duties for electronic transmissions supports digital trade but raises concerns about revenue losses and industrial policy implications, particularly in developing economies.
- ASEAN Member States (AMS) exhibit diverse stances: CPTPP members advocate for a permanent ban, while others, such as Indonesia, argue for the moratorium's termination.
- Existing regional trade agreements, including RCEP and AANZFTA, offer flexibility but leave critical ambiguities regarding the scope of the moratorium.
- Imposing tariffs provides limited revenue potential but risks stifling innovation and negatively impacting MSMEs and start-ups reliant on imported digital services.
- The Digital Economy Framework Agreement (DEFA) presents an opportunity to solidify a no-customs-duty stance on electronic transmissions, incorporating clear definitions, periodic reviews, and adaptability to address AMS-specific economic, technological, and fiscal needs.
- Governments can mitigate fiscal challenges by adopting alternative mechanisms such as VAT on digital trade and the creator economy, implementing strategic industrial policies, and ensuring fair market competition.

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The WTO Moratorium on Customs Duties for Electronic Transmissions

The World Trade Organization (WTO) introduced the moratorium on customs duties for electronic transmissions[1] in 1998, temporarily suspending tariffs on digital products delivered across borders. Established under the WTO's Work Programme on Electronic Commerce, the moratorium has been renewed biannually. Most recently, at the 13th Ministerial Conference, WTO members agreed to extend it until 31 March 2026 (WTO, 2024).

The moratorium remains a topic of debate. Advocates for its permanence argue that maintaining zero tariffs fosters seamless international digital trade, lowers consumer costs, and drives business growth (Andrenelli and González, 2019). However, critics voice concerns over potential revenue losses for developing economies, dependence on foreign digital imports, and the ambiguous scope of the moratorium – whether it covers only the transmission mechanism or also the digital content being transmitted (ICC and ITC, 2023). The growing creator economy further complicates these distinctions, blurring the lines between goods and services and complicating tax collection and customs duties application.

For ASEAN, the moratorium carries significant implications, reflecting the diverse policy perspectives of its Member States (AMS). A permanent ban aligns with ASEAN's commitment to tariff elimination and facilitates regional integration into the global digital economy, consistent with the objectives of the Digital Economy Framework Agreement (DEFA). However, concerns about revenue loss and constrained industrial policy tools persist.

Indonesia has argued that the moratorium's scope should not extend to the content of electronic transmissions and has emphasised its termination (Ghifari, 2024; WTO, 2022). Conversely, AMS such as Brunei Darussalam, Malaysia, Singapore, and Viet Nam – members of the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP) – have committed to a permanent ban on customs duties for electronic transmissions, including the content. Notably, Viet Nam has yet to participate in the WTO Joint Statement Initiative (JSI).

Regional commitments to electronic commerce are reflected in agreements like the Regional Comprehensive Economic Partnership (RCEP) and the upgraded ASEAN–

[1] There is no universally agreed definition of electronic transmission; however, it is commonly understood as the online delivery of products that can be digitised (Andrenelli and Gonzalez, 2023). Unlike cross-border e-commerce, trade in electronic transmissions excludes products that are ordered online but delivered physically (Banga, 2019).

Australia–New Zealand Free Trade Agreement (AANZFTA), which offer conditional flexibility within global trade norms. Understanding the moratorium's economic, developmental, and industrial implications within the ASEAN context is critical for shaping a balanced and high-quality approach in DEFA negotiations.

This paper examines these impacts and proposes pathways for policymakers to address the challenges and opportunities associated with the moratorium.

Key Trade and Development Indicators

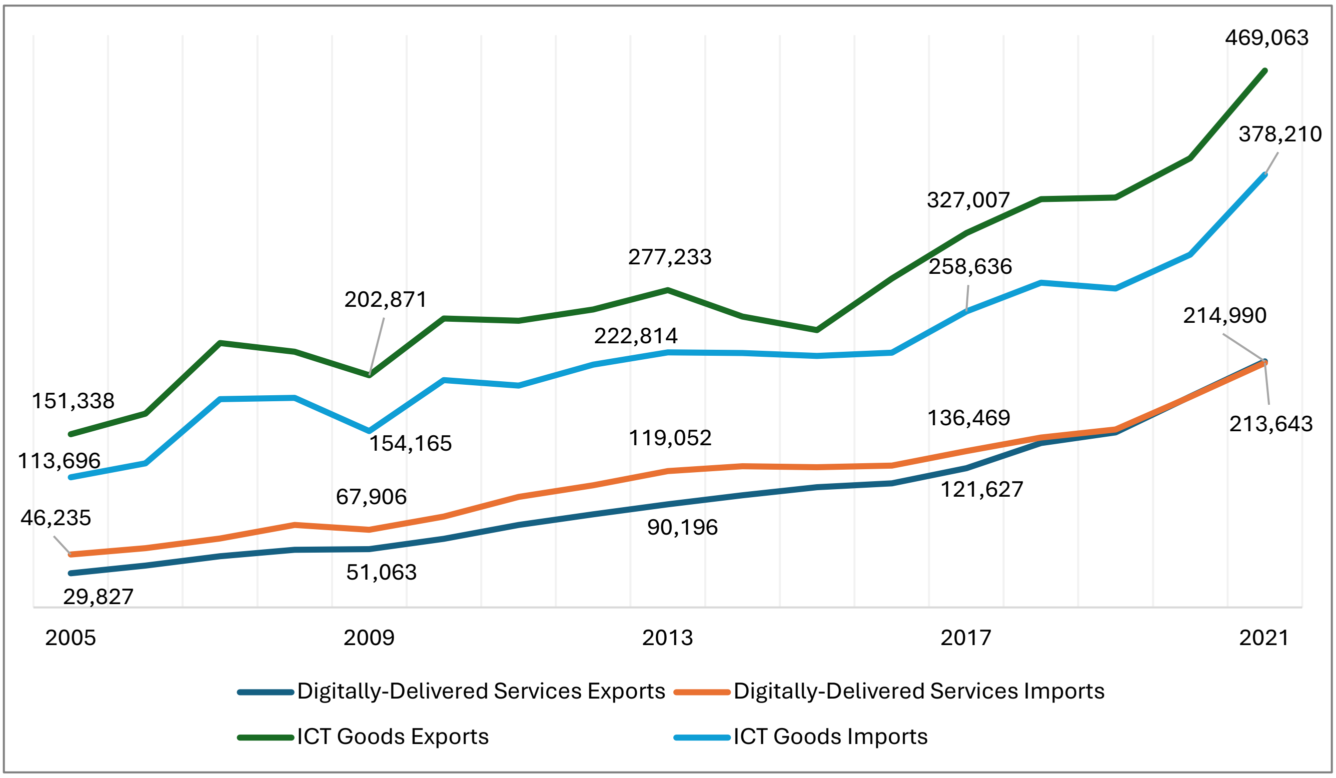
ASEAN is a highly trade-dependent region, with goods and services exports accounting for 61.1% of GDP in 2023 (EIU, 2024). Between 2001 and 2018, ASEAN exports of electronically transmitted products (excluding Singapore) grew by an impressive 788% (Montes and Lunenborg, 2023). Figure 1 illustrates the strong growth in trade values for ICT goods and digitally delivered services, highlighting ASEAN's increasing global competitiveness in digital trade. However, ASEAN's high reliance on ICT goods imports also underscores its dependence on external supply chains, which introduces vulnerabilities that could impede local industrial growth.

At the national level, this growth has been uneven. Singapore, Viet Nam, Thailand, and Malaysia dominate both exports and imports in the region, while other AMS report significantly lower trade values.

The expansion of ASEAN's digital economy, spurred in part by innovative digital startups, has driven greater cross-border trade and market integration (E-DISC, 2024). The WTO moratorium on customs duties for electronic transmissions has contributed to this growth by facilitating seamless digital trade.

However, disparities in digital readiness amongst AMS pose a significant challenge to the region's overall competitiveness and risk creating an uneven playing field. Less developed AMS, characterised by weaker digital infrastructure, lower technological adoption, and limited regulatory frameworks, may struggle to compete with their more advanced counterparts. This imbalance enables large companies to concentrate operations in digitally mature AMS with robust digital ecosystems, leaving less developed AMS reliant on foreign technologies and services.

Figure 1. ASEAN Trade in Digitally Delivered Services and ICT Goods (2005–2021, in million US$)



Source: UNCTAD, n.d.; WTO, n.d.

To achieve a sustainable and inclusive digital economy, ASEAN must address these disparities. By optimising the benefits of trade liberalisation, ASEAN can promote domestic innovation, strengthen regional value chains, and empower less developed AMS to participate more effectively in the global digital economy.

Diverging Perspectives on the Moratorium and Its Economic Implications

Estimating the economic impacts of the WTO moratorium on customs duties for electronic transmissions requires clarity on its scope and applicable duty rates (e.g. bound, applied, or Most Favoured Nations (MFN) tariffs). Differences in methodologies and assumptions across studies have produced varying estimates of these impacts.

For economies like Indonesia, where higher tariff regimes exist, the ability to impose customs duties on electronically transmitted (ET) products is viewed as critical policy space. Currently, Indonesia sets a 0% custom duty rate for software and digital goods under Minister of Finance Regulation No. 190/PMK.04/2022, effective since 14 January 2023. However, importing companies are required to comply with procedural rules, including submitting customs declarations.

Makiyama and Narayan (2019) supported the moratorium, highlighting that while tariffs could generate an estimated US$54 million in annual revenue, they would lead to broader economic costs – such as GDP losses of US$164 million and a tax revenue shortfall of US$23 million – that far exceed these gains. Similarly, Andrenelli and Gonzalez (2023) noted that fiscal revenue forgone due to the moratorium amounted to US$1.3 billion globally across 171 countries, equivalent to only 0.1% of total government revenue across 131 countries. This suggests the revenue potential from tariffs is minimal.

Conversely, Banga (2022) argued in favour of tariffs for developing economies, estimating that global tariff revenue losses in 2020 ranged from US$5.5 billion (applied duties) to US$14.3 billion (bound tariffs). In the ASEAN region, Montes and Lunenborg (2023) estimated that a permanent moratorium could result in revenue losses ranging from US$304 million (MFN tariffs) to US$532 million (bound tariffs).

Balancing Revenue Gains and Economic Costs

While the revenue potential of tariffs may seem appealing to some economies, the broader economic implications of imposing tariffs must be considered. Tariffs could:

- Increase costs for micro, small, and medium-sized enterprises (MSMEs), start-ups, and innovators reliant on digital imports as intermediate inputs, undermining their competitiveness.
- Stifle innovation and slow industrial digitalisation.
- Exacerbate trade imbalances, particularly in sectors like electronics. For instance, Indonesia's electronics sector already faces challenges from high import duties on raw materials, which place local producers at a disadvantage compared to finished goods imported tariff-free from other AMS (ADB, 2020).

To address these challenges, targeted industrial policies and a commitment to free digital transmissions are essential. These approaches can drive productivity, foster innovation, and create jobs – benefits that outweigh the potential fiscal gains from tariffs (ICC and ITC, 2023).

VAT as an Alternative to Tariffs

Value-added taxes (VAT) have been proposed as a viable alternative to tariffs. However, implementing VAT in the digital economy poses challenges:

- Many digital services, such as apps, music, and video streaming, bypass traditional VAT frameworks, leading to revenue losses.
- This creates unfair competition for brick-and-mortar retailers that are taxed, while untaxed online sales grow.

To address these issues, the OECD's Global Forum on VAT has developed internationally agreed rules to secure VAT revenues from e-commerce while ensuring a level playing field. Examples of successful implementation include:

- Australia, which collected nearly US$1.2 billion in the first four years of applying VAT to digital services.
- Thailand, which raised nearly US$171 million in VAT revenues in just ten months (Andrenelli and Gonzalez, 2023).

Relevance to the Creator Economy

VAT frameworks are particularly relevant for the growing creator economy, where revenue flows between content creators and platform operators often escape traditional tax systems. Compared to the complexities and uncertainties of applying customs duties, VAT frameworks provide a more robust mechanism to address revenue losses, ensure compliance, and support this burgeoning sector. Coupled with strategic industrial policies, VAT can help foster innovation and competitiveness while addressing fiscal concerns.

Approaches to Customs Duties on Electronic Transmissions in Global Trade Agreements

Prohibition of Customs Duties within PTAs

Outside the WTO framework, some Preferential Trade Agreements (PTAs) adopt a permanent moratorium on customs duties, to which several ASEAN Member States (AMS) have committed. While the scope of these moratoriums varies, such agreements signal strong and binding commitments to liberalising digital trade. However, these commitments are limited to the parties of the trade agreements, potentially leading to regulatory fragmentation.

For example, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) bans customs duties on electronically transmitted products, including their content (MFAT, 2016). Similarly, the EU–Singapore and EU–Viet Nam Free Trade Agreements (FTAs) prohibit customs duties on electronic transmissions (Official Journal of the European Union, 2019, 2020).

The Digital Economy Partnership Agreement (DEPA) and the CPTPP extend the prohibition to all digital products and their electronic transmissions, defining electronic transmissions broadly as 'transmissions made using any electromagnetic means.' Other agreements, such as the Regional Comprehensive Economic Partnership (RCEP), do not provide specific definitions (Kelsey, 2022).

Flexible Approaches in RCEP and AANZFTA

RCEP and the upgraded ASEAN–Australia–New Zealand Free Trade Agreement (AANZFTA) take a more flexible approach to customs duties. These agreements:

- Require parties to maintain their current practice of not imposing customs duties on electronic transmissions but remain silent on whether this includes the content transmitted electronically.
- Allow for adjustments based on WTO Ministerial Decisions under the Work Programme on Electronic Commerce (MFAT, 2020, 2023).

This conditionality allows AMS to adapt policies in response to changes in global trade norms and technologies. However, ambiguity remains regarding whether the ban on customs duties extends to digital products' content, underscoring ASEAN's cautious approach.

Digital vs. Physical Delivery in Other FTAs

Some FTAs differentiate between digital products transmitted electronically and those delivered physically. For instance:

- The Singapore–US FTA and the Korea–Singapore FTA explicitly prohibit customs duties on digital products delivered via electronic transmission.
- When such products are delivered physically, these agreements specify that the customs value is limited to the value of the carrier medium, excluding the value of the digital product stored on it (Enterprise Singapore, 2006; United States Trade Representative, 2003).

Implications for ASEAN

The diverse approaches to customs duties within PTAs have varying implications for AMS:

- Agreements like the CPTPP, with their permanent bans on customs duties, could limit policy flexibility, particularly for AMS looking to support nascent digital industries or address revenue concerns.
- Agreements such as RCEP and AANZFTA, with conditional commitments, provide AMS with the flexibility to adapt their policies to domestic priorities while remaining engaged in global trade.

Policy Recommendations

To address the complexities surrounding customs duties on electronic transmissions, the following recommendations are proposed:

- **Adopt Zero Customs Duties with Periodic Review Mechanisms**
  DEFA should maintain provisions for zero customs duties on electronic transmissions, ensuring alignment with WTO commitments and global trade rules. These provisions should include mechanisms for periodic review, a clear definition of the scope of electronic transmissions to reduce ambiguity, and flexibility for ASEAN Member States (AMS) to address economic, technological, and fiscal challenges.
- **Harmonise Digital Trade Policies for Regional Competitiveness**
  DEFA should promote harmonisation of digital trade policies across AMS to enhance regional competitiveness and foster inclusive economic growth. By strengthening regional collaboration, AMS can share best practices, address common challenges, and create a unified framework to support industrial development and digital transformation.
- **Adopt Strategic Industrial Policies Consistent with WTO Commitments**
  AMS should implement strategic industrial policies, including local content requirements (LCRs), to promote domestic innovation and production. These policies must comply with WTO agreements, including the Trade-Related Investment Measures Agreement (TRIMS), the General Agreement on Tariffs and Trade (GATT), and the Agreement on Subsidies and Countervailing Measures (ASCM). LCRs should be supported by rigorous cost–benefit analyses to ensure alignment with international commitments and to minimise legal and economic risks.
- **Diversify Fiscal Strategies to Offset Revenue Losses**
  To address potential tariff revenue losses, AMS should consider alternative fiscal strategies such as implementing digital services taxes (DST) or reforming value-added tax (VAT) on digital services. AMS can learn from countries that have successfully adopted these measures. Regional cooperation can also enable the sharing of experiences, good practices, and technical expertise to effectively manage fiscal implications while maximising the benefits of free digital transmissions.
- **Strengthen Local ICT and Creative Industries**
  Policies should prioritise the development of local ICT sectors, data-hosting services, and creative industries to strengthen the digital economy. Strategic interventions, such as imposing targeted tariffs in specific sectors, should be carefully designed to ensure they do not hinder the overall growth of digital trade. Emphasis should be placed on fostering innovation, digital infrastructure development, and capacity building to ensure long-term competitiveness in the global digital economy.

By addressing these critical areas, DEFA can strike a balance between fostering digital trade liberalisation and supporting the unique economic and developmental needs of AMS.

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