

The Senate

Economics
Legislation Committee

Treasury Laws Amendment (GST Low Value
Goods) Bill 2017 [Provisions]

May 2017

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Abbreviations and Acronyms

ABN	Australian Business Number
ATO	Australian Taxation Office
CAPEC	Conference of Asia Pacific Express Carriers
GST	Goods and Services Tax
ITZ	Indirect tax zone
LVT	Low value threshold
OECD	Organisation for Economic Co-operation and Development
PC	Productivity Commission

Recommendations

Recommendation 1

2.80 The committee recommends that the bill be passed, but that the implementation date be delayed to 1 July 2018. The committee urges the government to note the concerns raised in paragraph 2.78.

Chapter 1

Introduction

1.1 On 23 March 2017, the Senate referred the provisions of the Treasury Laws Amendment (GST Low Value Goods) Bill 2017 (the bill) to the Economics Legislation Committee for inquiry and report by 9 May 2017.¹

Conduct of the inquiry

1.2 The committee advertised the inquiry on its website. It also wrote to relevant stakeholders and interested parties inviting submissions by 10 April 2017. The committee received 34 submissions, which are listed at Appendix 1.

1.3 The committee held a public hearing in Melbourne on 21 April 2017. The names of witnesses who appeared at the hearing are at Appendix 2.

1.4 The committee thanks all individuals and organisations that contributed to the inquiry.

1.5 Hansard references throughout this document relate to the Proof Hansard. Please note that page numbering may differ between the proof and final Hansard.

Overview of the bill

1.6 At present, goods with a value of less than \$1000 are exempted from Goods and Services Tax (GST), when imported directly by consumers into Australia. The bill seeks to apply GST to those goods, with effect from 1 July 2017. This would, on the face of it, bring their tax treatment into line with goods supplied locally.

1.7 The bill applies GST by requiring the suppliers of those goods, including vendors, freight forwarders and electronic distribution platforms, to register for GST, and to remit the appropriate tax to the Australian Taxation Office (ATO).

1.8 The measure was announced in the 2016–17 Budget. It is a complementary measure to the extension of GST to digital products and other imported services, which was announced in the 2015–16 Budget and which will commence on 1 July 2017.²

Financial impact

1.9 The measure enacted by the bill is estimated to result in an increase in GST revenue over the forward estimates of \$300 million.³

1 *Journals of the Senate No. 34*, 23 March 2017, p. 1148.

2 *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016*, received royal assent 10 May 2016.

3 Explanatory Memorandum, p. 3.

Background and consultation

1.10 The low value threshold, set in 1985 at \$1000 and not indexed, is prescribed under the *Customs Act 1901*.⁴ It sets a level below which imported goods (with some exceptions such as alcohol and tobacco) are exempt from a number of processing and tax requirements, including GST.

1.11 This creates a price advantage for goods imported directly from overseas retailers over goods supplied locally, since the locally supplied goods incur the GST.

1.12 With the advent of online shopping, many local bricks-and-mortar retailers faced a new competitive threat. Meanwhile, online shopping made purchasing from overseas through sites like Amazon.com much easier, so consumers began importing more goods directly. This led retailers to claim that the failure to levy GST on low value imports was putting them at a significant competitive disadvantage. For example, the National Retail Association's submission to the 2013 National Commission of Audit was entitled *Protecting the Integrity of the GST System*, and dealt almost exclusively with this issue.⁵

1.13 The following figures are not authoritative. They are included merely to give an indication of the order of magnitude of the changes involved.

1.14 While precise data is not available, Australian Bureau of Statistics (ABS) figures suggest that retail sales have increased by about 11 per cent since 2014.⁶ Online sales appear to have increased by nearly 40 per cent since 2014.⁷ They now represent approximately 7 per cent of retail sales; but the rate of increase appears to be slowing.⁸ The Australian Bureau of Statistics increased its 'low value threshold adjustment' (by which it adjusts its estimate of total imports for the national accounts) by 13 per cent between 2013–14 and 2015–16.⁹ It is now \$7.6 billion, compared with a total value of annual retail sales of about \$300 billion.

4 Customs By-Law No. 1305011, Schedule 4, Item 26.

5 National Retail Association, *Protecting the Integrity of the GST System: submission to the National Commission of Audit*, November 2013, <http://www.ncoa.gov.au/docs/submission-national-retail-association.pdf> (accessed 5 April 2017).

6 Calculated from February figures for 2014 and 2017 in Australian Bureau of Statistics (ABS), *Retail Trade, Australia, February 2017*, cat no.8501.0.

7 Calculated from National Australia Bank (NAB), *NAB Online Retail Sales Index*, Monthly Report, January 2017, <http://business.nab.com.au/wp-content/uploads/2017/03/norsi-february-2017.pdf> (accessed 5 April 2017) and NAB figure for 2014 quoted in T Dale, *Online shopping and potential changes to the low value threshold: costs and benefits for government, consumers and retailers*, Parliamentary Library, 27 October 2014.

8 NAB, *NAB Online Retail Sales Index*, Monthly Report, January 2017.

9 Calculated from the Financial Year Situation section of the Analysis and Comments in ABS, *Balance of Payments and International Investment Position, June 2016*, cat no. 5302.0 and ABS, *International Trade in Goods and Services, Australia, 2014, Technical Note: Low Value Threshold UPDATE*, cat. no. 5368.0.

1.15 Thus, while online sales overall have increased rapidly, the proportion that are low value imports is actually modest. However, it is plausible that low value imports will continue to increase, especially as the rate of increase in the last few years was probably dampened by the depreciation of the Australian dollar.

1.16 The need to protect the GST base and the desirability of a level playing field for Australian based retailers have established a case for extending GST to low value imports.

1.17 Australia's threshold of \$1000 is relatively high: thresholds for GST or value-added tax (VAT) in similar countries are C\$20 for personal imports and C\$60 for gifts in Canada, £15 for personal imports and £39 for gifts in the United Kingdom, and NZ\$60 in New Zealand. The United States threshold appears to be US\$800 for customs duty; note that consumption taxes are more complex, as they are levied by individual states.¹⁰

1.18 Other countries are looking at the treatment of low value items. The OECD, after many years of work, published *International VAT/GST Guidelines* which dealt with the issue in November 2015.¹¹ Since then:

Most OECD countries have implemented or announced measures to collect the VAT on the ever-rising volume of online sales by offshore sellers in line with the International VAT/GST Guidelines and the [OECD Base Erosion and Profit Shifting] Action 1 Report on Addressing the Tax Challenges of the Digital Economy.¹²

1.19 There have been several analyses of the issue in Australia. The Productivity Commission (PC) examined it in its report on the retail industry in 2011. It noted that there were advantages of tax neutrality in collecting GST and any relevant duty on all imports. It looked at various changes to the low value threshold including complete abolition of it. Its discussion envisaged that collection of the GST on low value imports would involve separate handling of each parcel. The PC concluded that the advantages of tax neutrality and any increase in revenue would be far outweighed by

10 Canada Border Services Agency, *Determining duty and taxes owed*, <http://www.cbsa-asfc.gc.ca/import/courier/menu-eng.html>; UK Government, *Tax and customs for goods sent from abroad*, <https://www.gov.uk/goods-sent-from-abroad/tax-and-duty>; New Zealand Customs Service, *Internet Shopping*, <http://www.customs.govt.nz/features/internetshopping/Pages/default.aspx>; US Customs and Border Protection, *Internet purchases: your responsibility and liability* <https://www.cbp.gov/trade/basic-import-export/internet-purchases> (all accessed 27 April 2017).

11 Organisation for Economic Co-operation and Development (OECD), *International VAT/GST Guidelines*, November 2015, <http://www.oecd-ilibrary.org/docserver/download/2317031e.pdf?expires=1493269825&id=id&accname=guest&checksum=A843BC3ED207E0B04FA9551AE4D3F54B> (accessed 27 April 2017).

12 OECD, *Consumption Tax Trends 2016*, p. 12, <http://www.oecd-ilibrary.org/docserver/download/2316351e.pdf?expires=1493265901&id=id&accname=ocid194681&checksum=290E38723DC70AF5407030E359C164B1> (accessed 27 April 2017).

the costs of collection. It suggested that further examination of the handling of parcels was needed before a solution could be found.¹³

1.20 In response to the PC, the Government established the Low Value Parcel Processing Taskforce. It recommended, among other things, that there no longer be a single threshold for customs and GST; that the GST threshold be lowered (but the Taskforce did not recommend a specific value); and that simplified collection methods, not including transport costs, be devised. It also recommended (Recommendation 4.3):

To streamline revenue collection, legislative arrangements could be amended to enable and encourage appropriately regulated overseas suppliers to collect GST from purchasers of low value goods at the time of purchase.¹⁴

1.21 The Taskforce envisaged a gradual introduction of any changes. It saw the possibilities of using electronic data provided by suppliers, but still appeared to be thinking in terms of individual parcels.

1.22 In the 2015–16 Budget, the Government announced a measure to collect GST on cross-border supplies of digital products and services. Legislation has been passed and the change will take effect from 1 July 2017.

1.23 A Commonwealth-State Leaders Retreat agreed in July 2015 to extend the GST to cross-border supplies of low value goods. The Commonwealth put forward its proposed way of doing this:

At the meeting the Commonwealth Treasurer put forward a proposal that relies on a vendor registration model as a method of collecting the GST for the states and territories. As goods would not be stopped at the border, administering a vendor registration model would have a relatively low cost.

The Commonwealth also recommended that the existing threshold for the GST liability be reduced to zero, in line with the GST collection for other products and services. The states and territories have unanimously agreed to this in principle.¹⁵

1.24 In November 2016, the Government released an exposure draft, explanatory memorandum and further information for the proposed legislation.¹⁶ The responses to the consultation documents have not been published.

13 Productivity Commission, *Economic structure and performance of the Australian retail industry*, Canberra, 2011, pp. xxxiii–xxxviii.

14 Low Value Parcel Processing Taskforce *Final Report*, The Treasury, Canberra, 6 September 2012, pp. 14–19.

15 J B Hockey (Treasurer), *Statement: Council on Federal Financial Relations Tax Reform Workshop*, media release, 21 August 2015, <http://jbh.ministers.treasury.gov.au/media-release/075-2015/> (accessed 7 April 2017).

16 Available at The Treasury, *Applying GST to low value goods imported by consumers*, 4 November 2016, <https://treasury.gov.au/ConsultationsandReviews/Consultations/2016/Applying-GST-to-low-value-goods-imported-by-consumers> (accessed 7 April 2017).

1.25 Several submitters and witnesses to the inquiry have complained that consultation has been inadequate. Some have asserted that they were not aware of the specific model that the Government was adopting until the publication of the exposure draft in November 2016. This statement by Ms Kristen Foster of eBay is more or less typical:

We have been watching and monitoring this issue since the COAG decision of 2015... [It] was based on a low value threshold and moving it to zero. It did not come up with a policy option of an electronic distribution platform model or a collection model whereby marketplaces would need to collect. The vendor registration model was announced in the federal budget last year in a couple of sentences. When we read that we thought: 'vendor, seller; not eBay'. When we saw the draft bill at the end of last year we saw that there were electronic distribution platforms included in that, so we had a few questions around that.

To be very honest and very frank with the committee, the first we actually saw of the final bill was when it was introduced into the House of Representatives.¹⁷

1.26 The bill simplifies some of the issues by requiring suppliers, rather than customers, to be responsible for the GST, as foreshadowed by the Treasurer. Suppliers with sales into Australia of over \$75,000 will be required to register for GST and remit the tax to the Australian Taxation Office. In many cases the suppliers are not the vendors; rather, they are parcel delivery companies or electronic trading platforms.

1.27 Unusually, the bill and explanatory memorandum are not accompanied by a Regulation Impact Statement. An official of the Department of the Treasury conceded that it had been found to be a breach of the Office of Best Practice Regulation's guidelines. She explained that there had been a great deal of preliminary work on the issue.¹⁸ Another witness, however, pointed out that most of that work had concluded that the measure was not worth pursuing.¹⁹

Content of the bill

1.28 The *A New Tax System (Goods and Services Tax) Act 1999* defines as taxable supplies goods which are 'connected to the indirect tax zone (ITZ)' (which roughly means Australia, excluding the external territories). At present, goods which are purchased overseas by an Australian consumer are not 'connected to the ITZ'.

1.29 At present, goods with a value at the time of purchase which is below the low value threshold defined in the Customs Act are specified as non-taxable.

17 Ms Kristen Foster, Director, Government Relations, Australia, New Zealand, Japan and South East Asia, eBay, *Committee Hansard*, 21 April 2017, p. 25.

18 Mrs Marisa Purvis-Smith, Division Head, Individuals and Indirect Tax Division, The Treasury, *Committee Hansard*, 21 April 2017, pp. 5–6.

19 Ms Erin Turner, Acting Director, Content, Campaigns and Communications, Choice, *Committee Hansard*, 21 April 2017, p. 30.

1.30 The bill does not change the low value threshold specified in the Customs Act.

1.31 The bill works by defining these goods that were previously excluded (that is, goods supplied direct to consumers from offshore and valued at \$1000 or less) as supplies of goods 'connected with the ITZ' (and therefore subject to GST) if they are brought to the ITZ with the assistance of the supplier.²⁰

1.32 The bill further defines 'redeliverers' as suppliers. They include entities which provide offshore mail or shopping services in relation to the goods, take delivery or arrange the delivery outside the ITZ, and assist the recipient to bring the goods to the ITZ. The operator of an electronic distribution platform through which a supply is made is also a supplier.²¹

1.33 An entity is treated as a supplier only if it has some involvement in the delivery of the goods, as part of making the supply. This is intended to ensure that the entity is liable only when it has knowledge and involvement that make it appropriate.²²

1.34 Suppliers who supply goods in the ITZ valued at more than \$75,000 (or \$150,000 for non-profit entities), which is the same as the Australian threshold, are liable to register for GST.

1.35 Goods purchased overseas and brought to Australia by the consumer are not to be taxed. But goods purchased overseas where the vendor arranges for them to be delivered to Australia will be taxed.²³

1.36 Because of the way the change is to be made, low value goods will still be treated differently from goods whose value is above the threshold.

1.37 The bill makes provision for valuations in the light of changing exchange rates and bundling of goods of various values. These are described in detail in the Explanatory Memorandum.²⁴

1.38 The new rules apply only to delivery of goods to consumers. Supplies to businesses are unaffected. Suppliers (including redeliverers) are expected to collect the ABN of a recipient that is claiming to be a business.²⁵ There is a protection for a supplier who, after seeking information, believes that the goods are a taxable importation, that is, they are not covered by the current bill. There are also further mechanisms to prevent double taxation.²⁶

20 Explanatory Memorandum, pp. 5, 7.

21 Explanatory Memorandum, pp. 9, 10.

22 Explanatory Memorandum, p. 13.

23 Explanatory Memorandum, p. 15.

24 Explanatory Memorandum, pp. 16–19.

25 Explanatory Memorandum, pp. 19–23.

26 Explanatory Memorandum, pp. 23–28.

1.39 Redeliverers become liable for the GST because they assist in delivery of the goods into the ITZ. This broadens the application of the GST, by catching entities who are not vendors. How the order is made—online, or in person overseas—is not relevant.²⁷

1.40 The logic is that an overseas supplier may deliver goods outside the ITZ to an entity which will assist in their delivery to Australia. In this case the supplier has no connection with Australia and it would not be reasonable to apply GST to the supplier. Rather, the redeliverer who provides offshore mail or shopping services and assists in arranging delivery of the goods will be connected with the ITZ and liable for GST (if their supplies into Australia exceed the \$75,000 threshold).²⁸

1.41 To avoid paying GST on goods which have already been taxed, the redeliverer will be required to supply the ABN or vendor registration number of the supplier.²⁹

1.42 A supplier delivering goods to an entity that is registered for the GST will not charge GST. However, the goods could be for consumption rather than for use in the business that is registered for GST. In that case, the recipient of the goods is liable for GST, which is 'reverse charged'.³⁰

1.43 Electronic distribution platforms such as Ebay were brought into the GST system when it was applied to digital services. This bill shifts liability for GST from individual suppliers to the operators of the platform, because:

The operators of electronic distribution platforms are better placed to comply with GST obligations because they are generally larger and better resourced entities than individual suppliers.³¹

1.44 The electronic distribution platform may be liable even though the actual supplier delivers the goods to Australia.³²

1.45 There are simplified registration arrangements available to entities with no or limited presence in Australia. Again, this is similar to the arrangements for provision of digital products.³³

1.46 Previously, international transport services were GST free on the basis that the cost of the transport would be included in the value of the goods for purposes of GST.

27 Explanatory Memorandum, pp. 14–15.

28 Explanatory Memorandum, pp. 28–31.

29 Explanatory Memorandum, p. 26.

30 Explanatory Memorandum, pp. 34–36.

31 Explanatory Memorandum, p. 36.

32 Explanatory Memorandum, p. 37, para 1.127.

33 Explanatory Memorandum, p. 40.

Where goods were of low value, transport costs were thus not taxed. Schedule 1 to the bill extends GST to transport services in relation to low value items.³⁴

34 Explanatory Memorandum, pp. 46–47.

Chapter 2

Views on the bill

Introduction

2.1 The views expressed in the submissions and the hearings, of course, strongly reflect the interests of the authors and the witnesses. Partly in response to questioning, a number of witnesses suggested criteria for a good tax. There was some consensus that these were simplicity, efficiency, effectiveness and fairness.

2.2 There was general acceptance of the notion that individual consumers' imports should be treated the same for tax purposes as imports purchased from a local retailer.

2.3 However, several stakeholders suggested that the measure should be opposed because it was a trade barrier. Others contested the idea that the bill would create a level playing field. It was suggested that the measure was inconsistent with the design of the GST.

2.4 The most common objections to the bill had to do with the method of collection of the GST, both in terms of transaction costs and in terms of creating a tax liability for entities which are not sellers of goods.

2.5 Concerns were further expressed that Australian consumers might lose access to some online suppliers and, worse, that the additional costs for complying importers would make them uncompetitive with less secure, reliable or honest suppliers. This was especially so given the difficulties of enforcement if compliance was not voluntary.

2.6 Several witnesses at the hearing complained that the process for introducing the bill had been flawed, and, in particular, that the time before the tax takes effect was far too short. Others suggested that it would be better to wait until an international agreement had been reached on the treatment of cross-border sales.

2.7 There was some discussion of alternative models that might have been used.

Competitive neutrality

2.8 The strongest support for the bill came from bricks-and-mortar retailers. The Australian Booksellers Association argued that it restored the integrity of the GST and improved revenue collection, as well as creating a level playing field. Similar views were expressed by the Australian Retailers Association, the Australian Sporting Goods Association, and Mr Eddie Peters.¹

1 Australian Booksellers Association, *Submission 34*, [p. 2]; Australian Retailers Association, *Submission 13*, [p. 2]; Australian Sporting Goods Association, *Submission 4*, [p.4]; Mr Eddie Peters, *Submission 22*, [p. 2].

2.9 Professor Robert Deutsch made the point that, because the purpose of the measure is to create a level playing field, it would even be reasonable if there was a net revenue loss in the early years.²

2.10 Several submissions supported the general principle of charging the GST on low value imports. Amazon supported the reduction of the GST threshold to zero.³ Alibaba, eBay and Etsy described the objective of providing a level playing field as 'laudable'.⁴ The Conference of Asia Pacific Express Carriers (CAPEC) supported the bill 'in so far as it endorses a fairer tax system through a [Vendor Collect Model]'.⁵

2.11 However, a number of submitters and witnesses argued that the measure would not achieve competitive neutrality. Representatives of electronic distribution platforms pointed out that many of the sellers who used their services had turnover of less than \$75,000, so if they were Australian vendors they would not incur the GST. Ms Angela Steen of Etsy said:

[A]s Etsy sellers are predominantly microbusinesses...few of our sellers would ever reach the \$75,000 threshold that would require them to register and apply GST to sales under \$1,000. However, as the legislation currently treats platforms like Etsy as one individual seller, aggregating the sales of all of our international sellers into one and requiring us, as a platform, to register for the collection and remittance of GST, we would be forced to apply this 10 per cent GST charge onto each individual seller's product, even if this is the first sale that they ever make into Australia.⁶

2.12 A similar view was expressed by Mr John O'Loghlen of Alibaba.⁷

2.13 Several witnesses argued that the complexity of the tax would impose costs on compliant businesses which would put them at a competitive disadvantage versus non-compliant businesses. Further, the difficulty of enforcing a tax on foreign businesses meant that compliance rates would be low.⁸

2.14 Amazon pointed to the complexity and the difficulty of enforcement:

2 Professor Robert Deutsch, Senior Tax Counsel, The Tax Institute, *Committee Hansard*, 21 April 2017, p. 53.

3 Amazon, *Submission 26*, p. 5; Mr Kevin Willis, Director, Global Trade Services, Amazon, *Committee Hansard*, 21 April 2017, p. 22.

4 Alibaba, eBay and Etsy, *Submission 27*, p. 2, Mr John O'Loghlen, Director, Business Development Australia and New Zealand, Alibaba Group, *Committee Hansard*, 21 April 2017, p. 19.

5 Conference of Asia Pacific Express Carriers (CAPEC), *Submission 8*, [p. 1].

6 Ms Angela Steen, Director, Government Relations, Etsy, *Committee Hansard*, 21 April 2017, p. 21.

7 Mr John O'Loghlen, Director, Business Development Australia and New Zealand, Alibaba Group, *Committee Hansard*, 21 April 2017, p. 20.

8 For example, Mr Kevin Willis, Director, Global Trade Services, Amazon, *Committee Hansard*, 21 April 2017, p. 20; Professor Robert Deutsch, Senior Tax Counsel, The Tax Institute, *Committee Hansard*, 21 April 2017, p. 53.

In any week, there are over a thousand [low value imported goods] suppliers that would be required to be registered for GST under the Bill, many of which would have little or no incentive to charge their customers GST. Where they do not comply, they benefit from being able to undercut the competition and attract consumers onto their websites.

Adding to this incentive not to comply, the Bill will require these offshore entities to develop bespoke systems to calculate, collect and remit GST. This means compliant sellers and electronic distribution platforms, which invest heavily in their customer service and value their strong reputations, are at a disadvantage relative to non-compliant competitors.⁹

2.15 A more specific issue of competitive neutrality was raised by freight forwarders and express services. They noted that they will be required to provide Vendor Registration Numbers to the ATO, whereas Australia Post will not. Mr Kim Garner of CAPEC noted:

Adding costs to CAPEC members' operating models to increase regulatory burden would give an unfair advantage to Australia Post.¹⁰

2.16 As well as increasing costs for freight companies, the exemption of Australia Post could provide a way to bring taxable goods in tax free, further disadvantaging the freight companies.¹¹ Online retailer Wiggle was also concerned that suppliers using postal services might not apply GST.¹²

2.17 Mrs Marisa Purvis-Smith of the Treasury explained that, where Australia Post competes directly with freight companies, it would have to meet the same requirements:

Where Australia Post competes with cargo...then it will have to do the same thing. It is in the mail stream only where it will not, which seems to be a different market as well. Consumers choose other forms of shipping other than Australia Post, or the Australia Post variants that compete, for different reasons. They usually are happy to pay a little bit more to get better tracking and faster delivery. In that market, Australia Post competes with other companies, and where Australia Post competes in that market it will need to do the same thing.¹³

GST on low value imports as a trade barrier

2.18 A tax that is applied on imports which were previously untaxed is a 'barrier to trade'. A submission by Dr Chris Berg and Professor Sinclair Davidson argued that the

9 Amazon, *Submission 26*, p. 11.

10 Mr Kim Garner, Chairman, Board of Directors, Conference of Asia Pacific Express Carriers, *Committee Hansard*, 21 April 2017, p. 32.

11 Mr Kim Garner, Chairman, Board of Directors, Conference of Asia Pacific Express Carriers, *Committee Hansard*, 21 April 2017, p. 32

12 Wiggle, *Submission 15*, p. 2.

13 Mrs Marisa Purvis-Smith, Division Head, Individuals and Indirect Tax Division, The Treasury, *Committee Hansard*, 21 April 2017, p. 62.

measure is actually a tariff, because it imposes the GST on sellers who do not have access to input credits as an Australian based seller would have.¹⁴ Dr Berg and Professor Davidson also noted that the intention of the relatively high \$1000 threshold when it was first imposed was not only to reduce regulatory burdens but also to facilitate trade.¹⁵

2.19 A number of submissions made the general point that the measure was anti-free trade. The Export Council of Australia said:

The proposed law is anti-consumer and anti-free trade in nature at a time when we need to be seen as a leader and advocate for free trade.¹⁶

2.20 Disrupt Sports described the measure as 'anti online small business, anti free trade and anti consumer'.¹⁷ The American Chamber of Commerce in Australia also described the measure as 'anti-free trade in nature'.¹⁸ Alibaba, eBay and Etsy argued that the compliance costs for overseas businesses would constitute a barrier to trade, and the measure was 'contrary to Australia's advocacy for free trade'.¹⁹

2.21 The electronic distribution platforms made more pragmatic points about the restriction of trade. Mr John O'Loughlen of Alibaba pointed out that his company connected buyers and sellers. Australian companies such as Swisse, Woolworths, and Chemist Warehouse used Alibaba to sell into China many times the volume of goods that Chinese merchants sold to Australians. The complications introduced by the bill could harm this trade.²⁰

2.22 Mr Jooman Park of eBay said that his company used one platform around the world, but the effect of the bill would be 'almost the same as developing a separate Australia site'.²¹ Ms Angela Steen of Etsy said that blocking Australian users was a possibility because of the complexity and risk imposed by the bill.²²

2.23 The effects on Australian businesses were also noted. The Export Council of Australia pointed out that many exporters were also importers of components, and would have to pay the tax on them, which would make them less competitive. They

14 Dr Chris Berg and Professor Sinclair Davidson, *Submission 11*, p. 3.

15 Dr Chris Berg, *Committee Hansard*, 21 April 2017, p. 15; Professor Sinclair Davidson, *Committee Hansard*, 21 April 2017, p. 15.

16 Export Council of Australia, *Submission 29*, [p. 2].

17 Disrupt Sports, *Submission 6*, p. 1.

18 American Chamber of Commerce in Australia, *Submission 5*, p. 2.

19 Alibaba, eBay and Etsy, *Submission 27*, p. 7.

20 Mr John O'Loughlen, Director, Business Development Australia and New Zealand, Alibaba Group, *Committee Hansard*, 21 April 2017, 21 April 2017, p. 19.

21 Mr Jooman Park, Managing Director, Australia and New Zealand, eBay, *Committee Hansard*, 21 April 2017, p. 25

22 Ms Angela Steen, Director, Government Relations, Etsy, *Committee Hansard*, 21 April 2017, p. 26

further expressed concern that the measure would create a disincentive for foreign firms to do business with Australia.

2.24 The Laminated Cotton Shop explained how it might be affected:

...as a small home based business I find platforms like Ebay and Etsy give my handmade business visibility to a wide range of traffic that I would not be able to obtain without spending thousands of dollars on SEO and website optimisation. If these platforms are made to collect GST they will start to make it harder for Australians to buy from international sellers on their sites. The effect would be Ebay and Etsy would have very low traffic and the whole benefit to local sellers of being on there would be lost.²³

2.25 Several submitters and witnesses pointed to the danger of retaliatory action by other countries. Mr Paul Drum of CPA Australia noted:

Australian small businesses continued to be less likely to use social media and online commerce for business purposes...Australian small businesses selling online are significantly more likely to grow than those that are not. But the uptake of these business tools has been sluggish, and any retaliatory tax moves from offshore markets will further stymie development...²⁴

2.26 Mr John O'Loughlen of Alibaba said that reciprocal measures against Australian businesses were likely because this measure was a world first and, importantly, because it put overseas sellers at a disadvantage compared to Australian sellers by denying them the GST threshold.²⁵

The revenue that would be collected

2.27 The estimated revenue in the first three years of operation of the measure is projected to be \$300 million, with \$130 million in the third year.²⁶ Treasury confirmed that this represented a collection rate of about 27 per cent.²⁷ (Note that not all low value imported goods are taxable.) The Treasury estimates that collection rates could rise to about 54 per cent when 'compliance reaches maturity in 2022–23'.²⁸

2.28 Thus the revenue would be, in today's values, in the region of \$260 million a year. This is a very small amount compared with the \$60,312 million collected in GST in 2015–16.²⁹

23 The Laminated Cotton Shop, *Submission 32*.

24 Mr Paul Drum, Head of Policy, CPA Australia, *Committee Hansard*, 21 April 2017, p. 51.

25 Mr John O'Loughlen, Director, Business Development Australia and New Zealand, Alibaba Group, *Committee Hansard*, 21 April 2017, p. 20; see also Ms Angela Steen, Director, Government Relations, Etsy, *Committee Hansard*, p. 21.

26 Explanatory Memorandum, p. 3.

27 Mr Robert Ewing, Principal Adviser, Tax Analysis Division, The Treasury, *Committee Hansard*, 21 April 2017, p. 61.

28 Mr Robert Ewing, Principal Adviser, Tax Analysis Division, The Treasury, *Committee Hansard*, 21 April 2017, p. 61.

29 ABS, *Taxation Revenue Australia, 2015–16*, Cat. no. 5506.0, April 2017.

2.29 Ms Erin Turner of Choice observed that Treasury had not fully modelled the revenue from the bill and in particular the costs of collection. She was not convinced that the revenue would exceed the costs.³⁰ Both Mr Paul Drum of CPA Australia and Professor Robert Deutsch of The Tax Institute thought that the Treasury estimates of compliance were 'on the high side'.³¹

2.30 Amazon produced modelling by KPMG which suggested that using a different collection method, the 'logistics model', under which GST is collected by logistics providers such as Australia Post, express carriers and freight forwarders, could increase collection rates to 70 per cent. (Note that the modelling appears to assume that GST would be payable on imports irrespective of the turnover of the seller.)³² This would go further towards addressing 'the growing risk that the current arrangements pose to the integrity of the GST base', which is one of the stated objectives of the bill.³³

The method chosen to implement the policy

2.31 The proposal is that GST will be collected at the point of sale. Overseas vendors with a turnover of \$75,000 or more are required to register for, collect and remit GST on low-value goods supplied to consumers in Australia. This was largely found unexceptionable by submitters and witnesses.

2.32 However, the implementation of the scheme is more complex and contentious. Freight companies and express carriers will be required to collect Vendor Registration Numbers and submit them to the ATO. Electronic distribution platforms will be treated as suppliers, and liable for GST on all the sales that pass through the platform. Two schemes, one for consignments worth over \$1000 and one for consignments of \$1000 and under, will continue to operate.

Freight companies and express carriers

2.33 Freight forwarders, express carriers and parcels delivery services in general support a Vendor Collection Model, in preference to collecting the tax at the border. However, they strongly oppose a system which requires them to collect ABNs and Vendor Registration Numbers. They argue that it creates complexity and will result in unnecessary delays, as well as increased costs which will be passed on to consumers.³⁴

30 Ms Erin Turner, Acting Director, Content, Campaigns and Communications, Choice, *Committee Hansard*, 21 April 2017, p. 28.

31 Mr Paul Drum, Head of Policy, CPA Australia, *Committee Hansard*, 21 April 2017, p. 56; Professor Robert Deutsch, Senior Tax Counsel, The Tax Institute, *Committee Hansard*, p. 57.

32 KPMG, *Estimating the direct GST revenues from alternative collection models*, 10 April 2017, pp. 4–5, Appendix D in Amazon, *Submission 26*; Mr Brendan Rynne, Partner, KPMG, *Committee Hansard*, 21 April 2017, pp. 23–24.

33 The Hon. Scott Morrison MP, Treasurer, *Second Reading Speech*, Treasury Laws Amendment (GST Low Value Goods) Bill 2017, *House of Representatives Hansard*, 16 February 2017, p. 1278.

34 Conference of Asia Pacific Express Carriers (CAPEC), *Submission 8*, Freight and Trade Alliance P/L, *Submission 7*.

CAPEC points out that its members deal with 220 countries, with different business registration systems.³⁵ CAPEC argues that it would be more efficient for information to flow from the vendor to the ATO.³⁶

2.34 As discussed above, freight companies expressed concerns that Australia Post will not be under the same obligation to report Vendor Registration Numbers, and will therefore have a competitive advantage.³⁷ The Tax Institute similarly thought that a model where goods entering the country by mail were inspected at the border was necessary for the integrity of the scheme.³⁸

2.35 However, Mrs Marisa Purvis-Smith of the Treasury explained that GST would be payable by the vendor at the point of sale, regardless of the shipping method chosen.³⁹

Electronic distribution platforms

2.36 Electronic distribution platforms ebay, Alibaba and Etsy expressed disquiet that they will be liable for GST on goods which they have never owned, held, tracked or traded. They liken it to a landlord or a shopping centre being liable for GST on goods sold by tenants. They believe that the system will be complex and costly to administer, and the costs will be passed on to consumers.⁴⁰

2.37 Mr John O'Loghlen of Alibaba was concerned about the complexity of the GST, where:

...prescriptive rules and exemptions result in bizarre outcomes such as crackers being taxable and dry bread being GST-free. Educating [foreign] business on this complex system would be near impossible.⁴¹

2.38 Ms Angela Steen of Etsy emphasised the company's role in supporting sellers rather than selling consumer goods itself:

Etsy.com provides a platform for sellers to list, market and showcase their goods. Etsy does not own, store, produce or warehouse these goods in any way. We provide a platform to connect sellers and buyers, but each Etsy seller individually can adopt their own Etsy shop policies. They fully control their own product pricing. They are fully responsible for the delivery of that product. Etsy does not hold, ship or deliver any of our

35 CAPEC, *Submission 8*, [p. 4].

36 CAPEC, *Submission 8*, [pp. 1–2].

37 CAPEC, *Submission 8*, [pp. 2–4].

38 The Tax Institute, *Submission 14*, p. 3.

39 Mrs Marisa Purvis-Smith, Division Head, Individuals and Indirect Tax Division, The Treasury, *Committee Hansard*, p. 62.

40 eBay, *Submission 20*; Alibaba Group, eBay and Etsy, *Submission 27*.

41 Mr John O'Loghlen, Director, Business Development Australia and New Zealand, Alibaba Group, *Committee Hansard*, 21 April 2017, p. 20.

sellers' goods...Our business model does not currently support, nor was it ever built to support, the collection of GST.⁴²

2.39 Ms Kristen Foster of eBay said:

I think it was the representative of the Treasury who mentioned that the GST needs to be applied at the point of sale. We do not see any of that money transferred across from consumer to eBay, so it is even the simplistic way that GST is done that is not really being clearly thought through.⁴³

Online retailers

2.40 Online retailers, including Wiggle and ASOS, were concerned about the complexity of the scheme and the possibility that non-compliance could give less reputable firms a competitive advantage. In particular, both retailers pointed to complexity and impracticality of operating two systems, one for low value goods and one for goods over \$1000. Not only would there be extra administrative cost for them, but there was the potential for delays and double taxation if goods were stopped at the border.⁴⁴

2.41 ASOS was also concerned about the need to distinguish supplies to consumers from supplies to businesses. It does not collect that information at point of sale, and to do so would slow down the sale.⁴⁵

Alternative models

2.42 Several submitters and witnesses favoured a 'logistics model' under which GST is collected by logistics providers such as Australia Post, express carriers and freight forwarders (as opposed to the vendor collection model). Amazon, in particular, submitted detailed analysis. It argued that the logistics bodies had the electronic data collection and transmission systems in place to enable the collection and remittance of the tax.⁴⁶

2.43 Mr Jooman Park of eBay pointed out that, while electronic marketplaces cover 25 to 30 per cent of imports, logistics companies handled virtually all imports.⁴⁷

2.44 Perhaps most tellingly, Mr John O'Loughlen of Alibaba gave this judgement:

[Alibaba has] a minority share in Cainiao, a global logistics business that helps move over 60 million parcels around the world every day, including

42 Ms Angela Steen, Director, Government Relations, Etsy, *Committee Hansard*, 21 April 2017, p. 21.

43 Ms Kristen Foster, Director, Government Relations, Australia, New Zealand, Japan and South East Asia, eBay, *Committee Hansard*, 21 April 2017, p. 25.

44 Wiggle, *Submission 15*, p. 2; ASOS, *Submission 2*, [p. 2].

45 ASOS, *Submission 2*, [p. 2].

46 Amazon, *Submission 26*, p. 7.

47 Mr Jooman Park, Managing Director, Australia and New Zealand, eBay, *Committee Hansard*, 21 April 2017, p. 19.

within Australia. Because of this, we are in a unique position where we can deeply assess the impact of collecting the tax from the perspective of both logistics providers and electronic distribution platforms. After an internal assessment, we are strongly of the view that the proposed measures should be abandoned and replaced with a fairer, more effective model based on logistics providers being responsible for the collection of GST on low-value goods.⁴⁸

2.45 However, Ms Erin Turner of Choice drew on the experience of consumers in the United Kingdom to argue that the logistics model was not desirable for them, in terms of cost and timeliness. She said:

Whenever we [have] seen modelling on a logistics model, usually it does rate favourably, but those readings may not be looking at the costs that are passed onto consumers, and that is what we encourage any assessment look at. A system is still high cost if the costs are not borne by government or businesses but are foisted onto consumers. Any assessment needs to be holistic.⁴⁹

2.46 Mr Kim Garner of CAPEC also suggested that favourable analyses of the logistics model tended to ignore or understate the cost of collection. He offered some arithmetic:

If we use an example of collection at the border, in 2014–15 the CAPEC members, the four companies, brought 8.8 million low-value shipments into the country. That is 34,000 per day. If we have to collect that at the border, we have to make contact with 34,000 consignees. So it is a phone call; it is trying to find out what their numbers are. You call them and then you have to go through process: 'Are you reregistered for GST or are you not? Is this exempt or is it not? Are you are resident or are you not? Is this related to carrying on an Australian enterprise?' We would have to go through that 34,000 times a day with someone to work out whether GST is collectable or not. Then if it is, you have to make arrangements with them to actually collect it.⁵⁰

2.47 Mr Paul Zalai of the Freight and Trade Alliance was sceptical as to the capacity of the integrated cargo system to cope with the amount of data the logistics model would generate.⁵¹

2.48 Another model that was proposed was based on using the self-assessment data already collected by the integrated cargo system for monitoring compliance. CAPEC

48 Mr John O'Loughlen, Director, Business Development Australia and New Zealand, Alibaba Group, *Committee Hansard*, 21 April 2017, p. 20.

49 Ms Erin Turner, Acting Director, Content, Campaigns and Communications, Choice, *Committee Hansard*, 21 April 2017, pp. 28, 31.

50 Mr Kim Garner, Chairman, Board of Directors, Conference of Asia Pacific Express Carriers, *Committee Hansard*, 21 April 2017, p. 33.

51 Mr Paul Zalai, Director, Freight and Trade Alliance, *Committee Hansard*, 21 April 2017, p. 38, 42.

argued that there was already sufficient data for the ATO to collect the tax and monitor compliance. Alternatively, the vendor could communicate directly with the ATO.⁵²

The Treasury response

2.49 Mr David Pullen of the Treasury noted that the Organisation for Economic Co-operation and Development (OECD) had canvassed various models and concluded that the one used in the bill may result in good collection rates with relatively easy compliance:

The OECD...reaches conclusions such as that a border collection model for low-value goods is a very inefficient model to pursue given the growth in online sales and the cost of collection, and the amount of revenue that you would raise on each low-value good is quite low compared to the cost of collecting for each item. It also includes some conclusions around the vendor collection model. It identifies that it could improve the efficiency of the collection of VAT on low-value imports. It talks about e-commerce platforms already having most of the information that would be needed to assess tax liability. It says that taxing electronic distribution platforms could also provide an efficient and effective solution. It talks about the context of a vendor collection model potentially combined with an intermediary model such as utilising online platforms. It says that such a model may allow small and medium sized businesses to comply more easily.⁵³

2.50 Mrs Marisa Purvis-Smith of the Treasury said that one of Treasury's priorities was to keep trade flowing across the border. Another was for the consumer to have a good experience. Keeping administration costs down was also important.⁵⁴

2.51 Mrs Purvis-Smith noted that the solution chosen involves a balance, and including electronic platforms increased the efficiency of compliance for the measure. This is particularly important given that the number of businesses involved is likely to grow quickly. With regard to the logistics model, in fact the logistics companies do not necessarily have the information needed to collect GST. Further, the logistics model could involve a second point of payment for the consumer.⁵⁵ Treasury had liaised with the main players in the industry, including overseas and online suppliers, and believed that suppliers had the capability to implement the model. She conceded that suppliers would need to make system changes.⁵⁶

52 CAPEC, *Submission 8*, pp. 4–5; Mr Kim Garner, Chairman, Board of Directors, Conference of Asia Pacific Express Carriers, *Committee Hansard*, 21 April 2017, pp. 32-34.

53 Mr David Pullen, Manager, Individuals and Indirect Tax Division, The Treasury, *Committee Hansard*, 21 April 2017, p. 7.

54 Mrs Marisa Purvis-Smith, Division Head, Individuals and Indirect Tax Division, The Treasury, *Committee Hansard*, 21 April 2017, p. 6.

55 Mrs Marisa Purvis-Smith, Division Head, Individuals and Indirect Tax Division, The Treasury, *Committee Hansard*, 21 April 2017, p. 59, 61.

56 Mrs Marisa Purvis-Smith, Division Head, Individuals and Indirect Tax Division, The Treasury, *Committee Hansard*, 21 April 2017, p. 5–6.

Impact on consumers

2.52 Various impacts on consumers, all unfavourable, were predicted, including the obvious outcome that the tax would increase prices. In addition, the costs of implementation, which could be substantial, would also be passed on.⁵⁷

2.53 There was also concern that platforms might close their operations to Australian consumers. Mr Jooman Park of eBay said simply:

If the legislation passes as is—while we have no tax collection capabilities—it will force marketplaces like eBay to prevent Australian buyers from purchasing from foreign sellers. Because we do not want to violate the law, we may have to stop all overseas sellers from selling to Australians.⁵⁸

2.54 Ms Erin Turner of Choice was particularly concerned for regional consumers and consumers with disabilities:

Anything for them that means they cannot get the goods easily delivered to their home is going to have a significant impact. This is not about cost and price; this is about the convenience that online shopping brings to their lives.

2.55 She also referred to people who had non-standard needs in terms of clothing sizes or sporting goods.⁵⁹

2.56 It was also thought possible that the measure could cause reputable businesses to close access to consumers in Australia, or at least to increase their prices, and that this would force or encourage consumers to use less trustworthy sites.⁶⁰

Implementation

2.57 It is clear that there will be significant challenges for some parties in implementing this measure. As discussed above, it will require changes to the systems of the entities required to participate in the scheme.

2.58 CAPEC suggested that implementing the measure could take two or three years. The system changes are complex:

There is obviously a large investment required. If it is implemented as is then we have to report the VRN, the ABN and the extent to which it has been treated as a taxable supply. To actually put that through our worldwide systems would be an enormous task. Each member company has spoken to their IT people and just even trying to scope what that would take would be

57 Mr John O'Loughlen, Director, Business Development Australia and New Zealand, Alibaba Group, *Committee Hansard*, 21 April 2017, p. 20; Ms Erin Turner, Acting Director, Content, Campaigns and Communications, Choice, *Committee Hansard*, 21 April 2017, p. 28.

58 Mr Jooman Park, Managing Director, Australia and New Zealand, eBay, *Committee Hansard*, 21 April 2017, p. 19.

59 Ms Erin Turner, Acting Director, Content, Campaigns and Communications, Choice, *Committee Hansard*, 21 April 2017, p. 29, 30.

60 Australian Taxpayers' Alliance and MyChoice Australia, *Submission 16*, para. 69–73.

an enormous task. Each of us has hundreds of different types of airway bills, hundreds of different types of front-end systems that those things go into which then flow into back-end systems.⁶¹

2.59 Further, express carriers cannot implement the changes unilaterally. Their systems have to tie in with those of the vendors.⁶²

2.60 eBay described the system changes similarly:

...[B]usinesses will be required to design, test and implement substantial, far-reaching changes to global business models to accommodate Australia's demands.⁶³

2.61 Mr Jooman Park expanded on this at the hearing:

...[W]e do not have tax collection capabilities...we do not even receive money from buyers. If the bill passes, we are not sure whether we can build tax collection capabilities into our system. eBay's business operates on one global platform. Adding tax collection capability to our platform only for Australia will cause major disruption to our global business, not to mention the significant financial investment we would have to make to build such processes and systems...This bill simply shifts expensive compliance costs from government to marketplace operators.⁶⁴

2.62 Mr Kevin Willis of Amazon also emphasised the unusual nature of the measure:

From Amazon's perspective, and from my own personal perspective—having done cross-border trade compliance for 36 years—there has never been a tax of this magnitude. When you think about the vastness, the complexity and the number of players that we are talking about—which grows exponentially daily, as cross-border e-commerce and the attraction of the marketplace takes hold, including in Australia—it is difficult to quantify what the implementation costs are, as well as any impact on revenue, for instance.⁶⁵

2.63 A number of submitters and witnesses commented on the timeline, requiring implementation by 1 July 2017. Reactions included that it was impossible,⁶⁶ it would

61 Mr Kim Garner, Chairman, Board of Directors, Conference of Asia Pacific Express Carriers, *Committee Hansard*, 21 April 2017, p. 34.

62 Mr Kim Garner, Chairman, Board of Directors, Conference of Asia Pacific Express Carriers, *Committee Hansard*, 21 April 2017, p. 35.

63 eBay, *Submission 20*, p. 3.

64 Mr Jooman Park, Managing Director, Australia and New Zealand, eBay, *Committee Hansard*, 21 April 2017, p. 19.

65 Mr Kevin Willis, Director, Global Trade Services, Amazon, *Committee Hansard*, 21 April 2017, p. 25.

66 Professor Sinclair Davidson, *Committee Hansard*, 21 April 2017, p. 17.

take vendors two to three years and express carriers another year after that,⁶⁷ and that the time allowed for implementation was absurdly short.⁶⁸

2.64 There was some questioning of why such haste was needed. Ms Erin Turner of Choice remarked:

I find it quite strange to see legislation that requires implementation just months after it is passed. It is very different to the other legislation we work on in financial services...all of those bills have had lead times of 12 months or more.⁶⁹

2.65 On the other hand, Mr Paul Zalai and Mr Kainoa Lincoln of the Freight and Trade Alliance thought that their members could probably implement the measure in time. They conceded that this depended on the capacity of other systems to handle the measure, and also that their members had a relatively simple customer base.⁷⁰

2.66 The Australian Retailers Association was anxious to avoid delay. It was pointed out that the measure had been discussed for a long time and also that the original GST implementation took a little over a year from the passage of the legislation.⁷¹

2.67 Mrs Purvis-Smith of the Treasury noted that the starting date of 1 July 2017 had been known since the measure was announced in May 2016. She conceded that system changes would be necessary. She noted that some platforms already had services that enabled businesses to differentiate import duty from sale price, and could handle the complexity of United States consumption taxes which varied from state to state.⁷²

Enforcement

2.68 A good deal of attention was given to how the measure was to be enforced, given that the vendors it purports to regulate are generally overseas. The ATO noted that it had identified a relatively small number of organisations that would be required to comply. The ATO would work with them to help them understand their obligations, which were straightforward. Given that they were predominantly large organisations

67 Mr Kim Garner, Chairman, Board of Directors, Conference of Asia Pacific Express Carriers, *Committee Hansard*, 21 April 2017, pp. 35, 36.

68 Professor Robert Deutsch, Senior Tax Counsel, The Tax Institute, *Committee Hansard*, 21 April 2017, p. 53.

69 Ms Erin Turner, Acting Director, Content, Campaigns and Communications, Choice, *Committee Hansard*, 21 April 2017, p. 31.

70 Mr Paul Zalai, Director, Freight and Trade Alliance, *Committee Hansard*, 21 April 2017, pp. 41, 39; Mr Kainoa Lincoln, Business Operations Adviser, Freight and Trade Alliance, *Committee Hansard*, 21 April 2017, p. 41.

71 Mr Russell Zimmerman, Executive Director, Australian Retailers Association, *Committee Hansard*, 21 April 2017, p. 44.

72 Mrs Marisa Purvis-Smith, Division Head, Individuals and Indirect Tax Division, The Treasury, *Committee Hansard*, 21 April 2017, pp. 58, 5, 60.

with a history globally of complying with their obligations, the ATO expected a high rate of compliance. In part, the ATO relied on other businesses to complain where organisations were avoiding their obligations.⁷³

2.69 Electronic distribution platforms were concerned that the measure would be difficult to enforce, particularly as there was no way to identify goods at the border. Mr John O'Loghlen of Alibaba pointed out that a business using its own website is not liable for GST until it reaches the threshold of \$75,000 turnover, and:

When they do exceed this mark, the onus will be entirely on them to report and collect the tax. The ATO is not equipped to monitor millions of Chinese businesses, and this will create an incentive for some businesses to dodge the tax and cheat the system.⁷⁴

2.70 They noted that the Treasury's projection of the revenue to be raised by the tax suggested a relatively low compliance rate.⁷⁵

2.71 Freight companies noted that the fact that Australia Post was not required to report Vendor Registration Numbers or ABNs created an easy channel for avoidance.⁷⁶

2.72 The Australian Retailers Association noted that blocking of websites was one available method of enforcement which had been discussed by government officials.⁷⁷ Choice, in particular, expressed 'major concerns' about this suggestion.⁷⁸ Mrs Purvis-Smith of the Treasury noted that while that power might exist, the ATO had never used it to date.⁷⁹

2.73 Mr Paul Drum of CPA Australia described the measure as a 'voluntary tax' because it would not be enforceable.⁸⁰ However, Mr Michael Croker of Chartered Accountants Australia and New Zealand suggested that Australia was an important enough market for overseas businesses to see compliance as in their interest.⁸¹

73 Mr Timothy Dyce, Deputy Commissioner, Indirect Tax, Australian Taxation Office, *Committee Hansard*, 21 April 2017, pp. 4, 8, 11.

74 Mr John O'Loghlen, Director, Business Development Australia and New Zealand, Alibaba Group, *Committee Hansard*, 21 April 2017, p. 20.

75 Mr Prashant Kamalapuram, Director, International Tax, Amazon, *Committee Hansard*, 21 April 2017, p. 24.

76 Mr Kim Garner, Chairman, Board of Directors, Conference of Asia Pacific Express Carriers, *Committee Hansard*, 21 April 2017, p. 36.

77 Australian Retailers Association, *Submission 13*, [p. 3].

78 Ms Erin Turner, Acting Director, Content, Campaigns and Communications, Choice, *Committee Hansard*, 21 April 2017, p. 30.

79 Mrs Marisa Purvis-Smith, Division Head, Individuals and Indirect Tax Division, The Treasury, *Committee Hansard*, 21 April 2017, p. 60.

80 Mr Paul Drum, Head of Policy, CPA Australia, *Committee Hansard*, 21 April 2017, p. 51.

81 Mr Michael Croker, Tax Leader for Australia, Chartered Accountants Australia and New Zealand, *Committee Hansard*, 21 April 2017, p. 51.

Committee view

2.74 The committee notes that the imposition of GST on low value imported goods has been the subject of extensive inquiry and research. The case for equal treatment of offshore and onshore retailers is clear, as is the need to protect the GST base, given the expected rapid increase in the volume of such imports. The committee therefore regards this legislation as a step in the right direction.

2.75 The committee acknowledges the concerns of freight services that they are being asked to collect business information, but considers that this will become routine in a reasonably short time. While Australia is an 'early adopter' of this measure, it is likely that other countries will implement similar measures.

2.76 The committee accepts that the role of electronic distribution platforms is different from that of sellers. However, it believes that the bill represents a pragmatic solution to a difficult problem. It notes that the platforms have been able to make arrangements for a variety of situations in other countries.

2.77 The committee does not accept that the measure is a barrier to trade, as it merely extends a tax that is already paid on purchases within Australia to low value imports direct to consumers.

2.78 While alternative models have been suggested, the committee does not have sufficient information before it to form the view that any of these models is preferable to the one envisaged in the bill. It also notes the OECD's work in the area and that the OECD analysis, while not arriving at a specific recommendation, is consistent with the proposed model. The committee suggests that Treasury better articulate the rationale for its chosen model.

2.79 The committee notes the concerns expressed about the proposed implementation date, and the complexity of implementation and enforcement. It accepts that businesses may need more time and assistance to develop their systems to implement the measure.

Recommendation 1

2.80 The committee recommends that the bill be passed, but that the implementation date be delayed to 1 July 2018. The committee urges the government to note the concerns raised in paragraph 2.78.

Senator Jane Hume
Chair

Additional Comments by Senator Nick Xenophon

Levelling the playing field can be a logistical nightmare – let’s get it right

1.1 The Treasury Laws Amendment (GST Low Value Goods) Bill 2017 could be summed up in the words attributed to Thomas A. Edison: 'A good intention, with a bad approach, often leads to a poor result'. This is unfortunate because had the Government taken a different approach there would be a real opportunity for the Senate to pass legislation that levels the playing field between the online and traditional 'bricks and mortar' businesses in the retail sector.

1.2 The Government's proposed vendor collection model will go some way in collecting tax from large online platforms such as eBay and Amazon; however small businesses in Australia will still face competition from small online suppliers overseas who are unlikely to voluntarily comply with this legislation.

1.3 A Logistics Model is more likely to provide a competitive playing field between Australian and overseas retailers and improve the position of small business in Australia. However, this model is not without its critics. The Nick Xenophon Team supports GST being applied to low value goods purchased online but it is important that we get this right. Implementing a model which is voluntary, unenforceable and likely to raise less revenue than other collection models is unlikely to assist consumers and small businesses and will not level the playing field.

Background

1.4 I note some of the following material has been canvassed in the Chair's report, and I thank the committee for the work it has undertaken; however I think it is important to highlight the significant amount of work that has been completed prior to this legislation being presented to the Senate.

1.5 The issue of whether GST should apply to low value imported goods has been subject to a number of reviews. The Productivity Commission (PC) completed an inquiry in November 2011 and examined whether the low value threshold (LVT) of \$1000 should be lowered or removed to ensure tax neutrality. As outlined by Amazon in their submission, the PC made a number of recommendations including that '...the Government should not proceed to lower the LVT unless it can be demonstrated that it is cost effective to do so'¹ and also to '...establish a taskforce charged with investigating new approaches to the processing of low value imported parcels.'²

1.6 The then Labor Government established a Low Value Parcel Processing Taskforce which published its final report in July 2012. The Taskforce made 15 recommendations. One of these recommendations included the following, as outlined by Amazon in their submission:

1 Amazon, *Submission 26*, p.35.

2 Amazon, *Submission 26*, p.35.

That reform to the handling and administration of low value goods, incorporating a new option to collect revenue, would best be achieved through the application of simplified GST assessment arrangements for low value imported goods between a separate low value GST threshold set above \$0 and below \$1,000. This would require modifications to existing processes, including requiring Australia Post, express carriers and other freight forwarders to be responsible for collecting and remitting the revenue liability...³

1.7 In December 2012, the Gillard Government released an interim response and produced a Regulation Impact Statement which set out the steps that would need to be taken in order to implement a logistics model. Disagreement among state and territory governments under the Abbott Government delayed any progress until August 2015 when they agreed on a hybrid Vendor Model. The Turnbull Government then announced in the May 2016 Budget that a Vendor Model would apply from 1 July 2017.

Options for collecting GST on low value imported goods

1.8 There are four main collection models that would enable the Government to collect GST on low value imported goods.

Traditional Collection Model

1.9 The traditional collection model would involve the Department of Immigration and Border Protection collecting GST on goods under \$1000 prior to them being released from customs control. This method is not favoured due to inefficiencies and compliance costs.

Vendor Model

1.10 The vendor model requires the overseas seller to collect and remit GST to the Government. At the public hearing, a representative from Treasury stated:

One of the reasons a vendor registration model was chosen was because of the fact that the administration costs would not outweigh the revenue raised, and some of the other models, particularly collection at the border and other such models, do have those challenges associated with them. But given that the vendor registration model provides for the suppliers to charge the GST and remit the GST, it does not have the challenges of the administration costs outweighing the revenue raised.⁴

1.11 A significant issue that impacts on the ability of the Vendor Model to generate revenue from GST is that it is largely unenforceable. Evidence from CPA Australia at the public hearing was telling:

...this tax is voluntary. It is largely unenforceable. It will raise very little revenue. It is likely to only improve price competitiveness at the margin for

3 Amazon, *Submission 26*, p.37.

4 Mrs Marisa Purvis-Smith, Division Head, Individuals and Indirect Tax Division, the Treasury, *Proof Committee Hansard*, 21 April 2017, p. 4.

most retailers. It will do little, if anything, to make Australian businesses more competitive.⁵

1.12 The Government's hybrid Vendor Collection Model would most likely result in only the large, well known online platforms complying with the new legislation. There is a possibility that this model would create a system that incentivises customers to make transactions through smaller online businesses overseas. Consequently, this would expose small Australian retail businesses to online competition while large Australian retail companies experience the advantage of their online competitors complying with the new legislation.

Purchaser Model

1.13 The Purchaser Model allows a purchaser of low value imported goods to self-assess and pay GST. This model would rely on a purchaser pre-registration system and voluntary compliance and therefore is not a viable option.

Logistics Model

1.14 The Logistics Model, also known as the Intermediary Collection Model, places the burden of collection and remitting GST with intermediaries including postal operators, express carriers or e-commerce platforms. This model was favoured by many submitters, with Amazon submitting that the Logistics Model has a high degree of simplicity, certainty and effectiveness.⁶ Further, KPMG estimates that the Logistics Model could deliver GST revenue of approximately \$650 million compared to the hybrid Vendor Model which would deliver approximately \$260 million.⁷

1.15 However, the Logistics Model is not without its faults, as consumer representative group Choice demonstrated:

A logistics model essentially means that the tax is collected by couriers or bodies like Australia Post. This option would be simpler for bodies like eBay, Amazon and Etsy, but it would not be simpler for couriers, and it definitely would not be simpler for consumers. This kind of system, when we see it operating internationally, pushes costs onto consumers. The United Kingdom uses a logistics-style collection model to collect VAT on goods purchased outside of the European Union. This system, if you go through Royal Mail, requires consumers to pay an eight pound collection fee on top of VAT. The way the system works is that frequently consumers are not getting their goods delivered straight to their home. They need to go to the post office to pay the VAT and pay the fee to pay the VAT. It leads to delays and absurd additional costs.⁸

5 Mr Paul Joseph Drum, Head of Policy, CPA Australia, *Proof Committee Hansard*, 21 April 2017, p. 51.

6 Amazon, *Submission 26*, p. 6.

7 KPMG, *Estimating the direct GST revenues from alternative collection models*, 2017, Appendix D in Amazon, *Submission 26*, p.5.

8 Ms Erin Turner, Acting Director, Content, Campaigns and Communications, Choice, *Proof Committee Hansard*, p.28.

1.16 In addition, the Freight and Trade Alliance outlined some concerns it had with the logistics model:

A logistics model is extremely complex. It has, as has been said several times today, a negative impact on the consumer experience, and it has proven that it is a really difficult way to go about things in other countries that have low thresholds—the UK was quoted earlier, but there are a number of countries like the UK and Canada that do it. It is a very difficult system and hard to administer.⁹

Choosing the right model

1.17 Levelling the playing field for small, medium and large retail businesses in Australia in the face of an ever increasing presence of online selling platforms is critically important.

1.18 The Senate should proceed with caution to ensure the good intention of this legislation does result in an outcome that is bad for small business and bad for consumers. The Nick Xenophon Team reserves its final position so that it can undertake further consultation with stakeholders. If the Senate decides to pass this bill, as the Chair recommends, the Nick Xenophon Team agrees with the recommendation that it be implemented from 1 July 2018.

Senator Nick Xenophon

Nick Xenophon Team, SA

9 Mr Kainoa James Lincoln, Business Operations Adviser, Freight and Trade Alliance, *Proof Committee Hansard*, p.42.

Dissenting Report by Labor Senators

Position of Labor Senators

1.1 Labor Senators support the collection of GST on low value imports in principle.

1.2 However, Labor Senators want to see a model that is workable. It should have a high degree of compliance and not have significant adverse consumer outcomes.

1.3 Labor Senators are prepared to work in a bi-partisan manner to find a suitable model.

Findings from the written submission and hearing processes

1.4 Treasury admitted that the lack of a Regulation Impact Statement was in breach of the Office of Best Practice Regulation guidelines. Labor Senators were very concerned to hear that the Turnbull government had botched its own policy process.

1.5 eBay claimed that Treasury officials had told them that they expect a 25–30% compliance rate from the model set out in this legislation. Treasury officials later stated that they expect this compliance rate in the third year of operation and for it to reach maturity in 2022–23 at 54%. Labor Senators are concerned that this bill will not level the playing field as claimed by the Government.

1.6 Labor Senators also heard evidence from the Australian Tax Office that jurisdictions like the USA and China will not enforce the measure on their behalf. Labor Senators are concerned that compliance is largely reliant on the goodwill of overseas operators.

1.7 No explanations were offered by the Government for the decision to move away from recommendations set out in Chapter 7 of the 2011 Productivity Commission report *Economic Structure and Performance of the Australian Retail Industry* and the subsequent Low Value Parcel Processing Taskforce final report. The taskforce report considered a number of different models and proposed a form of 'logistics' model where logistics companies might collect GST revenue.

1.8 Regarding the 1 July 2017 start date, Treasury officials declined to answer questions about whether alternative start dates had been modelled. Witnesses from the Australian Retailers Association, online retailers, the Conference of Asia Pacific Express Carriers and the Freight & Trade Alliance all expressed concerns about the 1 July 2017 start date.

1.9 Labor Senators also note comments made in the media by the Chair expressing similar concerns about the 1 July 2017 implementation date:

Look, the model that's been proposed was announced in August 2015. However, it's quite understandable that those companies to whom it applies

wouldn't be prepared or have made the necessary changes until after the legislation was actually passed.¹

Conclusion

1.10 The Treasurer has botched the policy development process, has failed to properly consult with stakeholders and has failed to develop a workable model for low-value imports that levels the playing field while maintaining suitable consumer outcomes.

Recommendation 1

1.11 The Government note the in-principle support of Labor Senators for the collection of GST on low value imports.

Recommendation 2

1.12 That the Senate should not pass the Treasury Laws Amendment (GST Low Value Goods) Bill 2017.

Recommendation 3

1.13 The Government complete a full review within one year, with engagement from all stakeholders. The review should include an analysis and comparison of alternative implementation models.

Recommendation 4

1.14 The Government deliver a Regulation Impact Statement with any revised legislation to assure small businesses and consumers that measures will operate as intended.

Recommendation 5

1.15 Any revised legislation is to have a start date of 1 July 2018.

Senator Chris Ketter
Deputy Chair

Senator Jenny McAllister
Australian Labor Party, NSW

1 Jackson Stiles, *Delay the online shopping tax, Senate committee to urge government*, *The New Daily*, 24 April 2017, <http://thenewdaily.com.au/money/your-budget/2017/04/24/ebay-gst-delay/> (accessed 8 May 2017).

Appendix 1

Submissions and additional information received

Submissions received

- 1 Retail Council
- 2 ASOS
- 3 Hi-Tech Freight Solutions (Aust) Pty Ltd
- 4 Australian Sporting Goods Association (ASGA)
- 5 The American Chamber of Commerce in Australia
- 6 Disrupt Sports
- 7 Freight & Trade Alliance (FTA) Pty Ltd
- 8 CAPEC
- 9 FedEx Express
- 10 DHL Express
- 11 Prof Sinclair Davidson & Dr Chris Berg
- 12 TNT Australia
- 13 Australian Retailers Association (ARA)
- 14 The Tax Institute
 - a) Attachment 1
- 15 Wiggle Limited
- 16 Australian Taxpayers' Alliance & MyChoice Australia
 - a) Attachment 1
- 17 UPS Pty Ltd
- 18 Australian Small Business and Family enterprise Ombudsman (ASBFEO)
- 19 Shopping Centre Council of Australia (SCCA)
- 20 EBAY
 - a) Attachment 1
- 21 CHOICE
- 22 Mr Eddie Peters
 - a) Supplementary submission
- 23 Express Association of America
- 24 Shop, Distributive & Allied Employees' Association (SDA)
- 25 Global Express Association
- 26 Amazon

- 27 Alibaba, Ebay and Etsy
 - a) Supplementary submission
- 28 Australia Post
- 29 Export Council of Australia (ECA)
- 30 Australia China Business Council
- 31 NT Government
- 32 The Laminated Cotton Shop
- 33 CPA Australia
- 34 Australian Booksellers Association

Answers to Questions on Notice

- 1 Answers to questions on notice from a public hearing held in Melbourne on 21 April 2017, received from the Australian Taxation Office on 5 May 2017
- 2 Answers to questions on notice from a public hearing held in Melbourne on 21 April 2017, received from The Treasury on 5 May 2017

Additional information

- 1 Document provided by Choice following the public hearing held in Melbourne on 21 April 2017
- 2 Document provided by Amazon following the public hearing held in Melbourne on 21 April 2017
- 3 Document provided by ebay following the public hearing held in Melbourne on 21 April 2017

Correspondence received

- 1 Answers to questions on notice from a public hearing held in Melbourne on 21 April 2017, received from the Australian Taxation Office on 5 May 2017

Appendix 2

Public hearings

Melbourne VIC, 21 April 2017

Members in attendance: Senators Hume, Ketter

Witnesses

BERG, Dr Chris, Private capacity

BROADHURST, Ms Diana Maree, Associate General Counsel, Amazon

CROKER, Mr Michael, Tax Leader for Australia, Chartered Accountants Australia and New Zealand

DAVIDSON, Professor Sinclair, Private capacity

DEUTSCH, Professor Robert, Senior Tax Counsel, the Tax Institute

DRUM, Mr Paul Joseph, Head of Policy, CPA Australia

DYCE, Mr Timothy, Deputy Commissioner, Indirect Tax, Australian Taxation Office

EWING, Mr Robert, Principal Adviser, Tax Analysis Division, the Treasury

FOSTER, Ms Kristen, Director, Government Relations, Australia, New Zealand, Japan and South East Asia, eBay

GARNER, Mr Kim, Chairman, Board of Directors, Conference of Asia Pacific Express Carriers; and Managing Director of Australasia, FedEx Express

GEALE, Mr Jeremy, Deputy Chief Tax Counsel, Australian Taxation Office

HUDSON, Mr James, Director, Corporate Affairs and Marketing, Alibaba Group

KAMALAPURAM, Mr Prashant Rao, Director, International Tax, Amazon

LINCOLN, Mr Kainoa James, Business Operations Adviser, Freight and Trade Alliance

MARAR, Mr Satyajeet, Director, MyChoice Australia; Research Associate, Australian Taxpayers' Alliance

MICHAEL, Mr Heath, Director Policy, Government and Corporate Relations, Australian Retailers Association

O'LOGHLEN, Mr John, Director, Business Development Australia and New Zealand, Alibaba Group

PARK, Mr Joo Man, Managing Director, Australia and New Zealand, eBay

PULLEN, Mr David, Manager, Individuals and Indirect Tax Division, the Treasury

PURVIS-SMITH, Mrs Marisa, Division Head, Individuals and Indirect Tax Division, the Treasury

RYNNE, Mr Brendan, Partner, KPMG

SOMERVILLE, Mr Benjamin John, Secretary, Conference of Asia Pacific Express Carriers; and Senior Manager of Customs and Regulatory Affairs, Oceania Region, DHL Express (Australia)

SOUTHWELL, Mr Paul, Assistant Commissioner, Client Engagement Governance, Reporting and Practice, Australian Taxation Office

STEEN, Ms Angela, Director, Government Relations, Etsy

TURNER, Ms Erin, Acting Director, Content, Campaigns and Communications, Choice

WILLIS, Mr Kevin Joseph, Director, Global Trade Services, Amazon

ZALAI, Mr Paul, Director, Freight and Trade Alliance

ZIMMERMAN, Mr Russell, Executive Director, Australian Retailers Association