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Implementation of WTO Rules: Legality of Consensus Decision-Making Practice

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Abstract

The decisions taken under the principle of consensus in the World Trade Organization (WTO) receive direct effect in domestic law of the contracting parties. Meanwhile, the rule-based system of the Uruguay Round has to comply with the domestic law of the contracting parties. The paper analyzed different approaches of the contracting parties regarding the provisions of WTO agreements, the rule-based system; and the decisions of the consensual practice. It went through the concerns on the scope of the WTO moratorium on electronic transmissions, and its inclusion either in the domestic law or in the regional trade agreements. The contracting parties of the WTO provided for full acceptance of the consensual decisions. Unlikely, the rule-based system of the WTO first went through legislative procedure for its application in the jurisdiction of the contracting parties. The paper concludes on the legal implementation of the decision made through the practice of consensus, placing the decisions of consensus on the top of hierarchy in WTO Law system.

Keywords

Consensus Practice, Rule-Based System, WTO Moratorium, Electronic Transmissions

1. Introduction

The World Trade Organization (WTO) became a genuine international institution in charge of international trade regulation. It inherited the practice of taking decisions by consensus from the provisional General Agreement on Tariffs and Trade of 1947. The establishment of the WTO is the result of negotiations, which constitute the deal package of the Uruguay Round (Kurihara, 2012), creating the trade rule-based system. The deal package of the Uruguay Round did not conclude

any trade agreement regulating electronic commerce. To fill that legal gap, the WTO Ministerial Conference (1998) adopted a waiver of two years on the application of customs duties on electronic transmissions. The waiver became the WTO moratorium of customs duties on electronic transmissions (WTO moratorium). The WTO moratorium did not specify the scope and the substantive matter of its implementation on customs duties related to electronic transmissions. Under the WTO Law, the contracting parties implement the rules and regulations adopted in accordance with the consensus practice (Art. IX Marrakesh Agreement), their concessions and commitments under GATT 94 and specific commitments under the GATS (Art. XXVIII GATT and Art. XX GATS). However, the implementation of the moratorium on cross-border electronic transmissions lacks the concessions and commitments. The absence of these concessions and commitments started impairing the ability of states to regulate digital trade. Regarding these impairments, some calls were made to rethink the implementation of the WTO moratorium (WTO General Council, 2018), and others challenged the scope of the WTO moratorium on customs duties on electronic transmissions (WTO General Council, 2021, 2023). Despite these challenges, the Ministerial Conference usually reaches a consensus to extend the implementation of the moratorium. The last Ministerial Conference, held in Abu Dhabi from 26 February to 2 March 20224, for instance, showed the interest of business associations calling WTO members to renew the practice of not imposing customs duties on electronic transmissions during thirteenth Ministerial Conference (Global Industry, 2024). And the Ministerial Conference agreed to the continuation of not imposing customs duties on electronic transmissions up to the fourteenth Ministerial Conference or to 31 March 2026, whichever is earlier will end the mandate of the Work Programme and the implementation of the moratorium on electronic transmissions (WTO Ministerial Conference, 2024). The consensus around the extension of the moratorium interrogates the legal authority of the consensus decision-making practice under WTO Law. Does the renew of the moratorium every two contribute to the regulation of international trade? In the affirmative, the inclusion of electronic commerce regulation in domestic law and in the free trade agreements can shed light on the consensual scope resulting from the consensual decision. It will also guide the perspectives of the contracting parties on the implementation of the moratorium as a rule of WTO Law. The paper aims to study the acceptability of WTO rules by comparing the enforcement of the moratorium on customs duties with the enforcement of WTO agreements. The second section focuses on the scope of WTO Moratorium under WTO Law; Section 3 studies the inclusion of WTO moratorium in the free trade agreements; Section 4 researches the enforcement of the provisions related to WTO Moratorium by national jurisdictions. Finally, the conclusion observes a systematic and direct implementation of the moratorium over the rule of law resulting from the negotiations of the Uruguay Round, creating a supremacy of the moratorium over the implementation of the WTO agreements.

2. Scope of WTO Moratorium under the Implementation of WTO Rules

WTO rules deal with the regulation of international trade through the implementation of trade agreements adopted in the rule-based system. The electronic transmissions, which represent the essential part of electronic commerce, are however regulated according to the practice of consensus. There is no rule-based trade agreement among the agreements of the WTO to regulate electronic commerce. The consensual practice established the global regulation of electronic commerce (2.1), starting the regulation of electronic commerce in international trade (2.2).

2.1. Establishment of Global Electronic Commerce Regulation

The topmost authority of the WTO (Marrakesh Agreement, Art. IV) embodied and protected global electronic commerce by suspending the imposition of customs duties on electronic transmissions (WTO Ministerial Conference, 1998). It continued the liberalization process of international trade under GATT/WTO Law by preventing customs duties on electronic transmissions. Customs duties are these taxes levied during the importation or exportation of physical goods in consideration of the transaction value of the goods. The transaction value is the price determined under the importing country's legislation of the goods at a determined period (General Agreement on Tariffs and Trade, 1994: Art. VII). The transaction value of electronic transmissions overtook the value of physical goods in 2014, making electronic commerce/digital trade the fourth factor of wealth production after the land, labour and capital (Shaffer, 2021).

This ever-increasing use of electronic transmissions brings electronic commerce/digital trade closer to the centre stage of national economies (WTO General Council, 2018), raising the hypothesis of implementing the agreements of the WTO in addition to the moratorium on customs duties on electronic transmissions. The electronic transmissions are assimilated to cross-border trade following the definition of trade in services in the General Agreement on Trade in Services (GATS, Art. I(2)(a)(c)). In the *China-Publication and Audiovisual Products* (Appellate Body Report, 2010), the Dispute Settlement Body of the WTO (WTO DSB) dealt with a dispute related to digital technology affecting cross-border trade. The Panel and the Appellate Body of the WTO DSB referred to WTO trade agreements, particularly the GATS to settle the disputes on market access and national treatment. In the report of the Appellate Body related to the *US-Gambling* (2005), the Appellate Body even referred to Article 32 of the Vienna Convention on the Law of Treaties to uphold the interpretation of "recreational services" as a cross-border activity which can include gambling and betting services.

The implementation of the WTO moratorium contributed to regulate technology devices under the Information Technology Agreement (ITA). It started the embodiment of tangible goods within the regulation of electronic commerce. The results of the negotiations on ITA had been concluded and signed during the first Ministerial Conference of the WTO on 13 December 1996 and came into effect

on 13 March 1997. The ITA contributed to the liberalization of trade on information and communication technologies (WTO Ministerial Conference, 1996). The members of the WTO liberalized the trade of computers and peripheral devices, semiconductors, printed circuit boards, telecommunications equipment (except satellites), and software in their schedule of concessions. Such liberalization represented 97.1 percent of information and technology products, comprising 180 products covering the markets of 82 WTO contracting parties (WTO, 2017).

Other relevant documents also participated to the regulation of global electronic commerce: the Annex of the General Agreement on Trade in Service related to Telecommunications; and the Telecommunications Reference Paper of the General Agreement on Trade in Service. While the Annex on Telecommunications are binding rules on all the contracting parties of GATS agreement, the Reference Paper only applies to contracting parties that committed themselves to it. The Annex on Telecommunications regulates reasonable access to public telecommunications and their use according to the commitments scheduled by the contracting party. The Reference Paper regulates the best practice determined in the blueprint of telecommunications reform. Therefore, the periodical renews of WTO moratorium using the consensus practice strengthens the legality of the moratorium in international trade.

2.2. Regulation of Electronic Commerce in International Trade

The principle of global electronic commerce regulation can be observed from the beginning as a very broad and general liberalization of global electronic commerce. The Ministerial Conference declared that the members of the WTO "will continue their current practice of not imposing customs duties on electronic transmissions" (WTO Ministerial Conference 1998). The declaration embodied two irrefutable evidences: the authority taking the decision and the moment of adopting the decision. It was the first Ministerial Conference after the institutionalization of the WTO (Marrakesh Agreement, Art. II) to deal with the legal aspects of international trade among its contracting parties. All the contracting parties expected the creation of new jobs (employment) by recognizing the evolution of global electronic commerce. The members of the WTO consensually avoided the scenario of Havana Charter rejection by the U.S. Senate. The Ministerial Conference, as the topmost authority of the multilateral trade organization, successfully adopted the declaration of suspending the imposition of customs duties on electronic transmissions. The legal authority of the Ministerial Conference is supported by its consensual decision-making process, which means that no contracting party of the WTO, which attended that first Ministerial Conference formally objected the adoption of the declaration on global electronic commerce. The declaration has been consensually renewed to implement the moratorium, except during the Cancun Ministerial Conference (2003-2005) when ministers failed to reach a consensus (Banga, 2019).

The broadness of the moratorium on customs duties on electronic commerce

went through some restrictions. The ever-increasing use of digital technologies led some members of the WTO to adopt exclusive perspectives, especially since the eleventh Ministerial Conference in 2017. In 2023, other members of the WTO opposed their points of view against the exclusive perspective and argued in favor of inclusive perspectives in the liberalization of global electronic commerce. Indonesia excluded the implementation of the moratorium on the content transmitted electronically (goods and services transmitted electronically) and supported the implementation of the moratorium only on the electronic transmissions, bits and bytes (WTO Ministerial Conference, 2017). The Director-General and his staff agreed with Indonesian's position to exclude the content (digital products) from the scope of the moratorium opening a Pandora box for the imposition of customs duties on digital products by the members of the WTO (WTO General Council, 2021). In their opposition to such restriction, some members of the WTO communicated to the General Council on the meaninglessness of the moratorium if the contents transmitted electronically can be granted the exemption of customs duties (WTO General Council, 2023). Excluding the contents means that the moratorium applies to telecommunications signals (transmission, bit, byte) whose value would not be determined by the transmissions but by the content they carry. The continuation of legal uniformity among the members of the WTO should continue with the general and broad moratorium of customs duties. Therefore, the relevant Ministerial Conference did not attach any specific definition of "electronic transmissions" making the understanding of the moratorium very broad including everything transmitted by telecommunications, the internet, emails, software, music, blueprints, movies and video games. The liberalization of global electronic trade would have created a legal dichotomy by excluding one aspect which is not covered by any trade agreement.

3. Inclusion of WTO Moratorium in the Free Trade Agreements

The practice of free trade agreements comes from the provisions the articles XXIV(b) and V of GATT and GATS respectively. These arrangements aim to improve the implementation of international trade rules to further trade liberalization (Callo-Müller & Kugler, 2023). They exclude the non-discriminative principles of the WTO although the exclusion is approved under the provisions of the GATT and GATS (Kurihara, 2011). The implementation of WTO moratorium in the free trade agreements goes through with either electronic commerce (3.1) or digital trade (3.2).

3.1. Electronic Commerce Agreements Implementing the Provisions of WTO Moratorium

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership agreement (RCEP) included the regulation of electronic transmissions using the electronic

commerce instead of global electronic commerce as did the declaration of the Ministerial Conference. The Chapter 14 of the CPTPP deals with electronic commerce whiles Chapter 12 of RCEP is dedicated to electronic commerce regulation. Both agreements embraced the broad understanding of the global electronic commerce. They completed the regulation of electronic commerce with the provisions of the UNCITRAL Model Law on Electronic Commerce, and the United Nations Convention on the Use of Electronic Communications in International Contracts. The electronic transactions among the shareholders of the contracting parties shall abide by the requirements of these conventions and shall avoid unnecessary regulatory burden on the consumers or users of electronic commerce (RCEP, 2022, Art. 12.10; CPTPP, 2016, Art. 14.5). These trade agreements narrowed down the implementation of the moratorium on electronic transmission leaving the global electronic commerce towards regional electronic commerce.

At the regional level, they first followed suit regarding the imposition of customs duties on electronic transmissions. The CPTPP straightforwardly prohibited the imposition of customs duties both on the electronic transmissions and the content transmitted electronically among its contracting parties (CPTPP, 2016, Art. 14.3). As for the RCEP, such clarification is not mentioned. However, the contracting parties shall keep their practice in accordance with not imposing customs duties on electronic transmissions and in conformity with the further decision of the WTO Ministerial Conference (RCEP, 2022, Art. 12.11). This statement could be understood from the acknowledgement of the Ministerial Conference authority over the General Council or the Director-General who could be misled by a delegation. These free trade agreements directly or indirectly support the inclusive perspective of the scope on WTO moratorium.

The CPTPP gave a definition of electronic transmission for the first time providing a legal ground for legal reasoning. Some scholar even said that the CPTPP appeared to be the most comprehensive regulation of electronic commerce (Burri, 2021). Electronic transmission refers to electronically transmit or send, which uses the electromagnetic and photonic means (CPTPP, 2016, Art. 14.1). These means can easily be represented in the information and technology communications devices that are used to receive telecommunication signals. The use of electronic means encompassed both the electronic transmissions and the content transmitted electronically which are both exempted from customs duties. The evolution of the internet gave birth to digital trade agreements.

3.2. Digital Trade Agreements Inclusion of WTO Moratorium Provisions

The inclusion of WTO moratorium on electronic transmissions extended to digital trade agreements, which cover only digital products, formerly unknown in international trade regulation. This digital trade is continuously enriched… making individuals, enterprises and governments the main producer of digital data (Su, 2024). The WTO Work Programme on Electronic Commerce has yet to

define digital trade. Exclusively, the General Council defined "electronic commerce" to allow the Work Programme on Electronic Commerce to examine the effects of digital technologies on international trade as the production, distribution, marketing, sale or delivery of goods and services by electronic means (WTO General Council, 1998). However, digital trade focuses on the delivery or sale of digital products, which are yet to be included in the legislation of WTO rules. But these free trade agreements are designed only for the regulation of digital products to support the development of digital economy. The conclusion of digital trade agreements raised a legal issue in regards of Article XXIV of the GATT 1994 and Article V of GATT as well. Some scholars showed their doubts about the conformity of the digital trade agreements to the provisions of Articles XXIV, V of GATT and GATS respectively (Burri, Callo-Müller, & Kugler, 2024). Digital trade is based on the collection, aggregation, organization, analysis, exchange and exploitation of digital data for the production and sale of digital products (Shaffer, 2021). Data driven economy is yet to be included within the legal framework of the WTO. The rules of the WTO are still on the regulation of physical goods, remote services and electronic transmissions. The regulation of electronic transmissions under the WTO moratorium is included in the provisions of three free trade agreements, which took into consideration the regulation of digital trade: the Agreement between the United States of America, Mexico, and Canada (USMCA), the Agreement between the United States of America and Japan concerning Digital Trade (US-Japan DTA, 2019), and the Digital Economy Partnership Agreement (DEPA).

The imposition of customs duties is prohibited both on the electronic transmissions and on the content transmitted electronically (US-Japan Art. 7; DEPA, 2021, Art. 3.2). The US-Japan DTA and the DEPA prevent the shareholders of any party to apply customs duties on electronic transmissions, including the content. The USMCA included the content in the implementation of the moratorium. It suspended the imposition of customs duties during the importation and exportation of digital products. No customs duties, fees or charges should be levied during the importation and exportation of digital products transmitted electronically (Protocol Replacing NAFTA Agreement, Art. 19.3). Digital products can be a goods or service depending on the legislation of each contracting party (Footnote to Art. 19.1 of USMCA). However, the digital products refer to computer program, text, video, image, sound recording, or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically, excluding the digitized representation of a financial instrument and money (Protocol Replacing NAFTA Agreement, Art. 19.1).

The three digital trade agreements required the conformity of domestic electronic transactions framework to the Model Law of the United Nations Commission on International Trade Law related to electronic commerce (UNCITRAL Model Law on Electronic Commerce). They encouraged the contracting parties to maintain a legal framework consistent with the principles of the UNCITRAL

Model Law on Electronic Commerce and to avoid unnecessary regulatory burden on electronic transactions. The digital trade agreements also tried to maintain the domestic electronic transactions of their contracting parties in conformity with the UNCITRAL Model Law on Electronic Commerce or with the United Nations Convention on the Use of Electronic Communications in International Contracts (DEPA, 2021, Art. 2(3); US-Japan DTA, Art. 9; Protocol Replacing NAFTA Agreement, Art. 19.5).

4. Enforcement of WTO Moratorium in Domestic Law

The assumption that states have to perform in good faith their international obligations (Vienna Convention, Art. 26) does not have direct effects in domestic law of the contracting parties. The provisions of the rule-based system and consensus-based system go through different legislative process for their enforcement in the domestic jurisdiction of the contracting parties. The European Union and the United States of America embodied these exceptions, which affect the enforcement of WTO rules in their domestic law (Herdegen, 2016). And they adopted legislations on the full enforcement of WTO moratorium in their legal system. This section studies the approaches of these two contributors to the legal system of WTO in the approbation process of WTO agreement in the United States (4.1) and in the implementation of WTO agreement in the territories of the European Union (4.2).

4.1. Approbation of WTO Agreement in the United States

The deference to international commitments to which States agreed is applicable in America after the approval of the legislative body. The US Congress is empowered for the regulation of international trade, especially on the imposition of taxes or duties on imported goods in the US (U.S. Constitution, 1787, Art. I Sect. 8). The Congress has a major competence in approving the conformity of international agreements to the legislation of the United States. For instance, the Congress adopted an act approving the results of international trade negotiations related to the Uruguay Round negotiations. The Uruguay Round Agreements Act (URAA) approving the enforcement of Uruguay Round negotiations submitted the conformity of WTO rules to the laws of the United States. The ratification of WTO agreements recognized that no provision of the URAA, nor the application of any such provision to any person or circumstance shall be ineffective, if it is inconsistent with any law of the United States (Sect. 102(a)(1)). Nothing in the URAA can amend or modify the rule of law, including those related to the protection of human, animal, or plant life or health, the environmental protection, and the safety of the workers (Sect. 102(a)(2)). This hegemony of the US Congress has been observed during the ratification of Havana Charter for the establishment of the International Trade Organization in 1947. The Congress rejected Havana Charter allowing the conclusion of the provisional General Agreement on Tariffs and Trade in 1947.

The United States consecrated the implementation of the moratorium's provisions into its domestic legislation before introducing it in its bilateral trade relations. The adoption of the Bipartisan Trade Promotion Act 2002 expressed the commitments of the United States to implement the moratorium on customs duties on electronic transmissions.

> The Act provides that the principal negotiating objectives of the United States with respect to electronic commerce are (A) to ensure their (…) obligations, rules, disciplines, and commitments under the WTO apply to electronic commerce; (B), that the 1) electronically delivered goods and services receive no less favorable treatment under trade rules and commitments than like products delivered in physical form; and 2) the classification of such goods and services ensures the most liberal trade treatment possible; that (C) they refrain from implementing trade-related measures that impede electronic commerce; (D) where legitimate policy objectives require domestic regulations that affect electronic commerce, to obtain commitments that any such regulations are the least restrictive on trade, non-discriminatory, and transparent, and promote an open market environment; and (E) to extend the moratorium of the World Trade Organization on duties on electronic transmissions (Bipartisan Trade Promotion Act, 2002, Sect. 2102(9)).

The United States is considered to be the first country to include the regulation of electronic transmissions in its bilateral trade relations since 2000 (Burri, Callo-Müller, & Kugler, 2024). Two years after the declaration of WTO moratorium, the United States concluded a free trade agreement with the Kingdom of Jordan whose article 7 deals with the regulation of electronic commerce. Both parties avoided the imposition of customs duties on electronic transmissions, the unnecessary barriers on electronic transmissions, including digital products, and refrained from the impediment of electronic means supply (Art. 7.1). The same position of the United States can be observed in its recent free trade agreements such as the US-Japan Digital Trade Agreement (Art. 7), CPTPP, 2016, (Art. 14.3), and the USMCA (Art. 19.3).

Despite its support to the multilateral trade system, the United States did not hesitate to hamper the functioning of the dispute settlement body in claiming of their national interest. The United States took actions against the shining jewel crown of the multilateral trade system, especially its Appellate Body, by refusing to reappoint Jennifer Hillman (a US citizen) in 2011 and by blocking the reappointment of Seung Wha Chang (a Korean citizen) in 2016 (Lo et al. 2020). The dispute settlement body of the WTO had emerged as the innovative system of international resolution of disputes became an international compulsory jurisdiction. In fact, the dispute settlement system of the WTO provided for the negative consensus on the reports of the panels to suspend the enforcement of the dispute system's decisions. The negative consensus means that all the members of the WTO do not have to unanimously adopt the report for it to become legally

binding. Thus, the WTO dispute settlement system became the unique and the most frequent used jurisdiction for the resolution of state-to-state's disputes (Van den Bossche, 2021). Its success created the origin of its crisis by blocking Judges' appointment (reappointment) to reach the quorum of three judges (Understanding on Rules and Procedures Governing the Settlement of Disputes, 1994, Art. 17.1). The US Administration accused the Appellate Body of the dispute settlement system of "judicial activism" limiting therefore the ability to counteract on the importation of goods, which harmed their domestic industry (Van den Bossche, 2021). Due to these deadlocks, the Appellate Body became unable to hear and decide on any decision against the report of the panel since the expiration of the last sitting judge on 30 November 2020. This position of the United States resulted from the dissatisfaction of US Executive power over international trade policies, which started under George W. Bush Administration, continued with Barack Obama's Administration and finally expressed and maintained under the Administrations of Trump and Biden.

4.2. Implementation of WTO Agreement in the Territories of the European Union

The European Union is a customs union and an original contracting party of the WTO, representing its 27 member states during trade negotiations (Marrakesh Agreement, Art. XI(1)). The Commission of the European Union negotiates and defends the interests of the EU members in multilateral trade system of the WTO (TFEU, 1957, Art. 216(2)). After the establishment of the WTO, the EU adopted a decision denying the direct invocation of the Marrakesh Agreement, including its annexes by the members states before the European Court of Justice (ECJ) or before any court of its members (Council Decision, 1994). The ECJ refused the direct implementation of WTO rules considering the broadness of WTO provisions. Under the GATT 47, the court denied the citizens of the EU to invoke the provisions of article XI of GATT. In the disputes regarding the *EEC-Bananas II* (GATT Panel Report, 1994) and in the *EC-Bananas III* (Appellate Body Report, (1997)), the ECJ denied the claims of Germany over the Union's restrictions on the importation of bananas from Central and South American countries. The court considered the indeterminate substance of GATT's provisions, the specific mechanisms of settling the disputes, the indeterminate reciprocity in restrictive practice, and the possibility of negotiations within the union (Herdegen, 2016).

Like the United States, the European Union adopted a directive to guide the regulation of electronic commerce: Directive 2000/31/EC of the European Parliament and of the Council on 8 June 2000 on Certain Legal Aspects of Information Society Services, in particular Electronic Commerce, in the Internal Market (Directive on Electronic Commerce) OJ L 178/17. The foundations of electronic commerce in the European Union are improved with the Digital Service Act (Regulation 2022/2065) and the Digital Market Act (Regulation 2022/1925), which kept the provisions of the Directive 2000/31/EC related to WTO discussions on

electronic commerce. The three important provisions of the Directive 2000/31/EC relating to electronic commerce regulation are the consistency of the union's rules to international rules on electronic commerce (WTO, OECD, UNCITRAL), the applicability of union's rules at international level, and the cooperation among countries on electronic commerce (Directive 2000/31/EC, 2000).

The union recognized and adopted the implementation of the moratorium on customs duties on electronic transmissions. The global character of electronic commerce led the union to comply with the discussions of international organizations, particularly the WTO, OECD and the UNCITRAL. Many free trade agreements containing the provisions on electronic commerce regulations referred to the UNCITRAL Model Law on Electronic Commerce (Art. 12.10, RCEP; 2022, Art. 14.5, CPTPP; 2016, Art. 2(3), DEPA; 2021, Art. 9, US-Japan Digital Trade Agreement; art. 19.5 USMCA). The OECD and the Commission of the European Union defined extensively electronic commerce making easier the implementation of WTO moratorium on customs duties on electronic transmissions. The collaboration between the Organization for Economic Cooperation and Development (OECD) and the European Union led to the adoption of Ottawa Ministerial Declaration protecting the consumers or users of electronic commerce (OECD Ministerial Declaration, 1998). Both organizations have a definition of electronic commerce which are inclusive:

> Electronic commerce refers generally to all forms of transactions relating to commercial activities, including both organizations and individuals, that are based upon the processing and transmission of digitized data, including text, sound and visual images. (OECD, 1997)
>
> Electronic commerce is about doing business electronically. It is based on the electronic processing and transmission of data, including text, sound and video. It encompasses many diverse activities including electronic trading of goods and services, online delivery of digital content, electronic fund transfers, electronic share trading, electronic bills of lading, commercial auctions, collaborative design and engineering, online sourcing, public procurement, direct consumer marketing, and after-sales service. It involves both products (e.g. consumer goods, specialized medical equipment) and services (e.g. information services, financial and legal services); traditional activities (e.g. healthcare, education) and new activities (e.g. virtual malls). (OECD, 1997)

The European Union initiated the continuation of WTO dispute system as the quorum of three judges was unreachable to hear the appeal in the dispute settlement system. The EU and other members of the WTO agreed on the establishment of an expeditious arbitration in accordance with the provisions of Article 25 of the DSU on 30 April 2020. The expeditious arbitration known as the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) has now 27 parties, and two finalized disputes, and eight disputes are currently ongoing (Pauwelyn, 2023).

5. Conclusion

The implementation of the moratorium of customs duties on electronic transmission showed the full enforcement of WTO moratorium in domestic jurisdiction, regional trade agreements and in the global regulation of electronic commerce. Unlikely, the agreements of WTO and the Annex are affected by national legislations, which require the conformity of WTO rules to national legislations. The principle of consensus, which has been well established since the GATT 47 and improved after the establishment of the WTO in 1994 by distinguishing the positive consensus (normal consensus) and negative consensus (reverse consensus) to support the implementation of the rule of law in international trade law. The normal consensus principle is developed under the articles 2.4 of the DSU and IX (1) of the Marrakesh Agreement; and the reverse consensus under the articles 16.4, 17.14 and 22.6 of DSU. The direct acceptance and implementation of the moratorium in the legislation strengthens the legality of consensual decision-making process in the WTO system. The systematic and direct implementation of the moratorium in national and regional legislations creates the supremacy of the moratorium over the implementation of the WTO agreements, making the consensual decision-making the highest and powerful rule of law under the WTO Law system.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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