INTERNATIONAL CHAMBER OF COMMERCE

WTO PLURILATERAL NEGOTIATIONS ON TRADE-RELATED ASPECTS OF ELECTRONIC COMMERCE

Taxation of Physical Goods in the Context of E-commerce: Avoiding Non-tariff Barriers through Simple and Consistent Design

SUMMARY RECOMMENDATIONS

Indirect tax regimes, if poorly designed, can create non-tariff barriers to the supply of physical goods. Where goods are ordered via platforms or otherwise electronically, the same issues can arise, creating obstacles to micro, small and medium-sized enterprise (MSME) growth through digitally-enabled trade.

ICC believes that the 'digital dimension' to goods transactions is an important consideration. To this end, we encourage governments to consider the following guiding principles in any associated discussions under the scope of the Joint Statement Initiative (JSI):

1. Minimise discrimination between domestic and non-domestic businesses in registration requirements, and ensure tax systems are technology-neutral in application.
2. Allow suppliers, where relevant, to collect and remit taxes away from the border.
3. Maintain or establish appropriate *de minimis* thresholds, allowing customs agencies to focus on safety and security rather than domestic tax collection.
4. Ensure that registration and tax payment processes are simple, consistent and non-discriminatory.
5. Do not require a place of business or fiscal representative in the country of destination in order to supply goods.

CONTEXT

Growth in digitally-intermediated goods transactions, from consumers buying on marketplace platforms to global supply chain management and fulfilment platforms, has completely changed the way that buyers and sellers interact. Consumers and buyers can now interact with each other online, unconstrained by geographic location.

Online shopping has brought greater choice for consumers and opened global markets to entrepreneurs at remarkable speed. The number of online shoppers in Africa, for instance, has increased by 18% annually since 2014, surpassing the world average growth rate of 12%[1]. If you have the right product at the right price, a consumer can buy that product, no matter where you or they are. Never has such an opportunity existed for MSMEs in developing and least developed countries to access global markets.

However, it has also brought about challenges. In addition to the well-known challenges of technology and skills gaps, and e-commerce related trade frictions (such as those outlined in the recent ICC Baseline Position), MSMEs face another potential barrier to market access and cross-border commerce: complex, costly and inconsistent indirect tax collection processes.

We believe the JSI negotiations offer the potential to frame WTO disciplines that ensure behind the border measures are non-discriminatory and avoid the creation of non-tariff trade barriers. For indirect taxation, this means designing regimes that are consistent, simple, and ensure a level playing field between domestic and international businesses—while balancing the dual objectives of protecting domestic revenue bases and creating an enabling environment for MSMEs to trade internationally.

1 UNCTAD B2C E-Commerce Index 2018: Focus on Africa (UNCTAD Technical Notes on ICT for Development, No. 12) 15.

INDIRECT TAXES

Value-Added Tax (VAT) and Goods and Services Tax (GST) are indirect or consumption taxes, borne by the final consumer in the jurisdiction of consumption and charged/levied on supply of goods and services at the time of supply. The place of taxation (consumption) is determined based on the destination principle. Business collects the tax on behalf of, and pays to, governments via periodic tax declarations.

With the advent of e-commerce, consumers are increasingly buying goods online from sellers in foreign jurisdictions, creating challenges for national governments in their collection of domestic VAT/GST from businesses located beyond their jurisdictions.

Traditionally, many countries have established *de minimis* thresholds on imports, refraining from the imposition of tax at the border because the cost of collection is too high to warrant it. Growth in the volume and value of digitally-intermediated B2C goods transactions, however, has created pressure for countries to abolish *de minimis* thresholds and collect domestic VAT/GST.

Safeguarding VAT/GST revenues and ensuring a level playing field are highly important for business too. The key elements for this to be achieved are:

- the destination and neutrality principle
- simplicity, consistency, feasibility and proportionality, and channel neutrality when it comes to VAT/GST collection
- cooperation and exchange of information between tax administrations to ease compliance

Consideration should also be given to automation (given the millions of transactions and hundreds of thousands of business parties involved), as well as ensuring consultation with business and appropriate lead times.

COMPLEX AND INCONSISTENT DESIGN CREATES BARRIERS TO TRADE

ICC recognises that, with the rise of digitally-intermediated goods transactions, national governments are concerned with the protection of fiscal revenue. The imposition of indirect taxes on physical goods purchased online from third countries has an important place in the policy mix. However, a balance needs to be struck between tax collection and ensuring that collection processes are neither overly complex nor discriminatory as to create non-tariff barriers to trade.

Unfortunately, some jurisdictions clearly discriminate between domestic and non-domestic retailers in the sale of physical goods, to such an extent that MSMEs in developing and least developed countries may be unable to access these markets.

Some jurisdictions are introducing proposals which include VAT/GST collection processes as well as additional customs declarations at the border, even though the intention is only to collect VAT/GST and minimize non-compliance, rather than the collection of import duties. Some are even requiring businesses, regardless of size, to either register a permanent place of business in their jurisdiction or employ the services of a fiscal representative.

Such proposals not only place substantial cost and administrative burdens on businesses, but local customs officials as well. Customs have stated for some time that the sheer volume of small consignments being imported is placing a heavy burden on resources. Today, most of these shipments are cleared via manifests. If these consignments suddenly require a customs declaration the impact on resources and clearance times for all shipments will be negatively impacted.

GOOD PRACTICE

To date, Australia—with other countries in the process of doing the same—has introduced a model for collecting GST which ICC believes should be looked at carefully as a potential solution to enhance indirect tax collection models in other countries. The process has delivered revenue in excess of expectations and compliance is high. Though this GST regime is relatively new, early experience suggests that it is an efficient and effective way of taxing physical goods sold via digital platforms.

Supposing that in a fiscal quarter a third country trader sells 1,000 units to Australia-based recipients (B2C sales only), each unit with a value below AU$1,000, the key features of the system are below:

- obligatory registration if B2C shipper/vendor has sales > AU$75,000 per annum (otherwise *de minimis* of AU$1,000 applies)
- 1,000 invoices to buyers
- 1 monthly or quarterly GST return (depending on the choice of the B2C shipper/vendor; fixed GST rate always 10% of sale price)
- 1 payment of GST (monthly or quarterly depending on the choice of the B2C shipper/vendor
- No customs declaration required: registration number of the B2C shipper/vendor is conveyed to Customs on the cargo manifest
- The B2C shipper/vendor can file directly: there is no requirement for physical presence nor a fiscal representative/intermediary in Australia.

We also kindly encourage JSI participants to look at the VAT/GST work already done in this field, particularly on efficient VAT/GST collection mechanisms, by other international organisations such as the OECD:

OECD VAT/GST Guidelines

OECD Report—Mechanisms for the Effective Collection of VAT/GST—Implementation Guidance

OECD Report—The role of digital platforms in the collection of VAT/GST on online sales

RECOMMENDATIONS

We believe the ongoing negotiations represent a major opportunity to establish principles ensuring that behind the border measures are non-discriminatory and avoid the creation of non-tariff barriers. For indirect taxation, this means regimes applicable to e-commerce shipments of physical goods that are simple and consistent, in order to enable MSME trade while protecting revenue collection. We encourage all governments participating in the JSI to consider whether these principles might usefully be captured in WTO disciplines contained within any future agreement on e-commerce.

Whether or not JSI participants ultimately determine that this agreement should contain such provisions, their impact needs to be better understood, especially given the very considerable increase in cross-border supply of goods enabled by digital platforms.