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## **WTO Members pave the way for the interim implementation of the plurilateral *E-Commerce Agreement*, but let the multilateral *E-Commerce Moratorium* expire**

*By Amanda Carlota, Stella Nalwoga, and Tobias Dolle*

Electronic commerce (hereinafter, e-commerce) was high on the agenda of the *World Trade Organization’s* (hereinafter, WTO) *14<sup>th</sup> Ministerial Conference* (hereinafter, MC14), which took place from 26 to 30 March 2026 in Yaoundé, Cameroon. The outcomes are mixed. While 66 out of 166 WTO Members **agreed** on a “*clear and immediate pathway*” to implement the *WTO Agreement on Electronic Commerce* (hereinafter, *E-Commerce Agreement*), WTO Members failed to agree on extending the *moratorium* on Customs duties on electronic transmissions (hereinafter, *E-Commerce Moratorium*), opening the door to tariffs on digital products.

This article discusses the growing significance of e-commerce in global trade, provides an overview of the *E-Commerce Agreement* and the *E-Commerce Moratorium*, and examines the implications of these MC14 outcomes for the multilateral trading system.

### **The growing significance of e-commerce in global trade**

Over the past three decades, e-commerce has become a central pillar of international trade. During the WTO’s *2<sup>nd</sup> Ministerial Conference* (MC2) in 1998, WTO Members adopted the *Declaration on Global E-Commerce*, in which they recognised the need to “*examine all trade-related issues*” relating to global e-commerce, and agreed to “*continue their current practice of not imposing Customs duties on electronic transmissions*”, thus formalising the *E-Commerce Moratorium*.

WTO Members also established a dedicated *Work Programme*, which provisionally defined e-commerce as the “*production, distribution, marketing, sale or delivery of goods and services by electronic means*”. This definition encompasses a wide range of activities, including digital downloads, online platforms, cloud services, and financial transactions conducted electronically. The WTO **estimates** that, in 2025, global trade in digitally delivered services amounted to USD 5.25 trillion, underlining its systemic importance.

### **The *E-Commerce Moratorium* expires amidst continued opposition**

Even prior to MC2, many countries had refrained from imposing Customs duties on electronic transmissions. However, there is no official definition of “*electronic transmission*”, fuelling uncertainty regarding the scope of the *E-Commerce Moratorium*. Consequently, while the *Moratorium* had been extended at every *Ministerial Conference* since MC2, some countries, notably Brazil, India, and Türkiye, consistently opposed it, arguing that they would lose out on potential tariff revenues (see *Trade Perspectives*, Issue No. 13 of 4 July 2022).

The MC14 Chairperson, Cameroon’s Minister of Commerce *Luc Magloire Mbarga Atangana*, noted that WTO Members “*came very close*” to agreeing on an extension, but could not reach a consensus on the duration, with Brazil and Türkiye blocking a five-year extension, which the US had supported despite its preference for a permanent *E-Commerce Moratorium*. This outcome parallels the deadlock in the negotiations on agriculture: according to reports, Brazil had sought to use its agreement to the extension of the *E-Commerce Moratorium* as leverage in the protracted discussions on agriculture, a sector which Brazil’s Minister of Foreign Affairs, *Mauro Vieira*, claimed had seen “*less progress during the WTO’s 30 years of existence*” than others. As no agreement was reached on agriculture, hopes for an agreement on the extension of the *E-Commerce Moratorium* also faded and it expired on 30 March 2026 with the conclusion of the MC14.

On 1 April 2026, 23 WTO Members, including the US and the UK, but notably not the EU, issued a *Joint Statement* in which they agreed to “*maintain the current practice of not imposing Customs duties on electronic transmissions*” among themselves. They also defined “*electronic transmission*” as a “*transmission made using any electromagnetic means and includes the content of the transmission*”. The US Trade Representative (USTR), *Jamieson Greer*, announced that the US had “*secured commitments*” from “*dozens of countries*”, including “*nearly all*” of the US’ major trading partners, “*not to impose tariffs on US digital transmissions*”.

### ***Interim arrangements for the implementation of the E-Commerce Agreement***

WTO rules, largely negotiated in the early 1990s, did not anticipate the significance of e-commerce in international trade. To address this regulatory gap, at the WTO’s 11<sup>th</sup> *Ministerial Conference* (MC11) in 2017, 71 WTO Members issued a *Joint Statement* agreeing to “*initiate exploratory work towards future WTO negotiations on trade-related aspects*” of e-commerce. Negotiations for the *E-Commerce Agreement* concluded in July 2024 (see *Trade Perspectives*, Issue No. 16 of 9 September 2024). The *E-Commerce Agreement* is the most advanced attempt to establish multilateral disciplines on digital trade and applies to “*measures adopted or maintained by a Party affecting trade by electronic means*”.

Article 11 of the *E-Commerce Agreement* foresees a permanent *moratorium* on Customs duties on electronic transmissions. As the *E-Commerce Agreement* is a plurilateral agreement, this permanent *moratorium* would be binding only on the Parties thereto. Article 29 provides that the *E-Commerce Agreement*, including the permanent *moratorium*, would enter into force once 45 instruments of acceptance have been deposited with the WTO. So far, none of the parties has deposited their respective instrument of acceptance.

The concluded text of the *E-Commerce Agreement* was circulated in December 2024. At WTO General Council meetings in February 2025 and December 2025, participating WTO Members requested to add the *E-Commerce Agreement* to Annex 4 of the *Marrakesh Agreement Establishing the World Trade Organization*, which contains plurilateral trade agreements that are only binding among those WTO Members that have accepted them, but which nevertheless benefit from the WTO’s institutional arrangements. However, adding a plurilateral agreement to the WTO’s legal framework requires the consensus of all WTO Members and, to date, no consensus has been reached.

Even some WTO Members participating in the *E-Commerce Agreement*, such as Indonesia and Türkiye, oppose its incorporation into the WTO rulebook due to concerns about the impact of a permanent *moratorium* on Customs duties on electronic transmissions, particularly for

developing countries. India, which does not participate in the *E-Commerce Agreement*, opposes its inclusion on the ground that the *E-Commerce Agreement* had been negotiated and concluded based on a plurilateral *Joint Statement* and not through the multilateral *Work Programme on E-Commerce*.

In order to “realise expeditiously the benefits” of the *E-Commerce Agreement*, especially its institutional arrangements on dispute settlement, during MC14, 66 WTO Members issued a *Declaration on Interim Arrangements for the E-Commerce Agreement*, providing for “interim arrangements” that would allow participating WTO Members to refer their disputes to the Committee on Trade-Related Aspects of Electronic Commerce established under Article 28 of the *E-Commerce Agreement*, instead of the WTO Dispute Settlement Body, as foreseen in the *E-Commerce Agreement*.

In the meantime, the participating WTO Members committed to “proceed with their required domestic procedures” for acceptance of the *E-Commerce Agreement*, while continuing to push for its incorporation into the WTO rulebook.

### **A plurilateral moratorium maintains certainty and predictability**

The expiration of the *E-Commerce Moratorium* after 28 years marks a significant turning point. For the first time since 1998, WTO Members are no longer bound to refrain from imposing Customs duties on electronic transmissions. At the same time, 66 WTO Members committed to implement the *E-Commerce Agreement* “as soon as possible”, representing approximately 70% of global trade.

Therefore, despite the uncertainty and unpredictability caused by the expiration of the *E-Commerce Moratorium*, the moratorium in the plurilateral *E-Commerce Agreement* could provide a degree of stability for global trade in digitally delivered services by ensuring that participating WTO Members continue to refrain from imposing tariffs on digital products.

### **Will the E-Commerce Moratorium be reinstated?**

WTO Members will reportedly discuss reinstating the *E-Commerce Moratorium* at the next meeting of the WTO General Council, which is scheduled to take place from 6 to 7 May 2026 in Geneva, Switzerland. However, if achieved, an extension, would only be a temporary reprieve, and WTO Members should, arguably and for the sake of legal certainty and commercial predictability, still work towards a permanent solution.

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## **Bridging the classification gap: The role of tariff classification in supporting trade in ‘green’ products**

*By Alya Mahira, Joanna Christy, and Paolo R. Vergano*

Increasing commitment to sustainability has driven a notable shift towards the use and production of more sustainable and environmentally-friendly alternatives to conventional goods (*i.e.*, ‘green’ products). This includes, most notably, using biodegradable and compostable materials. However, this ‘green’ transition is currently not adequately reflected in international trade practices, with trade policies and Customs classification systems failing to keep pace.

In relevant part, environmentally sustainable alternatives are often not distinguished from conventional materials in tariff classifications, including under the *World Customs Organization’s* (hereinafter, WCO) Harmonised System (hereinafter, HS). This limits policymakers’ ability to design targeted trade measures or grant preferential treatment, thereby constraining the effectiveness of trade policy in supporting the ‘green’ transition.

This article examines the current international framework governing trade in certain ‘green’ goods, highlights the lack of appropriate Customs classification of environmentally sustainable alternatives, and assesses the need for greater harmonisation of tariff classification at the international level.

### **Defining ‘green’ goods:**

There is currently no universally accepted definition of ‘green’ or environmentally friendly goods. Various efforts have been made in international *fora* to develop a definition of, and compile a list of, such goods. In 2012, the *Asia Pacific Economic Forum* (APEC) adopted a list of 54 “environmental goods”, defined as products that “directly and positively contribute to green growth and sustainable development objectives”. In 2014, the *World Trade Organization* (hereinafter, the WTO) launched negotiations for an *Environmental Goods Agreement*, in which environmental goods were defined as goods that can “help contribute to climate and environmental protection”, including those used in the generation of renewable energy. However, these negotiations stalled due to the inability of WTO Members to reach consensus on the scope and list of such goods. The *International Monetary Fund* defines environmental goods as goods that are “connected to environmental protection”, including goods that have been “specifically modified to be more ‘environmentally friendly’ or ‘cleaner’”.

### **Policy tools to promote the use of environmentally sustainable alternatives**

In general terms, to promote the use and production of environmentally sustainable alternatives and strengthen their market position, countries may pursue tariff and non-tariff measures. For instance, to reduce production costs and improve the price competitiveness of bioplastics and compostable packaging relative to conventional plastics, WTO Members could consider reducing tariffs on relevant inputs (e.g., feedstocks and bio-based polymers), as well as on the necessary equipment (e.g., machinery and related inputs used for its production). However, such tariff reductions must be applied in accordance with WTO rules, particularly Article I:1 of the WTO’s *General Agreement on Tariffs and Trade 1994* (GATT 1994) on Most-Favoured Nation Treatment.

Non-tariff instruments may include the adoption of technical regulations, such as mandatory product standards that restrict or prohibit the use of conventional plastics for takeaway food containers and to require the use of compostable or biodegradable materials. Countries may also impose taxes on single-use plastic bags. However, such measures must be consistent with WTO rules, including Article III:4 of the *GATT 1994*, which prohibits WTO Members from treating imported products less favourably than ‘like’ domestic products. To the extent that such technical measures restrict trade, WTO Members may justify them under Article XX(b) or (g) of *GATT 1994*, provided that such measures are necessary to protect human, animal or plant life or health, or relate to the conservation of exhaustible natural resources, and are not applied in a manner that constitutes arbitrary or unjustifiable discrimination or a disguised restriction on international trade, in line with Articles 2.1 and 2.2 of the WTO’s *Agreement on Technical Barriers to Trade*.

### **The tariff classification of environmentally sustainable alternatives**

Despite the lack of an agreed definition, technologies that support the transition towards renewable energy, such as solar panels or wind turbines, are widely regarded as environmental goods and benefit from dedicated classifications under the HS. By contrast, environmentally sustainable alternatives, particularly substitutes for single-use plastics, are not distinguished from conventional materials and remain classified under the broader tariff headings for plastics.

This classification gap is evident in the case of bioplastics and compostable materials, such as polylactic acid (PLA), a bio-based polymer derived from renewable feedstocks like corn starch or sugarcane. These materials are increasingly used in food packaging, including compostable coffee capsules and food containers. However, for example, compostable coffee capsules are

still classified under subheading 3923.90 of the HS, which covers “*plastic articles used for the conveyance or packing of goods, including stoppers, lids, caps, and other closures, other packing articles*”, without differentiation from conventional plastic products.

In practice, the lack of dedicated tariff classifications may limit countries’ ability to facilitate trade and improve market access, for ‘green’ products that are more sustainable and environmentally friendly alternatives to conventional products, through tariff measures. As tariff rates are applied at the level of the HS subheading, products classified under the same subheading may not be treated differently. For instance, where bioplastics and conventional plastics are classified under the same subheading 3923 of the HS code, they are treated as a single product category and are subject to the same tariff rate, preventing countries from incentivising sustainable alternatives without also benefiting conventional products.

In the absence of internationally harmonised classifications, WTO Members may still adopt national-level approaches to improve product identification. This includes introducing more detailed national tariff lines beyond the six-digit HS level and up to eight or ten-digit classifications, such as for bioplastics and compostable packaging. These adjustments only require WTO Members to notify the WTO Secretariat of the new classification.

Once these dedicated classifications are in place at the national level, countries may reduce tariffs specifically on compostable packaging and bioplastics. Unless done in the context of a preferential trade agreement, any tariff reduction must be applied on a most-favoured-nation basis in accordance with the Most-Favoured Nation Treatment under Article I:1 of the WTO’s *General Agreement on Tariffs and Trade 1994*.

### ***The need of harmonisation at the international level***

While national-level refinements of domestic tariff classifications for environmentally sustainable alternatives may improve regulatory clarity and enable preferential treatment, they do not resolve the absence of an internationally harmonised classification. In general terms, differences in national tariff lines may lead to inconsistent treatment of the same product across jurisdictions. For example, a product identified as an environmentally sustainable alternative under a specific eight-digit tariff line in one country may not be separately recognised in another. This may create trade frictions, as exporters must navigate multiple classification systems and compliance frameworks for the same product.

Therefore, a more effective long-term solution would be the adoption of a harmonised, dedicated classification at the international level. This could be done through the development of dedicated HS classifications within the WCO framework, as the institution solely responsible for the development and maintenance of the HS. Such classifications could be based on issues and gaps identified through discussions at the WTO. Accordingly, updates to the WCO framework require only technical transposition by WTO Members rather than agreement on the substantive treatment of the products concerned.

In light of this, the 2028 update of the HS Framework at the WCO now includes dedicated tariff classifications for single-use plastics products, which were proposed by the *WTO Dialogue on Plastic Pollution and Environmentally Sustainable Plastics Trade*. Building on this development, classification could be extended to environmentally sustainable alternatives, including bioplastics and compostable packaging. This would allow for a more coherent classification framework that allows distinguishing products at a more granular level, such as single-use plastic products and bioplastics, thereby strengthening the policy basis for targeted trade measures.

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## Spain notifies a draft Law of Asturias on the prohibition of the sale of energy drinks to persons under 16, also limiting their advertising and sponsorship

By Ignacio Carreño García, Paolo R. Vergano, and Tobias Dolle

On 2 March 2026, Spain notified to the European Commission (hereinafter, Commission) a draft *Law of the Principality of Asturias on the regulation of the sale, supply and consumption of energy drinks for the protection of minors under 16 years of age* under the EU's *Technical Regulations Information System* (TRIS) procedure. Further to a sales prohibition, the draft Law would prohibit any advertising, promotion, or sponsorship of energy drinks aimed at children under the age of 16.

This article discusses the draft Law, the EU's legal framework on the labelling of energy drinks, and voluntary industry codes on the marketing of energy drinks. The article examines what measures have been taken in different EU Member States and argues that a harmonised approach on sales prohibitions and advertising restrictions in the EU would be preferable in view of the EU's Single Market.

### ***Asturias' measures on the sale, advertising, and sponsorship of energy drinks***

On 22 October 2025, the Principality of Asturias, one of Spain's autonomous communities, adopted the draft *Law of the Principality of Asturias on the regulation of the sale, supply and consumption of energy drinks for the protection of minors under 16 years of age*. The objective of the draft Law is to strengthen health protection for persons under 16 years of age, considered as vulnerable consumers, by regulating the sale, supply, and consumption of energy drinks with a stimulating effect in Asturias, as well as their advertising, promotion, and sponsorship.

Article 2(a) defines 'energy drinks with a stimulating effect' as "non-alcoholic drinks presented as products that increase physical concentration and performance, the composition of which includes, in combination: i. caffeine, whatever its origin, in a quantity equal to or greater than 15 mg per 100 ml; ii. glucose, sucrose or fructose in large quantities; iii. other substances with similar properties as may be determined by regulation, such as taurine, guarana, ginseng, theophylline or theobromine". Title I of the draft Law regulates, in three chapters, the prevention, the control of the sale and the supply, and the consumption of energy drinks with a stimulating effect for persons under 16 years of age.

Chapter I thereof establishes a series of prevention and awareness-raising measures aimed at providing information on the risks associated with the consumption of these drinks and promoting healthy habits. Chapter II prohibits the sale and supply of energy drinks with a stimulating effect to persons under 16 years of age, as well as their consumption in publicly accessible spaces, facilities or centres, and at events open to the general public. Finally, limits are set on the advertising, promotion, and sponsorship, particularly when aimed at minors or associated with benefits in terms of performance or social success, and restrictions are imposed on digital media, social networks, and public platforms frequented by minors.

### ***The EU legal framework on the labelling of energy drinks and industry codes***

At the EU level, there is no product-specific legislation regarding energy drinks. Point 4 of Annex III to *Regulation (EU) No 1169/2011 on the provision of food information to consumers* merely requires a specific warning statement for beverages with high caffeine content (except for those based on coffee, tea, or coffee or tea extract). Such beverages, intended for consumption without modification and containing caffeine from whatever source exceeding 150 mg per litre, must display the following warning message: "High caffeine content. Not recommended for children or pregnant or breast-feeding women". The warning must appear conspicuously in the same field of vision as the name of the beverage, followed by a reference in brackets to the caffeine content expressed in mg per 100 ml.

Beyond this provision, the members of *UNESDA Soft Drinks Europe*, a trade association representing the non-alcoholic beverages sector across Europe, commit to adhere to a number of additional voluntary provisions as set out in the *UNESDA Code on the labelling and marketing of energy drinks*, including statements to ‘*Consume moderately*’ or similar and not promoting the mixing of an energy drink with alcohol. Similarly, *Energy Drinks Europe*, representing companies in the energy drinks sector, established a *Code of practice in relation to the composition, marketing and promotion of energy drinks* under which *Energy Drinks Europe* members commit not to market their energy drink products to children under the age of 13.

### ***An unfortunate piecemeal approach in the EU Member States and its regions***

A number of EU Member States, with Lithuania and Latvia as the first in 2014 and in 2016, respectively, have introduced prohibitions on the sale of energy drinks to minors. Poland and Romania followed suit in 2024. More recently, in 2025, Hungary and Bulgaria introduced measures to ban the use, offering, and sale of energy drinks to minors under the age of 18. Since 7 March 2026, the sale of energy drinks to minors under the age of 18 is prohibited in the Spanish autonomous community of Galicia under the *Law on the Protection of Minors and Prevention of Addictive Behaviours*.

In the case of Asturias, the minimum age proposed to purchase energy drinks is 16 years. Adding to this inconsistency, in March 2026, Spain’s Government has [announced](#) that it would implement a regulation to prohibit the sale of energy drinks to children under the age of 16. The restriction would be even stricter for drinks with high caffeine content (above 32 milligrams per 100 ml), which would not be allowed to be sold to consumers under the age of 18.

From a legal point of view, with respect to energy drinks, two types of measures are currently implemented in EU Member States and at regional level: 1) Sales prohibitions to minors; and 2) Advertising restrictions. With respect to sales prohibitions to minors, measures of an EU Member State that are capable of hindering, directly or indirectly, trade within the EU are to be considered as measures having an effect equivalent to quantitative restrictions within the meaning of Article 34 of the Treaty on the Functioning of the European Union (hereinafter, TFEU). Such measures may, however, be justified on grounds of the protection of health and life of humans, under Article 36 of the TFEU, but only if such measures are appropriate for securing the achievement of the objective pursued and if they do not go beyond what is necessary in order to attain it.

In [August 2025](#), a petition called on the Commission to re-examine caffeine consumption and its possible harmful impact and to consider introducing a prohibition on the sale of energy drinks to minors. In reply, the Commission confirmed that an [EFSA Scientific Opinion of May 2015](#) already addressed the possible adverse health effects of caffeine consumption from all dietary sources in the general healthy population, as well as among children and adolescents. The Commission also drew attention to the fact that EU Member States “*may adopt national rules regarding the sale and advertising of energy drinks to persons under the age of 18*” and noted that it had “*not opposed the adoption of such national legislation as long as it is scientifically justified on public health grounds pursuant to Article 36 of the TFEU*”.

### ***Review of the EU’s Audiovisual Media Services Directive***

With respect to regional and national restrictions of the advertising and promotion of energy drinks to minors, it must be noted that food advertising law in the EU is only partially harmonised. The main harmonisation concerns the information (labelling, presentation, claims) that food advertisements must reflect. At the same time, actual advertising restrictions, especially those targeting children or specific food categories, remain largely national and non-harmonised.

In the EU, advertising restrictions are addressed by [Directive \(EU\) 2018/1808 of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain](#)

*provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities (i.e., the Audiovisual Media Services Directive, AVMSD). The AVMSD requires EU Member States to encourage co-regulation and self-regulation, and to reduce children's exposure to advertisements for foods high in fat, sugar or salt (HFSS). However, implementation varies significantly across EU Member States. The upcoming [review of the AVMSD](#) is an opportunity to introduce harmonised EU-wide regulation on the marketing of HFSS foods, such as energy drinks, to minors. A public [consultation](#) on the review of the AVMSD is currently open until 1 May 2026.*

The piecemeal approach of national and regional measures on energy drinks does not do justice to the EU Internal Market. In the context of Spain's TRIS notification, interested parties may submit comments until 3 June 2026. Operators should participate in the shaping of upcoming legislation by interacting with the respective institutions, relevant trade associations, and affected stakeholders.

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## Recently adopted EU legislation

### Trade Law

- *Commission Implementing Decision (EU) 2026/760 of 1 April 2026 amending Implementing Decision (EU) 2021/1182 as regards harmonised standards for sterilizers for medical purposes – small steam sterilizers, stainless steel steam boilers and electroacoustics – hearing aids*

### Trade Remedies

- *Commission Implementing Regulation (EU) 2026/846 of 9 April 2026 amending Implementing Regulation (EU) 2019/159 imposing a definitive safeguard measure on imports of certain steel products*
- *Commission Implementing Regulation (EU) 2026/801 of 9 April 2026 imposing provisional anti-dumping duties on imports of terephthalic acid originating in the Republic of Korea and the United Mexican States*
- *Commission Implementing Regulation (EU) 2026/831 of 14 April 2026 imposing a definitive anti-dumping duty on imports of certain continuous filament glass fibre products (GFR) originating in Bahrain, Egypt and Thailand*
- *Commission Implementing Regulation (EU) 2026/822 of 14 April 2026 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of softwood plywood originating in the Federative Republic of Brazil*

### Food Law

- *Commission Implementing Regulation (EU) 2026/765 of 1 April 2026 on the methods of sampling and analysis, and on the interpretation of results for the*

*official control of pesticide residues in and on food and feed of plant and animal origin, and repealing Directive 2002/63/EC*

- *Commission Implementing Regulation (EU) 2026/814 of 1 April 2026 amending Annexes V and XIV to Implementing Regulation (EU) 2021/404 as regards the entries for Chile, the United Kingdom and the United States in the lists of third countries, territories, or zones thereof authorised for the entry into the Union of consignments of poultry and germinal products of poultry, and of fresh meat of poultry and game birds*

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