Tax Policy Alert

Global digital trade rules: Proposal negotiated at WTO

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In brief

What happened?

The World Trade Organization (WTO) circulated draft text of the E-commerce Agreement under the Joint Statement Initiative (JSI) on Electronic Commerce on 26 July 2024. From a tax perspective, the JSI is important for two main reasons - it provides a commitment to prohibit imposing customs duties on electronic transmissions and it supports measures to promote e-invoicing. More broadly, the JSI outlines a comprehensive framework for digital trade covering matters such as: paperless trading and data exchanges to facilitate digital trade; consumer protection (designed to enhance consumer confidence and trust in e-commerce); personal data protection; cybersecurity; and e-payments.

Why is it relevant?

The agreement focuses on streamlining global digital trade and includes a commitment to not imposing customs duty on electronic transmissions by a significant number of countries. The agreement, in which over 90 WTO Members actively participated (i.e. more than half of the WTO membership) including the European Union (EU), seeks to establish the first-ever global rules governing digital trade and support digital inclusiveness and economic growth of the developing and least developed WTO participating Members.

The participants are now focused on integrating the agreed text into the WTO legal framework, a process that requires consensus among all WTO Members. The final shape of the agreement will not be known for some time and may be subject to change after future discussions. Importantly, there is no guarantee that all WTO members will adopt the draft agreement, even if amended.

Even though various plurilateral measures already exist in relation to digital trade (as discussed below), this development marks a positive step in attempting to establish the first global rules on digital trade.

In detail

In the European Commission's release on 26 July 2024 supporting the WTO release on the same day, it was observed that there is great value in this development. This positive outlook will ultimately need to be balanced with the interests of all WTO Members and as cautioned already, not all Members may agree to the draft agreement.

The agreement is the outcome of five years of negotiations (started in 2019) under the JSI, which was launched at the 11th WTO Ministerial Conference in Buenos Aires in 2017 by a group of 71 WTO Members, later expanded to 91. It was driven by the recognition of the importance of global electronic commerce and the opportunities it creates for inclusive trade and development, as well as the need for a predictable and transparent regulatory environment. Notably, however, the United States was one of eleven participants including Brazil, Colombia, El Salvador, Guatemala, Indonesia, Paraguay, Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and Türkiye, that did not join the list of participants on whose behalf the JSI was circulated.

Observation: The draft agreement presents an opportunity to coordinate and streamline digital trade rules globally and provide trust and confidence to consumers. The draft agreement would also help bring about a more consistent approach in certain areas that touch tax such as e-invoicing (Article 7) and customs duties on electronic transmissions (Article 11).

E-invoicing

Digital reporting and e-invoicing trends - evident in significant developments such as the EU's VAT in the Digital Age - are developing rapidly across the globe. In this context, Article 7 provides the following commitments:

1. Not denying the legal effect of an invoice simply because it's an electronic invoice
2. Recognising that electronic invoicing frameworks can help improve the cost effectiveness, efficiency, accuracy, and reliability of e-commerce transactions
3. If a party to the agreement develops e-invoicing frameworks, the design should also support cross-border interoperability, taking into account relevant international standards.

Under Article 7, there is commitment to share best practices relating to e-invoicing, as appropriate.

No customs duties on e-transmissions

The draft agreement aims to keep alive the WTO E-Commerce Moratorium established in 1998, which committed to refraining from imposing customs duties on electronic transmissions. This commitment has been regularly renewed, most recently at the 13th Ministerial Conference (MC13) ending 2 March 2024 with an agreement to maintain the current practice until the 14th Ministerial Conference (MC14), expected to be held in March 2026. Crucially, Article 11 stipulates that "*No Party shall impose customs duties on electronic transmissions*", and this commitment is to be reviewed within five years of the agreement coming into force.

Observation: Over the last 25 years, the prohibition has fostered a stable and predictable environment for digital trade. Access to foreign digital inputs is crucial for enhancing domestic competitiveness, as tariffs would increase input costs and limit the capacity for value addition, thereby potentially reducing competitiveness. However, indications are that the Moratorium will not be further extended owing to concerns from certain developing countries.

OECD analysis demonstrates that the potential fiscal revenue implications of the Moratorium are not significant, amounting to, on average, 0.68% of total customs revenue or 0.1% of total government revenue. According to the OECD, well-designed VAT/GST can help offset potential foregone revenue in most countries.

Next steps

The participants of the JSI now need to take necessary steps to integrate the text of the agreement into the WTO rule book, which will require consensus of all WTO members. This process will undoubtedly take time and there may still be some compromises and additional matters introduced due to the evolving nature of e-commerce and digital technology. To maintain smooth international trade within the WTO's rules, the agreement aims to be governed by the WTO's dispute settlement system, managed by a dedicated committee, and supported by the WTO Secretariat. Importantly, as there is a balance of interests at play there is no guarantee that the proposal will be adopted by all WTO Members.

If no final agreement is reached by all WTO Members, there are several potential alternatives that would still be beneficial for businesses and consumers. For example, participants could implement the protocols by pursuing their objectives outside the formal WTO structure and enter into plurilateral agreements. An example of such an initiative was the New Zealand/Chile/Singapore agreement called 'Digital Economy Partnership Agreement' (DEPA) that came into force in January 2021. The primary aim of DEPA is to provide guidelines between the partner countries on aspects of the digital economy that might support trade in the digital era, and these guidelines can also be used by other countries negotiating free trade agreements or engaging in international digital economy or digital trade work. In May 2024, South Korea joined the agreement and as of June 2024, more countries have applied: China, Canada, Costa Rica, Peru, the United Arab Emirates, and El Salvador.

Another recent example of plurilateral measures in the context of digital trade is set out in the Regional Comprehensive Economic Partnership (RCEP), signed in 2022 by 15 Asia-Pacific countries (Australia, Brunei, Cambodia, China, Indonesia, Japan, South Korea, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, Thailand, and Vietnam (notably India was not a party)). Chapter 12 of RCEP deals with various e-commerce and digital trade measures, and Chapter 12.11 confirms that: "Each Party shall maintain its current practice of not imposing customs duties on electronic transmissions …".

The takeaway

There is no guarantee that all WTO Members will adopt the proposed agreement. However, the initiative presents an opportunity to coordinate digital trade rules globally and certain tax matters, such as e-invoicing and preserving the current prohibition against imposing customs duties on electronic transmissions. The proposed commitment to not impose customs duties on electronic transmissions - echoing what has been agreed under RCEP - is a positive development bearing in mind that the WTO's multilateral Work Programme on E-Commerce had earlier this year decided to not renew the moratorium on such duties when it is due for review in 2026. The current global tax landscape - in relation to both tax-paying obligations and data sharing and reporting - has become very complicated and is becoming more fragmented. Pillar Two has had a profound impact on businesses and their processes, VAT rules have grown rapidly in relation to cross-border digital trade (especially in relation to services), and we expect more movement in the future on digital services taxes (DSTs) and regulatory change in relation to cross-border services.

Against the backdrop of an increasingly complicated global tax landscape, measures that help coordinate global tax rules and reduce fragmentation, such as those promoted in the draft E-commerce Agreement in relation to customs duties on electronic transmissions, are a welcome development. Even if not all WTO Members ultimately adopt the proposal - thereby increasing the prospects of fragmentation - the initiative sets a precedent for future digital trade developments and provides a helpful framework that can be built upon through other plurilateral agreements or regional partnerships.

Let's talk

For a deeper discussion of how the WTO digital trade developments might affect your business, please contact:

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