WT/GC/W/859

13 December 2022

(22-9276)



General Council

Original: English

# INDONESIA'S PERSPECTIVE ON CUSTOMS DUTIES ON ELECTRONIC TRANSMISSION

COMMUNICATION FROM INDONESIA

The following communication, dated 09 December 2022, is being circulated at the request of the delegation of Indonesia.

## 1 BACKGROUND

1.1. With the growing importance of e-commerce, Indonesia is of the view that international trade rules on e-commerce must ensure the inclusivity and fairness of the global e-commerce ecosystem. Since 1998, World Trade Organization (WTO) Members have agreed and renewed the temporary moratorium on customs duties on electronic transmissions, which has in the last seven years been the subject of lengthy debates about whether the moratorium includes electronically transmitted content. The debates are due to the lack of clarity on the definition as well as the lack of consensus on the scope related to the implementation of the moratorium.

1.2. Even though some literature suggests that the moratorium might offer benefits to the world economy and advantages brought on by the expansion of e-commerce, we need to also consider the moratorium's significant impacts on WTO Members, especially developing including 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 and Medium-sized Enterprises (SMEs) who engage minimally in cross-border e-commerce.

## 2 INDONESIA'S PERSPECTIVE ON CUSTOM DUTIES ON ELECTRONIC TRANSMISSION

### 2.1 Indonesian Customs Law and Classification on Software and Digital Goods

2.1. According to the Indonesian Customs Law number 17 Year 2006 on the Amendment of Customs Law number 10 Year 1995, Customs Duties are imposed on digital goods (software, electronic data, multimedia, etc.) which are delivered via electronic transmission i.e., through internet.

2.2. Indonesia has issued a specific tariff heading for digital goods in Chapter 99 (Heading 99.01) 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 which consists of five tariff lines, 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)[1], as stated in Figure 1 below.

[1] Minister of Finance (MoF) of Republic Indonesia Regulation Number 26/PMK.010/2022 regarding the Classification System and Imposition of Customs Duty on Imported Goods, 2022 as substitution of MoF Regulation Number 17/PMK.010/2018.

**Figure 1: Classification on 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.

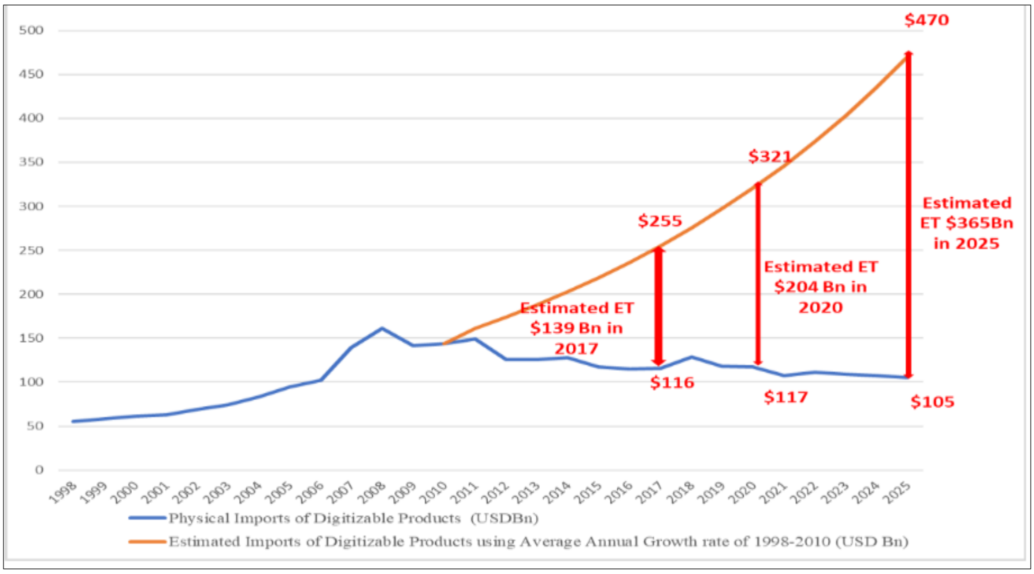
Subheading Notes.
Tariff Line 9901.40.00 covers only software that is a renewal or update of said software for machines or devices that have already been imported.

Source: Indonesia Customs Tariff Book 2022

## 2.2 Shifting Phenomenon and Potential Loss of Revenue

2.3. The shifting of physical goods importation to digital form has become a phenomenon that has occurred in recent years. Figure 2 shows that 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. In addition, using the same conservative 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%.[2]

**Figure 2: Global Physical Imports and Electronic Transmission of Digitizable Products: 1998-2025 (in USD Billion)**




Source: South Centre (2022), Research Paper Number 157

[2] South Centre (2022). WTO Moratorium on Customs Duties on Electronic Transmissions: How much tariff revenue have developing countries lost?, Research Paper Number 157, https://www.southcentre.int/research-paper-157-3-june-2022/.

2.4. 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. 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.[3] In addition, the moratorium could be a continuous provision of duty-free access to developed countries to enter the markets of developing countries including LDCs. This will have a negative impact on economic growth, employment, and sustainable development.[4]

2.5. 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.[5] As a result, there is a 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.

2.6. Figure 3 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 the import value of digital goods amounting to 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.[6] The increase has led to many companies declaring the importation of digital goods voluntarily since 2021.

**Figure 3: Indonesia's Import Value and Tax Revenue of Digital Goods (HS Code 99) period of March 2018 – September 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

## 2.3 Rationale for Administering the Importation of Digital Goods

### 2.3.1 To Record Trade Statistics

2.7. Customs duty policy on digital goods requires 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.

[3] UNCTAD (2019). Growing Trade in Electronic Transmissions: Implications for the South, Research Paper 29, UNCTAD/SER.RP/2019/1, 2019, https://unctad.org/en/PublicationsLibrary/ser-rp-2019d1_en.pdf.

[4] The Moratorium on Customs Duties on Electronic Transmissions: Need for Clarity on its Scope and Impact, Communication from South Africa and India, WT/GC/W/833, 2021.

[5] Directorate General of Customs and Excise, Republic of Indonesia.

[6] Directorate General of Customs and Excise, Republic of Indonesia.

### 2.3.2 To Create Level Playing Field

2.8. The moratorium on Customs duties on electronic transmissions, creates tax treatment discrimination between e-commerce stores (primarily foreign firms engaging in global e-commerce without a local presence) and brick-and-mortar stores (domestic) which results in unfair business circumstances. In 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 results in higher prices of physical products than with 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.

### 2.3.3 To Promote the growth of SMEs

2.9. The practice of imposing customs duties on content 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 prices of digital goods coupled with a convenient 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 and contribute towards domestic digital industrial development.

### 2.3.4 To Provide Certainty for Government and Businesses

2.10. 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.

### 2.3.5 To Assess Digital Goods Risk

2.11. Customs administration needs to assess digital goods risks which includes the potential occurrence of tax avoidance, Intellectual Property Rights (IPR) infringement, and trans-national organized crime such as creating weapons with the use of 3D printing, 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.

## 2.4 The Importance of Policy Space

2.12. To remain relevant in the midst of rapid development of the digital economy, we should also consider the importance of a 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 including LDCs to develop a viable domestic digital industrialization and the generation of local jobs in the era of Industry 4.0.[7]

## 2.5 Common understanding of Scope, Definition, and Impact of Moratorium on Customs Duty on Electronic Transmission

2.13. There is no common understanding on the scope and definition of the moratorium, despite evidence of its negative impact on the digital industry of most developing countries. Therefore, as Members consider the policy interventions to address the impacts of the moratorium, it is imperative that WTO Members approach the implementation of the moratorium from a holistic perspective. In this regard, all Members need to be equipped with the following crucial elements: multilaterally

[7] The Moratorium on Customs Duties on Electronic Transmissions: Need for Clarity on its Scope and Impact, Communication from South Africa and India, WT/GC/W/833, 2021.

agreed scope and definition, and a thorough, balanced understanding on the impact of the imposition of the moratorium particularly on developing countries including LDCs.

### 2.6 Draft Regulation Regarding Provisions of Imposition of Customs Duties on Electronically Transmitted Digital Goods

2.14. Indonesia has been developing a mechanism regarding the imposition of customs duties on electronically transmitted digital goods. The mechanism will be adjusted to accommodate digital goods importation, which is naturally different from the conventional importation. We are conducting intensive discussion in preparation for the implementation of the regulation.

2.15. The importer of digital goods will utilize a simplified customs declaration with the minimum requirement of filled-in element data compared to the general import. The importer will need to fill in the relevant data in the 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, and the customs clearance that is different from the conventional import of goods. In addition, the monitoring scheme for the import of digital goods will focus on the audit mechanism.

2.16. 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, Blu-ray), which are classified in HS Code 85.23 with the import tariff rates mostly at 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%.

## 3 CONCLUSION

3.1. Indonesian Customs Law has stipulated that Customs Duties are imposed on digital goods (software, electronic data, multimedia, etc.) which are delivered via 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 does not mean that Indonesia will abruptly increase the MFN tariff of electronically transmitted digital goods.

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

3.3. Indonesia has been developing a mechanism 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.

3.4. WTO Members need to analyze the implementation of the moratorium from a holistic perspective. For that, we need to be equipped with crucial elements, such as a multilaterally agreed scope and definition, and an understanding on the impact of the imposition of the moratorium on customs duties. In addition, we should be having a certain degree of policy space to enable the highly needed adjustments since customs duties are one of the manifestations of the fiscal rights of a State.

3.5. 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 global trade and it is not meant to put an administrative burden on the importation procedure of digital goods using electronic transmission.

3.6. Termination of the moratorium is also in line with the principles enshrined in the Declaration on the Right to Development, which will celebrate its 35th anniversary in 2023. As developing countries and LDCs are still struggling to continue to develop and become equal to developed countries, cooperation and common views are needed in ensuring and removing barriers to development.

3.7. Indonesia 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, we emphasize that the moratorium on customs duties on electronic transmissions should be terminated in accordance with the WTO Ministerial Decision adopted on 17 June 2022 contained in WT/MIN(22)/32 and WT/L/1143. Any discussion regarding the moratorium should be facilitated under the multilateral framework established in the 1998 Work Programme on Electronic Commerce.