



Understanding the ramifications of cross-border e-commerce: the WTO posture and agreement proposals

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INTRODUCTION

Cross-border e-commerce is a sensitive topic that has been discussed in the World Trade Organization (WTO) since the last years of the 1990s. The first action that took place over the subject was the Ministerial Declaration on Global Electronic Commerce that defined e-commerce. The WTO E-Commerce Work Programme is nowadays the main platform in the WTO to facilitate negotiations on e-commerce trade. It is agreed that multilateral WTO rules, such as the General Agreement on Trade in Services (GATS), the General Agreement on Tariffs and Trade (GATT), or even the Information Technology Agreement (ITA), are still far from to regulate digital goods and services. They can be partially used, but in general the possibilities to regulate e-commerce through them are limited (Biryukova & Daniltsev, 2019).

Additionally, the matter also pays attention to the dubious categorization (UNCTAD, 2017) amid digital products, besides the lack of privacy protection of cross-border information flows (Kende & Sen, 2019), being a major issue for WTO jurisprudence over the last two decades. In the digital trade context, the challenge is “at once more acute and less bounded” (Janow & Mavroidis, 2019, p.4), given that it is complex to limit the scope of electronic transmissions in industry 4.0 (UNCTAD, 2019). At the moment, WTO countries have periodically renewed a two-year Moratorium addressing e-commerce related goods and services at each Ministerial Conference since 1998, meaning that the comprehension of the scope and definition of the digital portfolio continues to be insufficient, and the requests that were nurtured in the last decades remain the same on customs duties (Ismail, 2020).

It is believed that digital data volume is growing at a rate of 40% per year and will increase 50 times by 2020 (WEF, 2016), and for that reason, UNCTAD (2019) considers that the effects of Moratorium will be mainly seen in developing nations that, in addition to the loss of tariff revenue, may depend on imported software from the developed countries without customs duties. As a result, big tech companies are looking for means to obtain new permission to profit in global markets, while ensuring that new rules allow them to not pay taxes to the markets in which they are profiting (James, 2019). Therefore, this article seeks to understand the ongoing legislation towards taxation and propose global alternative ways for CBEC range policies in place based first on Brazilian reality then global examples. So, standing on WTO regulation, we look forward to detailing the gaps over digital trade custom duties and recommending best options to remodel such a complex framework.

METHODOLOGY

First of all, a review of the literature was conducted, primarily selecting multiple papers on the Scopus platform, as well Web of Science as a supplementary source. Table 1 shares the filters employed in the present research.

Table 1: the research path taken

Sources	Searching	Other restrictions
Scopus (Elsevier)	Keywords: "Cross-Border Ecommerce", "CBEC & WTO Regulation", "CBEC, E-Commerce Taxation & Digital Business", "CBEC, Taxation & Regulation", and "Digital Business, and Online Business"	<ul style="list-style-type: none">• Papers as of 2015• if applied, filtered by the following subject areas: Business, Management, Accounting, Economics, Econometrics, and Finance.
Web of Science	Keywords: "Cross-Border Ecommerce", "CBEC & WTO Regulation", "CBEC & E-Commerce Regulation", and "CBEC, Digital Business & Online Business"	<ul style="list-style-type: none">• Papers as of 2015• In one case, filtered by the following subject areas: Business, Economics, International Relations, Law, and Management.

Source: The authors

In general, 53 articles were found in Scopus, as this number does not include duplicated or non-related papers. Looking for conclusions over these digitalization changes, the platform was the main basis of this study, whereas when it comes to the Web of Science, 13 articles were analyzed and used as a support to Scopus' database, thus totaling 66 articles.

Additionally, relevant data from the World Trade Organization (WTO), the United Nations Conference on Trade and Development (UNCTAD), World Bank, World Economic Forum (WEF), besides other agencies and institutions' visions were applied to strengthen the report view. The limitation for articles from 2015 on was mainly because guidance upon global trade generally changed in the past years due to CBEC recent relevance and conscience.

Through that, it could be done systematic research where 21 papers were reviewed to focus on the main problematic aspects of the theme, therefore, preparing the following steps to define pertinent outputs over CBEC taxation. The other 45 papers did not have a specific focus on tax evasion but yet assisted on the main findings in the study. By all those steps, the analysis could motivate questions over CBEC, specifically in respect to its regulation and further proposals and, since the theme happens to be in its very beginning, such outcomes encourage and prepare future investigation based on the inferences here made.

RESULTS & DISCUSSIONS

Even though there is evidence of revenue loss on e-commerce customs within emerging countries, Carpenter & Parsons (2016) and Kend & Sen (2019) doubt if they are ready for a plural agreement following the missing related information from a problematic framework. The Brazilian reality is more complicated than the average, in the light of the huge taxes already applied on different products and services, representing 31% of real earnings (World Bank, 2019), the highest in South America. The bureaucracy is also acute (WTO, 2017) concerning negotiations with digital platforms, in which multinationals' local operations may not fit within their complexity and large supply chain, as e-commerce enterprises still face difficulties in receiving such demands. That is one of the foremost symptoms to explain how WTO or other alternative proposals may delay its implementation while several packages do not consider tangible conditions.

By selling a product online, Brazilian companies are supposed to pay several costs, for example, concerning contractual partnership commission, storage, revenue collection, and access to market intelligence techniques to display their goods. Because of that, additional expenses – an increase of e-commerce taxation – happen to be a push to put away investors and customers, which

is why a global consensus must consider these edges, or at least put a deeper focus on big corporations' transactions, whereas SMEs could lose more severely on the new operational models.

With an unprecedented amount of data flows being seen worldwide, valuable input information is also served by users to platforms (OECD, 2018), being one of CBEC branches ahead of the new motions, being no exception for Brazil. In doing so, the same data, with the help of cookies and other website searching tools, can be manipulated with the intention of promoting advertisements, thus generating revenue with no solid restrictions as with the blockchain technology:

By recording when a transaction occurs, the details of the transactions (e.g., transfers of the ownership of assets), and providing assurance that the relevant business rules have been met without the necessity of a centralized verification authority, blockchain offers some useful applications for tax authorities. For example, a secure method for the registration and authentication of taxpayers, or the recording of transactions (e.g., land title registers) (OECD, 2018, p. 206).

Boosting the implementation of the Base Erosion and Profit Shifting (BEPS) fifteen actions by OECD is also a way enterprises can use to adapt their businesses in digital business, with positive impacts on national economic growth in the long run, as their Inclusive Framework (OECD, 2018) treats contradictions of digitalization and base erosion (Clavey et. al, 2019).

Another tool that can be mixed with BEPS is the *de minimis*, which “refers to the maximum customs value of goods below which goods can be processed through customs, duty-free, and also with minimal formal clearance procedures” (Tavengerwei, 2018, p.360). Practically, it is associated with customs categorization, being a procedure and cost-saving during customs steps, hugely appreciated by small enterprises as a threshold for trade facilitation (Latipov et al., 2017). The idea of setting a minimum quantity permits better assistance on cross border carriage and watching, not to mention the risk and gray area confrontation, being one of the greatest achievements for WTO and its country members if executed at a future time.

After doing the research, we also came up with the following questions to tackle the problem of CBEC tax evasion (Table 2). They represent some of our doubts in the long run around the challenges encountered inside WTO and economies' negotiations.

Table 2: questions for future researches

Citations	Issues raised
<i>Canada operates a Goods and Services Tax (GST) with federal and provincial rates; value-added tax (VAT) rates vary within the European Union (EU); and India and Brazil levy state-level rates through their tax systems. Even highly centralized tax systems are not immune to the pressures of e-commerce (Agrawal & Fox, 2017).</i>	May centralizing taxation laws within the government sphere solve the loss of revenue on CBEC tax evasion?
<i>As a result of court decisions, US states cannot use vendors to enforce destination taxes for cross-state e-commerce transactions when the vendor does not have physical presence in the buyer's state and states must resort to attempts to collect the tax from buyers (Agrawal & Fox, 2017).</i>	What happens to companies with no physical presence in some state but still have to follow the destination principle?
<i>Taxable services in most states do not include the faster growing services, such as health care, other professional services, and contractor services. As goods consumption has risen more slowly than non-taxable services, the base has fallen relative to personal income (Agrawal & Fox, 2017).</i>	How to track cash transactions, thus the taxes on them, as there is no address telling where the destination rule can be applied?
<i>In CBEC, additional uncertainties for buyers might arise before, during and after transaction stages. These uncertainties include asymmetric product information, privacy concerns, financial risk and delivery risk, all of which may detract from the use of CBEC (Koh et al., 2012; Chiu et al., 2014; Kim et al., 2017; Guo et al., 2018) (Mou et al., 2019).</i>	Concerning global data flows and privacy, is there any extent being considered when it comes to sharing information related to the consumption of such products by consumers?

<p>Every country has its laws and rules on trade. However, China's regulations on CBEC are generally lax compared to those on traditional international trade. China's policies on CBEC have also evolved over time, especially since 2012, to keep up with the development of the CBEC market (Tu & Shangguan, 2018).</p>	<p>Seeing that the profit of global trade is already fragile, does aggressive tax on CBEC may condemn it even more?</p>
<p>Developed economies, as well as a number of developing ones, have the necessary conditions for the development of e-commerce and have received significant benefits from it. However, not all countries can take advantage of e-commerce opportunities due to poor infrastructure, low levels of education and relevant skills, and institutional and regulatory disorder [ICTSD, 2017] (Biryukova & Daniltsev, 2019).</p>	<p>Are emerging countries prepared for CBEC taxation changes as they lack infrastructure and technology in many ways and still have to deal with administrative and compliance costs?</p>

Source: the authors

CONCLUSION

CBEC is playing an important role in transforming traditional trade and boosting digital economies, besides shortening intermediate steps in the supply chains, therefore delivering a much faster value to customers (OECD, 2018). At the same time, "CBEC is not about just putting up goods for sale on a website" (Tu & Shangguan, 2018, p.112), meaning applicable issues still hang in the air. That is because specifying "how, where and by whom income is earned" (Argilés-Bosch et al., 2020, p.3) may be as not simple as in a conventional via – the marketplace industry.

By taxing just traditional traders instead of including online platforms, the regulation in place opens up for price differentiation (Carpenter & Parsons, 2016). Consequently, new proposals such as BEPS can also put an end to the financial loss of US\$ 10.6 billion a year combined in GDP (Lee-Makiyama et al., 2019) that an extended-Moratorium can make for emerging economies; just as the *de minimis* and the blockchain technology can bring to an end nearly three-quarters of non-custom-policy-related trade costs to surrounding CBEC bilateral negotiations (OECD & WTO, 2017).

As a result, effective taxation systems on CBEC may help countries to collect revenue and work on social and environmental programs, while they still protect their economies from financial losses consequent to the "imperfect enforcement capacity" (Agrawal & Fox, 2017, p.1) which does not concentrate on the origin or destination choice of levying. Lastly, whatever future decision – on setting a temporary or a permanent Moratorium on CBEC, multilateral trade agreements must preserve countries' autonomy on regulation (Neeraj, 2019) as a way to assure an open and honest global electronic commerce.

In this way, we expect that this paper will serve as a deeper contribution for the acknowledgment of CBEC ramifications by governments, policymakers, enterprises and many other stakeholders ahead of further discussion amid WTO legislation on taxation. The present research shows plenty of analysis on tax evasion, however few literature related to solutions for it, as some are very superficial or briefly suggestive. The dynamic environment when it comes to CBEC law implementation follow-up was also difficult, as many were proposals to be validated by legislators on taxation.

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