



**INDONESIA`S PERSPECTIVE ON WORLD TRADE ORGANIZATION (WTO)
MORATORIUM ON CUSTOMS DUTIES ON ELECTRONIC TRANSMISSION: A
BRIEF REVIEW OF LITERATURE**

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ABSTRACT

In 1998, the World Trade Organization (WTO) has announced a moratorium on customs duties on electronic transmissions, which has led to lengthy debates about whether to include electronically transmitted content. This study was carried out to elaborate and emphasize the Indonesian Government perspective on the moratorium customs duty. This descriptive qualitative study conducted in several methods such as literature review, meeting informants in the field, and conducting interviews and observations mainly in the Directorate General Customs and Excise of the Republic of Indonesia. Currently, Indonesian Customs Law has stipulated that "digital goods" are objects of the Customs Law and Indonesia has been imposing most favoured nation (MFN) tariff of zero percent (0%) on software and other digital goods (HS 99.01). The rationales of imposing customs duties on digital goods are not solely about the state revenue, but there are several rationales, namely recording data statistic, creating level of playing field, encouraging local SMEs, providing business certainty, and assessing digital goods risks. In conclusion, Indonesia Government suggested that WTO Members consider to analyze this moratorium implementation from a holistic perspective and also need to be equipped with crucial elements, such as a multilaterally- agreed scope, definition, and impact of the moratorium. Therefore, the discussion regarding the moratorium should be intensively conducted in the WTO Work Programme of E-Commerce.

INTRODUCTION

With the growing importance of e-commerce, there is an urgency of the international trade rules on e-commerce which ensure the inclusivity and fairness of e-commerce environment. In 1998, the World Trade Organization (WTO) has announced a moratorium on customs duties on electronic transmissions, which has led to lengthy debates about whether to include electronically transmitted content. The debates are also due to the lack of clarity on the definition as well as the lack of consensus on the scope related to implementation of this moratorium (Andrenelli & González, 2019).

The moratorium might offer huge benefits to the world economy, not to mention the advantages brought on by the expansion of e-commerce. However, we need to also consider the moratorium's significant impacts to some countries, especially developing and least developed countries. For instance, domestic retailers in developing countries hardly benefit from the free-tax and duties scheme for electronic transmission, given that the majority of business sectors in developing countries are Small Medium Enterprises (SMEs).

In addition, using the 8% of Average Annual Growth Rate of online imports of 49 HS code of digitizable goods, it is projected that the online worldwide imports of digitizable goods imported by Electronic Transmission will rise from USD 204 billion in 2020 to USD 365 billion in 2025, that is an increase of 79%. The rapid increase of digitizable goods importation may indicate the shifting phenomenon on physical import trade to digital trade via electronic transmission (Banga, 2022).

The research aims to elaborate the necessity of imposing customs duties on electronic transmission by introducing the shifting phenomenon of import physical goods to digital goods, the rationales on imposing customs duties and the provisions of imposing customs duties on content transmitted electronically. This research also emphasizes the Indonesia's position in WTO negotiating forum which is in favor to terminate moratorium customs duties on electronic transmission.

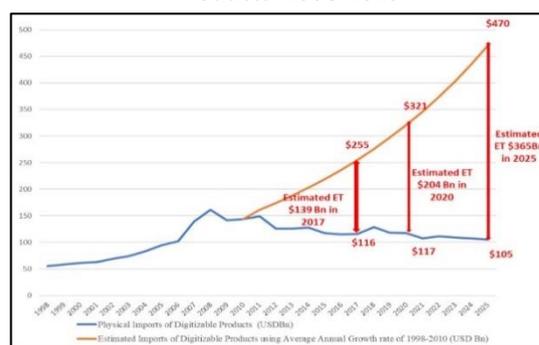
LITERATURE REVIEW

Hernández-López (2001) explained that WTO faces a variety of complex issues surrounding electronic transmission, these include classification of electronic transmission, extension of the moratorium on applying customs duties, and commencing liberalization negotiations for e-commerce.

According to Banga (2022), which is

illustrated by the Figure 1, the shifting of physical goods importation to digital form has become a phenomenon that has occurred in recent years. In 2017, the estimated imports of digitizable goods using 8% of Average Annual Growth Rate (AAGR) was USD 255 billion. However, the physical import of those digitizable goods was USD 116 billion. The difference between the estimated import value and the physical import value reached USD 139 billion, this number can be estimated as the import value of digitizable goods imported using Electronic Transmission.

Figure 1: Global Physical Imports and Electronic Transmission of Digitizable Products: 1998-2025



Source: South Center 157 Research Paper (2022)

Moreover, in the period 2017-2020, it is estimated that developing countries and LDCs lost USD 56 billion of tariff revenue, of which USD 48 billion were lost by the developing countries and USD 8 billion by the LDCs (Kozul-Wright & Banga, 2020). It is interesting to note that this loss of tariff revenue is from the imports of just 49 products (at HS six-digit), which include many luxury items like the movies, music, oriented matter, and video games (Banga, 2019). In addition, the moratorium could be a continuous provision of duty-free access to developed countries to enter the markets of developing and LDCs. This will have a negative impact on economic growth, employment, and sustainable development (South Africa & India, 2021).

Teltscher (2002) also found that the moratorium customs duties is of particular concern to developing countries, while for most countries overall shares in trade are still small and thus fiscal losses negligible, some developing countries would be affected considerably by tariff revenue cuts.

A research study in Zimbabwe concluded that losses suffered through customs duties exemption on digitizable goods are substantial in real terms although the figures might appear as small in percentage terms. The problem could be alleviated through a determination of which classes of digitized goods to levy duties on and which ones to exempt from duties (Makoni et al., 2013).

On the contrary, Lee-Makiyama & Narayanan (2019) asserted that if countries

levied import duties on digital goods and services, they would suffer negative consequences in the form of higher prices and lower consumption, this condition will lead to slow GDP growth and degraded tax revenues.

The shifting of physical goods importation to digital form has also been a phenomenon in Indonesia in the period of 2010 to 2020. The estimated import value of Digitizable Goods (49 HS Code) by using the 8% Average Annual Growth Rate (AAGR) is USD 4,5 billion in total. On the other hand, the total amount of physical import of digitizable goods is only USD 3,16 billion.¹ As a result, there is USD 1,39 billion gap between the total amount of estimated import value and the physical import value of digitizable goods, which indicates that Digitizable Goods importation has been altered from physical into digital form.

Figure 2 below shows Indonesia's import value and tax revenue (Value Added Tax/VAT and Income Tax) of Digital Goods Importation (HS Code 99) during the 2018-2022. As shown in the table, there has been a very significant increase in import value of digital goods amount at USD 1.1 million in 2020 to USD 56,2 million in 2021. In addition, an increase in the value of imports also occurred until September 2022, in which the import value has reached USD 66,5 million.² The increase caused by a lot of companies have started to declare the importation of digital goods voluntarily since 2021.

Figure 2: Indonesia's Import Value and Tax Revenue of Digital Goods (HS Code 99) period of 2018 – 2022

Year	Import Value (USD)	Income Tax (IDR)	VAT (IDR)	Import Tax (Income Tax + VAT) (IDR)
2018	7,985,351	1,830,978,836	11,329,658,612	13,160,637,448
2019	5,103,272	1,818,344,335	7,274,043,304	9,092,387,639
2020	1,162,896	107,525,629	1,672,287,764	1,779,813,393
2021	56,247,612	1,213,462,003	6,350,454,069	7,563,916,072
2022	66,510,881	3,631,370,507	15,909,374,311	19,540,744,818

source: Customs and Excise Information Directorate, DGCE

Amendment of Customs Law Number 10 Year 1995 Regarding Customs (2006) has stipulated that "digital goods" (software, electronic data, multimedia, etc.) are objects of the Indonesia Customs Law which their delivery may use electronic transmission i.e through internet.

Moreover, Indonesia has issued the specific tariff heading for intangible goods in Chapter 99 in the Indonesia Customs Tariff Book. So far, Indonesia imposes most favoured nation (MFN) tariff of zero percent (0%) on software and other digital goods transmitted electronically under Heading 99.01 (The Classification System and Imposition of Customs Duty on Imported Goods, 2022).

RESEARCH METHOD

This research is descriptive qualitative research. Qualitative research intends to understand the phenomena about what is experienced by research subjects such as behavior, perceptions, motivations, actions, etc., holistically, and by describing it in the form of words and language, in a specific context that naturally and by utilizing various natural methods (Lexy, 2006).

The fact that qualitative research collects data in the form of words and images rather than statistics is one of its distinguishing features. As a result, the study report will include data extracts to show how the report is presented.

Additionally, researchers employed other materials, such as field notes in the form of observation notes. Within a specific timeframe, this research was conducted in stages. Researchers tried to gather information by doing literature review, meeting informants in the field and conducting interviews and observations.

In this study, researchers described the perspective of Indonesia regarding the WTO Moratorium on Customs Duties on Electronic Transmission. The data obtained is then presented in the form of a description of words so that it is easier to understand according to what is obtained in the field. Apart from describing the words, the researcher also presents the data in the form of statistic figures to reinforce and clarify the results of the research.

DISCUSSION AND RESULTS

Rationales of Administering the Importation of Digital Goods

Indonesia government has made an official statement at the World Customs Organization (WCO) and Federal Administration of Public Revenue of Argentina (AFIP) side event meeting, in the margins of the 11th WTO Ministerial Conference that took place on 11 December 2017, regarding the rationales or background on the urgency of regulating and administering import of digital goods that transmitted electronically.

There are five fundamental rationales of why administering the importation of digital

¹ Directorate General of Customs and Excise, Republic of Indonesia, data taken in November 2022

² Directorate General of Customs and Excise, Republic of Indonesia, data taken in November 2022

goods is important (Directorate General of Customs and Excise of Republic of Indonesia, 2017), the explanation as follows:

The first is to record trade statistics, customs duty policy on digital goods compels the customs administration to monitor the flow of contents at the border accordingly. At the same time, the customs administration is expected to collect statistical data on contents which is essential for public policy making purposes. That is to say, the statistical data collected by the customs administration can be used by the policy makers to conduct effective policy and decision-making, especially on areas such as the livelihood of brick-and-mortar stores, infrastructure for e-commerce, and digital capacity development.

The second is to create level playing field, the moratorium customs duties on digital goods creates tax treatment discrimination between e-commerce stores and brick-and-mortar stores which results in unfair business circumstances. In a general practice, imported goods that physically enter the territory of a country are subject to customs duties, while importation of digital goods through electronic transmission is prevented from any duties collection. This different treatment on imported products will make physical products price higher than digital goods. Therefore, imposing customs duties for contents will preserve the fairness of tax treatment between physical and digital goods and create a robust business environment.

The third is to encourage Small Medium Enterprises (SMEs), the practice of imposing customs duties on contents provides support to domestic creative industries including SMEs e.g., software industries (software developer, etc.) through strengthening its competitive capability towards global e-retailers. Considering global e-retailers offer more competitive price of digital goods coupled with a convenience way of online shopping, there is no doubt that the consumers of brick-and-mortar stores will shift to online stores. On this account, in the future the role of customs duties is to increase the prices of imported digital goods so that domestic digital goods can maintain their competitiveness.

The fourth is to provide certainty for government and businesses, the certainty in customs procedures is not only for government agencies but also for businesses in terms of customs duty and import tax collection, digital goods classification, as well as the import declaration procedure.

The fifth is to assess digital goods risk, customs administration needs to assess digital goods risks of the potential occurrence of tax avoidance, Intellectual Property Rights (IPR) infringement, and trans-national organized crime such as creating weapon by using 3D printer,

illegal material smuggling, and money laundering. In addition, by monitoring the flow of contents, the customs administration can control the flow of content that is harmful for the society, such as digital materials for terrorist attacks.

The Importance of Policy Space

To remain relevant in the midst of rapid development of digital economy, we should also consider the importance of certain degree of policy space to enable highly needed adjustments for the imposition of customs duties on importation of digital goods transmitted electronically. This policy space includes both financial space and regulatory space in which customs duties is one of the manifestations of state fiscal rights. Moreover, retaining policy space is important for developing countries and LDCs to develop a viable domestic digital industrialization and the generation of local jobs in the era of Industry 4.0 (South Africa & India, 2020).

The Need of Scope, Definition, and Impact of Moratorium on Customs Duty on Electronic Transmission (CDET)

The moratorium on customs duties on electronic transmissions has been agreed since 1998 by WTO Members (General Council, 1998). However, there is still lack of clarity on the definition and lack of consensus on the scope of the implementation of this moratorium which has led to lengthy debates about whether or not to include electronically transmitted content. WTO Members are expected to analyze this moratorium implementation from a holistic perspective. In this regard, all Members need to be equipped with crucial elements, such as a multilaterally-agreed scope, definition, and impact of the imposition of moratorium on CDET particularly to the developing and LDCs.

The Provisions of Imposing Customs Duties on Electronically Transmitted Digital Goods

In December 2022, Indonesia Government has issued the Minister of Finance (MoF) Regulation Number 190/PMK.04/2022 regarding the Import for Use Purposes that stipulates the imposition mechanism of customs duties on electronically transmitted digital goods. The mechanism will accommodate digital goods importation, which is naturally different from the conventional or physical goods importation (Import for Use Purposes, 2022).

The importer of digital goods will utilize a simplified customs declaration with the minimum requirement of filled-in element data compared with the general import. The importer will need to fill in the relevant data in customs import declaration. Also, the exclusion of several customs measures such as delivery and submission of manifest, unloading and storing in Customs Area and Temporary Goods Storage, and physical inspection, also the customs clearance that is

different with the conventional import goods. In addition, the monitoring scheme for the import of digital goods will focus on the audit mechanism. In practice, the imposition of import duties for digital goods has previously been applied when the import of digital goods is carried out together with the physical media (e.g., CD, DVD, Bluray), which are classified in HS Code 85.23 with the import tariff rates mostly 0%. Currently, as the shifting of the importation method of digital goods by using electronic transmission, Indonesia has provided HS Code 99 to classify the electronically transmitted digital goods, with the same import tariff rate of 0% (The Classification System and Imposition of Customs Duty on Imported Goods, 2022).

CONCLUSION

Indonesian Customs Law has stipulated that "digital goods" (software, electronic data, multimedia, etc.) are objects of the Customs Law which their delivery may use electronic transmission i.e through internet. Indonesia has issued the specific tariff heading for intangible goods in Chapter 99 in the Indonesia Customs Tariff Book. So far, Indonesia imposes most favoured nation (MFN) tariff of zero percent (0%) on software and other digital goods transmitted electronically under Heading 99.01. However, the termination of the moratorium on CDET does not mean that Indonesia will abruptly increase the MFN tariff of electronically transmitted digital goods.

The rationales of imposing customs duties on digital goods are not solely about the state revenue, but more importantly regarding these following concerns: recording data statistic, creating level of playing field, encouraging local SMEs, providing business certainty, and assessing digital goods risks. Indonesia considers that these rationales are essential in establishing state sovereignty.

Indonesia has issued a regulation regarding the imposition of customs duties on electronically transmitted digital goods. The importer of digital goods will utilize a simplified customs declaration with the minimum requirement of filled-in element data compared with the general import and the exclusion of several customs measures.

WTO Members need to analyze this moratorium implementation from a holistic perspective. For that, members need to be equipped with crucial elements, such as a multilaterally- agreed scope, definition, and impact from the imposition of moratorium on customs duties. In addition, members should be having a certain degree of policy space to enable highly needed adjustments since customs duties

consist as one of the manifestations of state fiscal rights of a State.

Customs duties are the most accurate and effective policy tool of the government to administer importation of digital goods transmitted electronically referring to above-mentioned rationales. Imposing of Customs Duties on electronically transmitted content will not create a distortion for the global trade and it is not meant to put on an administrative burden to the importation procedure of digital goods using electronic transmission.

Indonesia government attaches great importance to the e-commerce discussion in the WTO and understands that electronic commerce could serve as a tool to support economic development for many members. Therefore, Indonesia emphasizes that the moratorium on customs duty on electronic transmission should be terminated and the discussion regarding the moratorium should be intensively conducted in the Work Programme of E-Commerce.

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