



PROVISIONS ON IMPORTATION OF ELECTRONICALLY TRANSMITTED DIGITAL GOODS STUDY CASE: INDONESIA

Achmad Hidayat^a, Gilang Rizki Pamutra^b

^a Directorate General of Customs and Excise, Indonesia. Email: achmad.hidayat@customs.go.id; achmad.hidayat@kemenkeu.go.id

^b Directorate General of Customs and Excise, Indonesia. Email: gilang.rizki@kemenkeu.go.id (penulis berkorespondensi)

ARTICLE INFORMATION

ARTICLE HISTORY

Received
12 September 2023

Accepted to be published
6 Desember 2023

KEYWORDS:

Customs Duties
World Trade Organization
E-Commerce
Moratorium
Digital Trade

ABSTRACT

Di dunia yang semakin bergantung pada *e-commerce*, kebutuhan akan peraturan perdagangan internasional yang komprehensif, yang memastikan keadilan dan inklusivitas dalam perdagangan digital ini menjadi sangat penting. Pada tahun 1998, *World Trade Organization* (WTO) memperkenalkan moratorium bea masuk untuk transmisi elektronik, yang menandakan komitmen terhadap lingkungan bebas tarif untuk perdagangan digital. Namun, keputusan ini telah memicu perdebatan yang luas di antara anggota WTO, terutama mengenai definisi dan cakupan konten yang ditransmisikan secara elektronik. Studi ini mempelajari ketentuan Indonesia dalam mengenakan bea masuk atas barang digital yang ditransmisikan secara elektronik, memberikan wawasan mengenai latar belakang kebijakan, kerangka hukum, dan prosedur pelaksanaannya. Dengan menggunakan metode penelitian kualitatif deskriptif, studi ini bertujuan untuk memberikan pemahaman yang menyeluruh mengenai ketentuan kepabeanan Indonesia untuk impor digital melalui transmisi elektronik. Studi ini menangkap nuansa kebijakan ini dengan menyajikan data dunia nyata, observasi, dan wawancara dengan para pemangku kepentingan. Pemerintah Indonesia telah mengatur impor barang digital melalui transmisi elektronik dengan menerbitkan Peraturan Menteri Keuangan (PMK) Nomor 190 Tahun 2022 tentang Ketentuan Impor Barang untuk Dipakai. Ketentuan tersebut mencakup tiga hal utama: pengecualian dari beberapa ketentuan impor barang berwujud, persyaratan minimum data elemen yang harus diisi dalam pemberitahuan pabean impor, dan mekanisme pengawasan dan penyerahan. Kesimpulannya, ketentuan importasi barang digital yang telah diterapkan di Indonesia telah mengakomodir kemanfaatan dan kemudahan bagi para importir dalam menyampaikan pemberitahuan impor. Hasilnya, telah terjadi peningkatan yang signifikan dalam jumlah dokumen pemberitahuan impor untuk barang digital sejak peraturan tersebut diterapkan pada Januari 2023.

In a world increasingly reliant on e-commerce, the need for comprehensive international trade regulations, ensuring fairness and inclusivity in this digital trade has become paramount. In 1998, the World Trade Organization (WTO) introduced a moratorium on customs duties for electronic transmissions, signalling a commitment to a tariff-free environment for digital commerce. However, this decision has sparked extensive debates among WTO members, particularly concerning the definition and scope of electronically transmitted content. The study delves into Indonesia's provision for imposing customs duties on digital goods transmitted electronically, offering insights into its policy background, legal framework, and implementation procedures. Employing descriptive qualitative research methods, this study aims to provide a holistic understanding of Indonesia's customs duties provision for digital imports through electronic transmission. It captures the nuances of this policy by presenting real-world data, observations, and interviews with stakeholders. Indonesia Government has regulated the importation of digital goods through electronic transmission with the issuance of the MoF Regulation Number 190 Year 2022 regarding Import Provisions for Home Use. The provisions include three main points: exclusion from some provisions of importation of tangible goods, a minimum requirement of filled-in element data in customs import declaration, and a monitoring and submission mechanism. In conclusion, the provisions of digital goods importation, which Indonesia has implemented, accommodates usefulness and easiness to the importers in declaring import declaration. As a result, there has been a significant increase in the number of import declaration documents for digital goods since the regulation's implementation in January 2023.

1. INTRODUCTION

1.1. Background of Study

Given the expanding importance of e-commerce, the need for international trade regulations that ensure the inclusiveness and fairness of the e-commerce environment is urgent. Therefore, in 1998, the World Trade Organization (WTO) announced the moratorium on customs duties on electronic transmissions and members agreed not to impose customs duties on electronic transmissions (General Council, 1998). Nevertheless, this decision has sparked lengthy debates among members, particularly regarding the inclusion of 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).

Apart from the moratorium policy, there is no formal WTO agreement governing digital trade, including e-commerce. However, discussions on this topic have been conducting since 1998 under the WTO Work Programme on Electronic Commerce (WPEC) and the ongoing WTO Joint Statement Initiative (JSI) on E-commerce, which began the negotiation in January 2019 (WTO, 2019).

In addition to the benefits brought on by the growth of e-commerce, the moratorium may have significant positive effects on the global economy. However, the substantial effects of the moratorium on some countries, particularly developing and least-developed countries, must also be considered. For instance, since most business sectors in developing nations are Small and Medium Enterprises (SMEs), domestic retailers in those countries scarcely profit from the free-tax and tariffs program for electronic transmission.

Moreover, Banga (2022) has predicted that the online worldwide imports of digitizable goods via electronic transmission will rise from USD 204 billion in 2020 to USD 365 billion in 2025, a rise of 79%, using the 8% Average Annual Conservative Growth Rate (ACGR) of online imports of 49 HS code of digitizable goods. Imports of digitizable commodities have been rising rapidly, which may signify that physical import trade is shifting to digital trade through electronic transmission.

Some countries have expressed their opinions regarding the moratorium on customs duties on electronic transmission in response to the shifting phenomenon, questioning whether the moratorium should continue and arguing that a specific measure is required to regulate the import of transmitted electronically digital goods (South Africa & India, 2020). For instance, Indonesia has enacted the provision on administering customs duties on digital goods due to several reasons, namely recording data statistic, creating level of playing field, encouraging local SMEs, providing business certainty, and assessing digital goods risks (Hidayat et al., 2023).

The purpose of this study is to provide an explanation of Indonesia's provision on imposing customs duties on the importation of digital goods through electronic transmission, including the policy background, the governing legal framework, and the procedure of administering digital goods importation. This study also highlights Indonesia's stance in the WTO JSI on E-commerce negotiations, which is in favor of removing the moratorium on customs duties on electronic transmission.

2. LITERATURE REVIEW

Hernández-López (2001) outlined the complex problems that WTO is grappling with concerning electronic transmission, including the classification of such transmission, the renewal of the moratorium on the imposition of customs duties, and the start of negotiations for e-commerce liberalization.

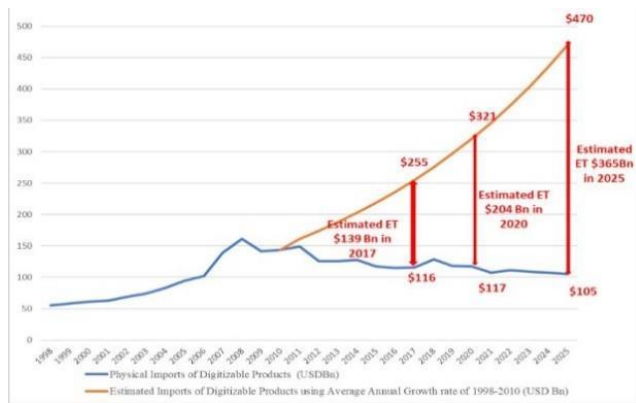
Teltscher (2002) also illustrated that while most nations' overall trade shares are still small, making fiscal losses insignificant, the moratorium on customs duties is of particular concern to developing countries. However, some developing countries would be significantly impacted by the reduction in tariff revenue.

According to a research study conducted in Zimbabwe, even if the results might seem insignificant in percentage terms, the losses incurred due to the exemption from customs duties on digitizable commodities are significant in real terms. Determining which categories of digital goods to impose tariffs on and which to exclude from duties could solve the issue (Makoni et al., 2013).

Liberalizing digital commerce regulations will make it harder for developing nations to raise funds for essential development needs and fulfill the Sustainable Development Goals (SDG). Add to this the growing financial need to pay for energy, roads, mail service, affordable and accessible broadband access, and digital skills to close the digital gap. Finally, developing and least-developed countries will require even more resources to finance the next stage of digital industrialization (James, 2019).

According to Banga (2022), which is illustrated by the Figure 1, in recent years, the importation of physical commodities in the form of digital goods has become commonplace. Using 8% of the average annual growth rate (AAGR), the expected imports of digitizable goods in 2017 were USD 255 billion. However, the actual physical import of those items was USD 116 billion. Therefore, the value of digital goods imported through electronic transmission accounts for the USD 139 billion as the gap between the expected and actual import values.

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 was lost by the developing countries and USD 8 billion by the LDCs (Kozul-Wright & Banga, 2020). It is interesting to observe that just 49 imports (at the HS six-digit) account for this loss in tariff revenue, many of which are high-end goods like movies, music, books, and video games (Banga, 2019).

In addition, the moratorium might continue to grant developed nations duty-free access to markets in developing and LDCs. This will harm sustainable development, job creation, and economic progress (South Africa & India, 2021).

On the contrary, according to Lee- Makiyama and Narayanan (2019), imposing import duties on digital goods and services would have a detrimental impact on such countries in the form of increased costs and decreased demand, which would result in sluggish GDP growth and diminished tax revenues. It would be expensive and inconvenient for the governments of developing nations, who have little resources, to operate a sophisticated customs system, to monitor data transfer and apply customs duties on it. (ICCWBO, 2019).

The non-renewal of the moratorium may lead to further retaliation among countries, such as the adoption of many tit-for-tat digital taxes, which would ultimately impede the development of the digital economy. (Agrawal & Mishra, 2022).

Some WTO members, including Australia, Canada, Chile, Costa Rica, the European Union, Hong Kong, China, Japan, Korea, Norway, Peru, Singapore, Taiwan, and the United Kingdom, have expressed their support for moratorium on customs duties on electronic transmission as a means of lowering trade costs and creating new opportunities for businesses. (WTO, 2023).

On the other hand, India and South Africa urge that it is necessary to have complete clarity on the definition of electronic transmissions, scope of the

moratorium and the impact of the moratorium of customs duties on electronic transmissions (WTO, 2021). Furthermore, those two countries share the same view with Indonesia in order to re-invigorate the work under the WPEC and instruct the General Council to hold periodic reviews (WTO, 2021).

In regional multilateral organization namely APEC forum, the Pathfinder Initiative Proposal for Permanent Customs Duty Moratorium on Electronic Transmissions, Including Content Transmitted Electronically has been endorsed by several economies, consisting Australia, Brunei, Canada, Chile, Japan, Korea, Mexico, New Zealand, Peru, Singapore, Chinese Taipei and the United States (APEC, 2016). Indonesia definitely opposes and does not join this pathfinder since it is not correspond with the Indonesia's position regarding the moratorium on customs duties on electronic transmissions.

Moreover, the customs duty moratorium is controversial because there is no consensus among WTO members over what constitutes an "electronic transmission." As a result, WTO countries have varied domestic customs and tax policies for cross-border electronic transfers. Some countries do not impose any taxes on digital goods. Others have categorized them as "intangible goods" in the tariff schedules, such as Indonesia, while nations like Australia, New Zealand, and South Africa impose a general sales tax or value-added tax on them. (Vasquez & Krugler, 2023).

WTO members must conduct a comprehensive analysis of the moratorium implementation. Members must have the necessary tools for that, including a multilaterally agreed-upon definition, the scope of the moratorium, and its effects. Additionally, as customs duties are one of the manifestations of a state's budgetary rights, members should have some room for policy adjustments that are urgently needed. (Hidayat et al., 2023).

3. RESEARCH METHODOLOGY

Descriptive qualitative research is what this study is. The goal of qualitative research is to comprehend phenomena relating to what research subjects experience, such as behavior, perceptions, motivations, and actions, holistically by describing it in words and language in a particular context that occurs naturally and using various natural methods (Lexy, 2006).

One of the characteristics that sets qualitative research apart is the fact that it gathers data in the form of words and images rather than statistics. The study report will, therefore, contain data extracts to illustrate how the report is laid out.

Researchers also used other materials, like field notes that took the form of observation notes. This research was carried out in stages over some time. By conducting a literature study, meeting informants in the field, and conducting interviews and observations, researchers attempted to obtain information.

In this study, researchers described Indonesia's provision for imposing customs duties on importing digital goods through electronic transmission. The information gathered is then provided as a word-by-word description to make it easier to comprehend in light of the field data. To support and further explain the research's findings, in addition to explaining the words, the researcher also provides facts in the form of statistical numbers.

4. RESULTS AND FINDINGS

4.1. Policy Background

Indonesia has given the position regarding moratorium on customs duties on electronic transmission in 11th WTO Ministerial Conference 2017, in Buenos Aires, Argentina. Indonesia stated that moratorium of customs duties only applies to the electronic transmission, but not including content transmitted electronically (General Council, 2017).

Moreover, Indonesia has been participating in WTO Joint Statement Initiative (JSI) on E-commerce negotiation since 2019 and has proposed a certain measure which emphasizes that customs duties should not be imposed on electronic transmissions, but this exclusion should not extend to electronically transmitted content or products (WTO JSI, 2019). In other words, the moratorium should only apply to electronic transmissions themselves, and not to the contents or products being transmitted electronically.

Since the 12th WTO Ministerial Conference in 2022, Members have engaged in a constructive reinvigoration of the work under the Work Programme on Electronic Commerce with a particular focus on its development dimension, as well as intensifying discussions on the issues specific to the moratorium (General Council, 2023).

Some WTO members, who support the permanent moratorium on customs duties on electronic transmission, raised question regarding how Indonesia impose the customs duties on electronic transmission, especially for the import of digital goods.

4.2. Legal Framework

Amendment of Indonesia Customs Law Number 10 Year 1995 Regarding Customs (2006) has stipulated that "digital goods" (software, electronic data, multimedia, etc.) are considered goods that fall under this law, and their transportation or delivery can be done through electronic transmission such as via the internet. Any tangible or intangible goods obtained from outside of Indonesia territory are considered "imported goods" and thus subject to customs duties.

According to the Indonesian Customs Law number 17 Year 2006 on the Amendment of Customs Law number 10

Year 1995, there are several articles regulates the importation of intangible goods/digital goods.

First, in Article 2 paragraph (1), it is state that "goods brought into the Indonesian Customs territory

shall be treated as imported goods and they are imposed on import duties". From this article, it is stipulated that any goods (whether they are tangible or intangible) that are acquired from outside of Indonesian territory are categorized as "imported goods", and are consequently subject to the imposition of import duties.

Further, in article 8B paragraph 2, it is stated that import or export software and/or electronic data can be conducted through electronic transmission. In the Explanation of Customs Law, it is determined that digital goods (i.e., software, electronic data or softcopy) are objects of the Customs Law which the delivery of the goods may use electronic transmission i.e., through internet.

In addition, Indonesia Trade Law Number 7 Year 2014 also mentioned that 'Goods' are every object, whether tangible or intangible, movable or immovable, whether expendable or non-expendable, and can be traded, used, or utilized by consumers or business actors. Therefore, intangible goods can be classified as Goods.

Moreover, Indonesia Government Regulation Number 80 Year 2019 regarding the Trade through Electronic Channel has explained that '*Digital Goods*' are any intangible goods in the form of electronic or digital information, including goods that are the result of the conversion or embodiment, and goods that are initially in electronic form, including but not limited to software, multimedia, and electronic data.

Furthermore, as the consequences that Indonesian Customs has stipulated those intangible goods, in this case digital goods as goods rather services, so the classification of the digital goods in HS Code must be regulated as well. The classification is important and is needed especially for the importer to declare in import declaration to customs. Therefore, Directorate General of Customs and Excise (DGCE) has issued the specific tariff heading for intangible goods in Chapter 99 in the Indonesia Customs Tariff Book.

The regulation that stipulates the classification of digital goods originally was stated in Ministry of Finance number 17/PMK.010/2018. Further, the regulation is renewed by the issuance of MoF regulation number 26/PMK.010/2022 regarding the Goods Classification System and Customs Duties on Imported Goods.

Nowadays, based on the above-mentioned regulation, Indonesia imposes *most favoured nation* (MFN) tariff of zero percent (0%) on software and other digital goods transmitted electronically under Heading 99.01 (The Indonesian Classification System and Customs Duties Book, 2022).

The imposition of this HS 99.01 for digital goods was also as the further step taken by Indonesia, following the Indonesia statement to the General Council in 11th WTO Ministerial Conference in 2017. Indonesia has submitted the position that the moratorium of customs duties shall not apply to

electronically transmitted goods and services. In other words, the extension of the moratorium applies only to the electronic transmissions and not to products or contents which are submitted electronically (General Council, 2017).

Like many other countries in the world, Indonesia is a party to the HS Convention at the WCO. The final two chapters 98 and 99, as explained in the HS Classification Handbook are chapters intended for national (TFIG, 2019). Then the implementation of these chapters depends on the national policy of each country. Therefore, Indonesia establishes the classification of Chapter 99 for intangible goods, in this regard digital goods.

Further, DGCE has stipulated digital goods is classified in heading 99.01 of HS Code. There are five tariff lines of digital goods fall under the heading 99.01, namely: Operating System Software (9901.10.00), Application Software (9901.20.00), Multimedia (9901.30.00), Supporting or Driver Data (9901.40.00), and Other Software and Digital Product (9901.90.00), as stated in Figure 2 below:

Figure 2: Classification of Digital Goods in Chapter 99

HS Code	Description of Good	Import Duty
99.01	Software and other digital product transmitted electronically	
9901.10.00	- Operating system software	0%
9901.20.00	- Application software	0%
9901.30.00	- Multimedia (audio, video or audio visual)	0%
9901.40.00	- Supporting or driver data, including design for machinery system	0%
9901.90.00	- Other software and digital product	0%

Chapter 99 Software and Other Digital Goods	
Notes.	
1. Software and other digital goods transmitted electronically referred to in heading 99.01 are those that are not related to machines or devices that have been or will be imported.	
2. Software and other digital goods transmitted electronically related to machines or devices that have been or will be imported are classified with such machines or devices.	
Subheading Notes.	
Tariff Line 9901.40.00 covers only software that is a renewal or update of said software for machines or devices that have already been imported.	

Recently, for administering the importation of digital goods, besides the imposition of Chapter 99 that classifies digital goods transmitted electronically, Indonesia Government has regulated provisions of digital goods importation through electronic transmission, with the issuance of the MoF Regulation Number 190 Year 2022 regarding Import Provisions for Home Use. The provisions are stated in the Article 34 - 35 of the regulation which is issued in December 2022 and it came into force in 14th January 2023.

4.3. Rationales for Administering the Importation of Digital Goods

Hidayat et al. (2023) explained that the rationale behind Indonesia policy to regulate digital goods importation not solely for revenue collection purpose but also for more significant reasons.

The first reason is to record trade statistics. Indonesia believes that administering digital goods importation is essential to record statistical data, which is crucial for public policy purposes related to the trade of digital goods.

The second rationale is to promote a level playing field. Administering customs duties on digital goods is important to eliminate tax treatment discrimination between e-commerce and conventional stores and it will create a more robust business environment by preserving fairness in tax treatment.

Further rationale is to support local Small Medium Enterprises (SMEs). Indonesia believes that administering customs duties on digital goods would support domestic creative industries, particularly SMEs, such as digital talents and software developers, in order to strengthen their competitive advantage towards global e-retailers.

Moreover, the rationale is needed to provide certainty for government and business, which is critical for both in term of customs duty and import tax collection, digital goods classification, as well as the import declaration procedure.

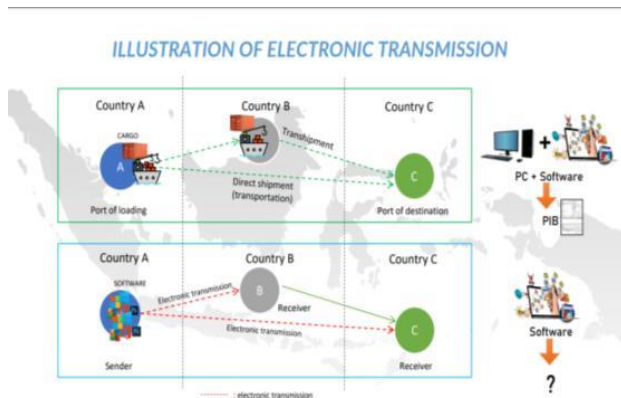
The last reason is for assessing digital goods risk. Indonesia believes that assessing the risks associated with digital goods is essential for the customs administration to mitigate the flow of content that is harmful to society, which can be associated with transnational organized crime, such as tax avoidance, IPRs infringement, creating weapons using 3D printers, and money laundering. This reason is very crucial since one of the DGCE's functions is as the community protector in Indonesia.

These rationales have been elaborated in the paper called Indonesia's Perspectives on Customs Duties on Electronic Transmission (CDET) and has been submitted to the WTO Secretariat in December 2022 (General Council, 2022). Further, as the respond to enquiry by the members of WTO, DGCE has also presented the above paper in the WTO Dedicated Discussion on e-commerce in 20th April 2023.

Moreover, according to Directorate General of Customs and Excise of Republic of Indonesia (2023), Indonesia has a view that content which is transmitted electronically can be analogized with the importation of tangible goods using the ship or plane as the carrier. The illustration of the electronic transmission can be explained in Figure 3 below:

The Figure 3 shows that the shipment of tangible goods, the imported goods are stuffed in the containers and loaded to the ship as the carrier from country A to B, either by direct shipment or through transshipment. Whereas in the lower part of the figure, the ship or plane is analogized as electronic transmission, and the cargo will be the contents or digital goods that transmitted from the sender abroad to the domestic receiver.

Figure 3: The Analogy of Importation by Using Electronic Transmission



Source: Directorate of Customs Technique, DGCE

In addition, Customs Law draws an analogy between electronic transmission with a pipe transporting gas. This analogy can help to illustrate the concept of electronic transmission. Just as a pipe is used to transport gas or liquids from one place to another, electronic transmission is used to transport data from one electronic device to another.

4.4. The Importance of Recording Trade Statistic

As one of the rationales underlining the imposition of provisions of importation on digital goods is how Indonesia could record the statistical trade data of digital goods (Hidayat et al., 2023). This statistical data is very important for government to formulate policies in e-commerce trade.

Due to the rapid development of digital trade and e-commerce, there was a change in how goods are being trade globally. There are three conditions that can be described how it is important to have trade statistics for Indonesian government (Directorate General of Customs and Excise of Republic of Indonesia, 2023).

First, before the importation by using electronic transmission, second after electronic transmission and last is by the implementation of MoF 190 Year 2022. The explanation of such conditions will be described in Figures 4 below.

The first condition shows that before the importation of digital goods via electronic transmission, the importation of hardware such as a personal computer (PC) together with the software included (such as operation systems or application systems software) is notified with the HS Code for hardware or the carrier medium (HS 84.71).

Because it is notified using the HS Code of hardware or the carrier medium, so the import value recorded in the import declaration is the total value of hardware and software. However, the import value and type of imported digital goods are not recorded in the import declaration. Thus, those data will not be recorded in the National Balance of Trade.

Figure 4: Challenges in Importation of Digital Goods Transmitted Electronically

Challenges in Digital Goods Transmitted Electronically
(Unrecorded Trade Statistics)

Before Implementation of HS 99 and MoF 199/2022

Importation	HS Code	Import Value
Product without Software	Product (HS 84 or 85)	Value of Product
Product with Software Included	Product (HS 84 or 85)	Total Value of Product + Software
Software in Carrier Media	Media (HS 8523)	Value of Software
Software Transmitted Electronically	NOT AVAILABLE	NOT DECLARED

unrecorded trade statistics

After Implementation of HS 99 and MoF 199/2022

Importation	HS Code	Import Value
Product without Software	Product (HS 84 or 85)	Value of Product
Product with Software Included	Product (HS 84 or 85)	Total Value of Product + Software
Software in Carrier Media	Media (HS 8523)	Value of Software
Software Transmitted Electronically	HS 99.01	Value of Software (declared)

recorded trade statistics

Source: Directorate of International Affairs, DGCE

For the example, the importation of hardware (PC) with the value of Rp7 million and the software of Rp3 million will only be recorded as the importation of hardware (PC) with total import value of Rp10 million.

As the current condition of the importation of digital goods by using electronic transmission, the hardware will be declared only as hardware or carrier medium in import declaration but not the digital goods. Import value declared only for the hardware and it will be recorded in national balance of trade. Therefore, only the importation of PC worth at Rp 7 million that will be recorded in national balance of trade.

Now, with the issuance of MoF Regulation Number 190/2022, the Importation of digital goods is notified by the same import declaration (PIB) for physical goods only with minimized element of data. The data on the importation of digital goods, such as: the types and value of digital goods, digital goods buyer and supplier, etc., will be recorded in trade statistics.

The importation will be divided into two declarations: one is for the importation of hardware and the second is the digital goods itself which are transmitted electronically. So, the importation for the hardware PC is declared in HS 84 or carrier medium in HS85. On the other hand, the importation of digital goods is declared in with HS 99.01.

With this mechanism, both data on the importation of hardware (PC) or carrier medium and digital goods will be recorded in national trade statistic. This mechanism is applied not only in import but also for export transactions. Thus, with the recording of the statistical data in national balance of trade, it will be very important for many purposes, such as in formulating public policies namely improving the domestic digital industry, developing creative industries or digital talents including SMEs, and determining other strategic policies by the Government.

4.5. Provisions of Importation Digital Goods Transmitted Electronically

Indonesia Government has regulated provisions of digital goods importation through electronic transmission, with the issuance of the MoF Regulation Number 190 Year 2022 regarding Import Provisions for Home Use. The provisions are stated in the Article 34 - 35 of the regulation which is stipulated in December 2022 and came into force in 14 January 2023.

The term 'Home Use' is referring to the WCO Revised Kyoto Convention (RKC) which defines "clearance for home use" as the Customs procedure for imported goods that enter free circulation in the Customs territory upon the payment of any import duties and taxes and the fulfillment of all Customs formalities.

Before the issuance of the abovementioned regulation, in June 2022, the Government of Indonesia have conducted Public Hearing with its stakeholders to seek inputs and comments regarding the MoF regulation. In addition, disseminations of information were held in January and specifically in April 2023 with more than 300 attendees from associations and companies related to software products and also several foreign country embassies.

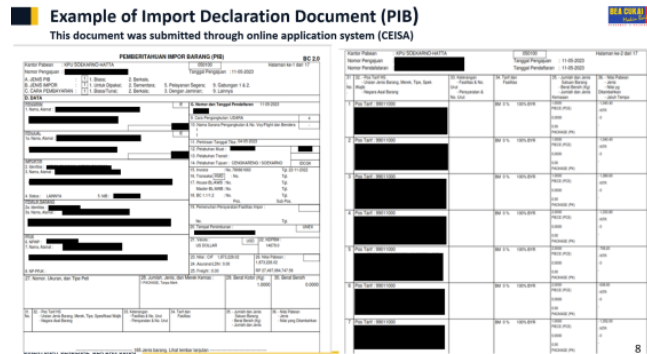
There are three main points regarding provisions of import digital goods, namely exclusion from some provisions of importation of tangible goods; minimum requirement of filled-in element data in customs import declaration; and monitoring and submission mechanism (Import Provisions for Home Use, 2022).

First, there are several exclusions of customs measures compared with the conventional import procedures for tangible goods, namely the importers do not need to submit the manifest or delivery data; there is no provision of unloading and storing of imported goods in Customs Area and Temporary Goods Storage; there is no Physical inspection of goods; and clearance of digital goods without customs officer's approval since the digital goods are using electronic transmission in delivery and they are not stored in the temporary warehouse.

Second, because of the nature of digital goods, the importers will utilize a minimized import declaration with minimum requirement of element data to fill in compared with import declaration for tangible good, as shown by Figure 5.

The importers only need to fill in following data through the online application system (CEISA) i.e., the name of Customs Office, Importer Data, Invoice, type of transaction, FOB value, currency, HS code (HS 99.01), goods description, etc. The element data is lesser than the element data in import declaration for tangible goods.

Figure 5: The Example of Import Declaration (BC 2.0)



Source: Directorate of Customs and Excise Information

In addition, there is no new import document for the importation of digital goods. The document is the same with the importation for tangible goods which is known as BC 2.0. Thus, it complies with the Article 10.1. WTO-TFA Formalities and Documentation Requirements

Third, the import procedure applies only for the importer as legal entity, and not for individual. The provisions are only for the importation of digital goods which are transmitted electronically (HS 99.01) according to Indonesian Customs Tariff Book 2022.

The Indonesian Customs will conduct customs audit for monitoring the import of digital goods. Importers may submit the Import Declaration Document (PIB) no later than 30 (thirty) days from the date of payment for the purchase transaction of the digital goods; and the Import declaration can be submitted to the customs office located nearby the importer's location or domiciled.

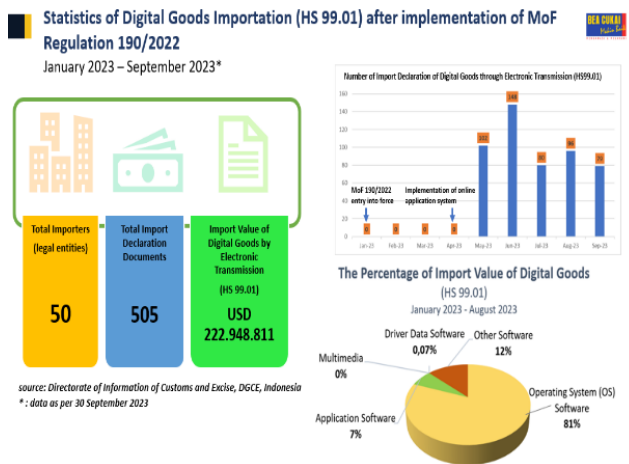
4.6. Statistic of Digital Goods Importation using Electronic Transmission

With the implementation of Minister of Finance Regulation Number 190 Year 2022, and according to the rationale of regulating the import of digital goods through electronic transmission, Indonesia Customs has recorded the statistics of digital goods importation using HS 99.01 in the period of January 2023 up to August 2023.

The Figure 6 shows the statistics of digital goods importation through electronic transmission from January 2023 until 31st August 2023. The data includes several information namely the number of importers and the import declarations, the import value of digital goods (in USD), and customs offices where the declarations were submitted.

As we can see in the left diagram of the Figure 6, as per 30th September 2023, there are already 50 importers or legal entities who have submitted the import declarations, with the total number of 505 documents. The total import value of digital goods is more than USD 222 Million (or around Rp3,2 trillion).

Figure 6: Statistical of Importation of Digital Goods through Electronic Transmission January to 30th September 2023



Source: Directorate of Customs and Excise Information

Furthermore, in the right graph shows the number of import declaration of digital goods transmitted electronically which used the provisions regulated in MoF 190/2022 in the period of January 2023 to 30th September 2023. The MoF regulation which was entered into force in January 2023 and to further facilitate the importation of digital goods by the importers, the implementation of online application system was launched in 17th April 2023.

Based on the classification of goods, 81% of imported digital goods are goods in HS code 9901.10.00 (Operating Systems) and the remaining 12% of goods in HS code 9901.90.00 (digital products and other software), 7% of goods in HS code 9901.20.00 (Application Software), 0.07% of goods in HS code 9901.40.00 (Driver Data software) and 0% of goods in HS code 9901.30.00 (multimedia).

After the implementation of online application system, there was a significant increase of import declaration documents which was recorded zero document in April 2023, to 102 documents in May, and it was continued to increase of 148 documents in June, 80 documents in July, 96 documents in August, and 79 documents in September.

The significant increase of the import documents from April to September 2023 is due to the implementation of online application systems to facilitate importers submitting the import declaration.

5. CONCLUSIONS

In 1998, the World Trade Organization (WTO) has announced a moratorium on customs duties on electronic transmissions, and its members agreed to refrain from doing so. The WTO Work Programme on Electronic Commerce (WPEC) and the continuing WTO Joint Statement Initiative (JSI) on E-commerce, which started the negotiation in January 2019, have,

nevertheless, been holding discussions on this subject since 1998.

Some WTO members have expressed their views regarding the moratorium in response to the shifting phenomenon, questioning whether the moratorium should continue and arguing that a specific provision is required to regulate the import of transmitted electronically digital goods.

The Government of Indonesia is in the view that members of WTO, especially developing countries, should be provided with instrument to support public policy objectives whilst at the same time to maintain effective customs control in trading across border.

There are several reasons why the administration of digital goods importation is important for Indonesia. The rationale behind this is not solely for revenue collection purpose, since Indonesia now apply 0% of customs duty for digital goods, but also for more significant reasons, such as: to keep a record trade statistic, to promote a level playing field, to support domestic SMEs, to provide certainty, and to assess digital goods' risks.

The provisions of digital goods importation, which Indonesia has implemented, accommodates usefulness and easiness to the importers in declaring import declaration. There are three main points regarding the provisions, namely exclusion from some provisions of importation of tangible goods; minimum requirement of filled-in element data in customs import declaration; and monitoring and submission mechanism.

As a result, there has been a significant increase in import declaration documents of digital goods since the implementation of the regulation in January 2023.

Indonesia values the WTO's e-commerce discussion and recognizes that electronic commerce has the potential to support economic development for many countries. Therefore, Indonesia underlines that the moratorium on customs duties on electronic transmissions should be lifted in, and any discussion about it should take place within the multilateral framework established in the 1998 Work Programme on Electronic Commerce.

6. RECOMMENDATION

The Government of Indonesia should continue the policy roadmap and conduct a periodic review of the policy implementation, especially in the mechanism and standard operating procedure of administering transmitted electronically digital goods importation.

Moreover, it is also essential to maintain good cooperation with the relevant ministries and other government bodies to increase the efficiency of applying the rules and procedures and to gain some new perspectives which can be useful for further policy development.

Finally, working with domestic and international stakeholders can significantly contribute to improving the understanding and alleviating some concerns that may emerge during policy implementation.

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