



**PROPOSALS FROM THE EXPRESS DELIVERY INDUSTRY FOR THE  
'JOINT STATEMENT' NEGOTIATIONS ON TRADE-RELATED ASPECTS OF E-COMMERCE**

**A position paper by the Global Express Association<sup>1</sup>**

**FACILITATION OF TRADE IN GOODS THROUGH E-COMMERCE**

**Introduction**

The three members of the Global Express Association welcome the launch of negotiations by an important and diverse group of countries regarding trade-related aspects of e-commerce. As far as the express delivery industry is concerned, e-commerce is generating new forms of traditional trade and enabling more companies to participate in global trade. This paper lays out some considerations regarding what should be covered relating to trade-related aspects of e-commerce. The recommendations below follow the structure of the 'Snapshot' adopted in December 2018.

Express delivery carriers support micro, small and medium-sized enterprises (MSMEs) every day, and e-commerce provides them a tremendous opportunity to reach new global markets. They participate in commerce that previously was only accessible to larger traders who have the resources and networks needed to gain a commercial foothold. Defining stable and clear global rules governing e-commerce will further unleash its full potential and spur inclusive economic development.

Our business is to provide sophisticated world-wide logistics services to traders of all sizes, and restrictive trade policies negatively impact our ability to do so. This, in turn, affects our efficiency and increases the cost of our services. Ultimately, these restrictions harm a country's competitiveness and growth prospects by reducing its connectivity to foreign markets.

We encourage negotiators to look, among other things, into two areas:

- Trade Facilitation (not limited to e-commerce shipments, which cannot be distinguished from other shipments); and
- Trade in Services.

Accordingly, we will address our specific proposals in two papers. This first one focuses on Trade Facilitation. A second one will focus on Trade in Services – both market access and disciplines.

We also note that the intention is to build on existing WTO agreements and frameworks. The negotiations should make clear which areas are already covered by existing WTO rules and which require the development of a new framework, as well as whether any existing rules need to be clarified or improved.

Geneva, June 2019

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<sup>1</sup> The Global Express Association represents the three leading express delivery carriers DHL Express, FedEx Express and UPS.





## Text-Based Proposals

This paper puts forward specific text-based proposals following the structure of the 'Snapshot' agreed by the signatories in December 2018. It explores the issues addressed under Theme A on Enabling Digital Trade/E-commerce., specifically: Paperless Trading, *De minimis* Exemptions and Taxation of Small Shipments, and Improving Customs Procedures. As previously indicated, the last issue raised under the 'Snapshot' - Market Access for Logistics and Delivery Services – will be addressed later in a separate paper.

Importantly, as far as trade facilitation is concerned, nothing in this paper should be interpreted as promoting a lower level of commitment than has been reached under the WTO Trade Facilitation Agreement (TFA), or detracting from obligations under it. On the contrary, we encourage negotiators to build on existing commitments with a view to strengthening them.

### **Paperless Trading**

In addition to texts quoted in the 'Snapshot', consider the WCO Immediate Release Guidelines<sup>2</sup>, article 6, notably paragraphs 1 and 5 (Appendix 1), as well as proposals made in the context of the review of the WCO's Revised Kyoto Convention.

*Members<sup>3</sup> shall permit the lodging of Cargo and Goods declarations by electronic means and not limited to the business hours of the competent authorities. Where Cargo and Goods declarations, including any commercial and transport documents in their place and other supporting documents, are submitted in electronic form, Members shall not require the submission of an additional paper copy<sup>4</sup>.*

Therefore, the elimination of any requirement for paper documentation will further digitize the cross-border process and enable the rapid movement of shipments through clearance, particularly B2C shipments.

### **Low-Value Shipments Treatment & Taxation, *de minimis***

We would recommend an obligation whereby each country must identify its cost of administering the collection of duties and taxes for individual shipments. When considering if a duty and tax *de minimis* threshold should be revised, maintained, or established, each country should consider these administrative costs.

This said, given the growth of cross-border e-commerce shipments, the GEA accepts a country's right to collect consumption taxes on sales of goods within their territories.

We recommend that negotiators consider agreeing on a series of **principles governing the collection of consumption taxes on low value shipments**, regardless of who ultimately pays. We understand it is not the purpose of these negotiations to sort out in detail taxation issues, nor come up with a detailed model.

Coupled with that, as a means to help facilitate trade amongst the signatory countries and move taxation off the border, we would encourage JSI signatories to agree to a duty-free threshold at minimum (140 SG or \$200USD).

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<sup>2</sup> Guidelines for the Immediate Release of Consignment by Customs, version III, 2018

<sup>3</sup> "Members" in this context refers to WCO members.

<sup>4</sup> Based on the WCO Revised Kyoto Convention, chapter 3

In short, the collection of consumption taxes for low value shipments should meet the following **principles**:

- Not be discriminatory in terms of process and thresholds between domestic and non-domestic retailers
- Be simple and low-cost in terms of registration
- Be easy to implement, especially for MSMEs
- Match the domestic process, i.e. collection away from the border
- Customs formalities at the border should focus only on safety and security.

*Above the duty-free de minimis threshold*, consignments that don't require a formal declaration should have a simplified submission process. The threshold suggested by the WCO's Immediate Release Guidelines is up to US\$ 1,400. (1,000 SDR)<sup>5</sup>.

The design of this informal category and process is to minimize border congestion due to the growth of cross-border e-commerce. These consignments should be granted immediate release with simultaneous or subsequent clearance on the basis of a simplified goods declaration containing the required information by border agencies. Duty and tax collection and payment should be done on a periodic, account basis.



<sup>5</sup> See Appendix 2



### Improving Customs Procedures

While we encourage signatories to strengthen their commitments on trade facilitation for all kinds of shipments, not just e-commerce ones<sup>6</sup>, it is important to separate this potential plurilateral agreement from the implementation of the multilateral TFA. One need not detract from the other. Some commitments could be made on the basis of TFA language by prescribing a more ambitious version. All of the Joint Statement signatories should have binding commitments **without caveats** for all of the 'best endeavour,' 'to the extent practicable,' etc. TFA provisions and do so on a Most-Favoured-Nation basis, demonstrating a higher level of ambition than the TFA requires. Appendix 3 lists all Articles of the TFA with best endeavours clauses.

In addition, this would be an opportunity to **introduce new facilitative measures**, such as:

- Adding a commitment to have private sector representatives in the National Trade Facilitation Committee foreseen in Article 23.2 of the TFA (Appendix 4).
- Where a product can be imported quota-free, banning customs policies that limit the number, value or frequency of imports of specific products acquired online by a consumer as, in our view, this would be tantamount to a quota under the GATT.
- Limiting the data required for customs declarations:
  - *Members shall limit the data required in the Cargo and Goods declarations and other formalities required for the importation and exportation of goods to only such particulars as are deemed necessary for risk assessment, the assessment and collection of duties and taxes, the compilation of statistics and the application of relevant laws<sup>7</sup>.*
  - *In support of the release and clearance of goods Members shall require only those documents necessary to permit control of the operation and to ensure that all requirements relating to the application of applicable law have been complied with<sup>8</sup>.*
  - *Members shall require the data necessary for risk assessment and the collection of duties and/or taxes only from those parties identified in the e-commerce supply chain, who are in the best position to provide that data for greatest accuracy<sup>9</sup>.*
- Additional facilitation measures could include the following:
  - *Members shall accept on a risk basis the value and the country of origin declared by the shipper on the invoice to be sufficient for the calculation of taxes and duties<sup>10</sup>.*
  - *Members shall include audit-based controls in their control systems to move away from transaction-based to account-based clearance processes related to the importation and exportation of goods<sup>11</sup>.*
  - *Members shall expand their AO Programmes and Mutual Recognition Arrangements/Agreements in the context of cross-border e-commerce by leveraging the role of intermediaries and enable them to extent their AO benefits to micro, small and medium-sized enterprises (MSMEs)<sup>12</sup>.*
  - *Members, in collaboration with the private sector and academia, shall explore innovative technological developments and consider their application for more effective and efficient control and to expedite the release of cross-border e-commerce<sup>13</sup>.*

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<sup>6</sup> Carriers cannot distinguish if a shipment is the product of an e-commerce transaction or not. Such information is not captured today and need not be captured in the future as it is not necessary for clearance purposes. Nothing in this paper should be interpreted as proposals to create a special facilitation category for e-commerce shipments.

<sup>7</sup> Based on Revised Kyoto Convention GA Std. 3.12

<sup>8</sup> Based on Revised Kyoto Convention GA Std. 3.16

<sup>9</sup> Based on WCO Framework of Standards on E-Commerce, paragraph 2.1.1

<sup>10</sup> Based on WCO Immediate Release Guidelines, paragraph 5.6

<sup>11</sup> Based on Revised Kyoto Convention GA Std. 6.6

<sup>12</sup> Based on WCO Framework of Standards on E-Commerce, standard 6

<sup>13</sup> Based on WCO Framework of Standards on E-Commerce, standard 15

- *Members shall seek partnerships with stakeholders from the private sector including SMEs in the NTFC to achieve sustainable reform and modernization<sup>14</sup>.*
- *Members shall issue a Code of Conduct to all competent authorities and its staff<sup>15</sup>.*
- *Members shall provide adequate professional training to staff of all competent authorities throughout their careers<sup>16</sup>.*
- *Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection. For this purpose, Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures<sup>17</sup>.*

*Electronic payments: Each Member shall adopt or maintain procedures allowing the option of electronic payment and payment methods other than cash for duties, taxes, fees, and charges collected by customs incurred upon importation and exportation<sup>18</sup>.*

*Returns Procedures: Members shall provide for simple procedures for the processing and control of return shipments by:*

- *reconciling the inbound with the outbound shipment and granting duty exemption on re-importation;*
- *Post-submission of supplementary documents (proof such as export declaration and/or proof of order cancellation); and*
- *Electronic drawback/refund system based on consistent data requirements and efficient reconciliation between the imported and the returned shipment (if/when taxes and duties have already been paid), including allowing authorized intermediaries to apply for drawback/refund on behalf of customers<sup>19</sup>.*

*Customs Brokers: Members shall not require the mandatory use of customs brokers. Members, if and when licensing customs brokers, shall apply licensing rules that are transparent, reasonable and non-discriminatory<sup>20</sup>.*

**Committee on E-Commerce:** Signatories could consider establishing a committee, both at national and WTO level, to deal with e-commerce specific issues.

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<sup>14</sup> Based on Paragraph 3.4.3 of the WCO Guidance on NCTFs

<sup>15</sup> Based on WCO Arusha Declaration on Integrity, recommendation 9: Morale & Organizational Culture

<sup>16</sup> Based on WCO Arusha Declaration on Integrity, recommendation 10: Relationship with the Private Sector

<sup>17</sup> Based on Article 4 of the WTO SPS Agreement

<sup>18</sup> Based on WTO Trade Facilitation Agreement, article 7.2: Electronic Payment

<sup>19</sup> Based on WCO Luxor Resolution on the Guiding Principles for Cross-Border E-Commerce, Principle II(vi)

<sup>20</sup> Based on WTO Trade Facilitation Agreement, article 10.6: Use of Customs Brokers, and GEA positions expressed in Sep 2013



## APPENDICES

### **Appendix 1: WCO Immediate Release Guidelines, article 6, paragraphs 1 and 5**

6.1. Depending on technological capabilities, the submission of data as defined in these Guidelines as applicable to the respective category should be accepted by Customs administrations in electronic format prior to arrival as soon as the information is available, and ideally be submitted through single window.

6.5. Supporting documents, such as the invoice or any applicable permit or certificate, should also be legally accepted by Customs administrations together with the declaration in electronic form, e.g. as a scanned copy. Original documents should only have to be provided on request, when a consignment is assessed as presenting a high risk.

### **Appendix 2: WCO Immediate Release Guidelines, article 9, paragraphs 2-4 and article 10, paragraphs 1-5**

#### Article 9: De minimis threshold

9.2. Customs administrations should ensure that information regarding the value of a consignment or the duty and/or tax payable below which no duties and taxes will be levied, is readily available. One or both criteria may be used.

9.3. For example, the value of a consignment should be less than SDR (Special Drawing Rights) 50 or the duty and tax less than SDR 3 or the consignment should be both less than SDR 50 in value and the duty less than SDR 3. These de minimis threshold values and/or amounts should be stipulated in national legislation and be applicable to all operators as far as possible.

9.4. Customs administrations should carry out regular reviews of the de minimis in paragraph 9.3, taking into consideration inflation/deflation, the need to simplify the processing of low value goods, and the need for proper revenue collections and trade controls.

#### Article 10: Category 3 - Low value dutiable consignments (simplified Goods declaration)

10.1. This category comprises consignments that are above the threshold and/or duty/tax limits of Category 2 consignments or do not qualify for duty and tax remission or waiver but are below a threshold below which a full Goods declaration is not required. Any goods that are prohibited or restricted are excluded.

10.2. Customs administration may decide a value below which a simplified Goods declaration is allowed. For example, the value of the consignment should be SDR 50 or above but below SDR 1,000. These consignments are above any thresholds specified for Category 2 but below the threshold specified in national legislation for which a full Goods declaration is required.

10.3. These threshold values and/or amounts for simplified Goods declaration should be stipulated in national legislation.

10.4. Customs administration should ensure that information regarding the value and/or the duty/tax limit below which a simplified Goods declaration is allowed in this category is readily available.

10.5. Customs administrations should carry out regular reviews of the value or the duty and/or tax limits used for determining whether consignments fall into this category, taking into consideration inflation/deflation, the need to simplify the processing of these consignments and the need for proper revenue collections and trade controls.

### **Appendix 3: Best Endeavours Clauses**

We understand the following Articles of the TFA contain *best endeavours* clauses:

Article 1 (Publication and availability of information) sections 2.1, 2.2, 2.3; 3.1, 3.2, 3.3

Article 2 (Opportunity to Comment, Information before entry into force, Consultations.) sections 1.1., 1.2; 2;

Article 3 (Advance Rulings) sections 2, 5, 8, 9 b) and d)

Article 4 (Procedures for Appeal or Review) Sections 2 and 6

Article 5 (Other Measures to Enhance Transparency...) Sections 1 a) b) and d); 3.1

Article 6 (Disciplines on Charges and Fees...) Section 3.6

Article 7 (Release and Clearance of Goods) Sections 1.2 (Pre-Arrival Processing); 2 (Electronic Payment); 3.2 (Separation of Release from Final Determination); 4.1, 4.3 (Risk Management); 5.4 (Post-Clearance Audit); 6.1, 6.2 (Average Release Times); 7.1, 7.2 b, 7.3 (*See below, our suggested edits to include account-based acceptance of licenses etc*); 7.4 (Trade Facilitation Measures for Authorised Operators); 8.1; 8.2 c) and d) (Expedited Shipments); 9.4 (Perishable Goods)

Article 8 (Border Agency Cooperation) section 2

Article 9.

Article 10 (Formalities) Section 2.1(acceptance of copies); 3.1, 3.2, 3.2 (Use of International Standards); 4.1, 4. 4 (Single Window), 8.1 (Rejected Goods)

Article 11 (Freedom of Transit) Sections 5; 15; 16; 17.

Article 12 (Customs Cooperation) Section 1.2; 6.2; 7; 11

GEA suggested editions for Article 7.7.3 TFA for JSI signatories

**Article 7.7.3: Trade Facilitation Measures for Authorized Operators:** The trade facilitation measures provided pursuant to paragraph 7.1 shall include ~~at least three of~~ the following measures:

- (a) low documentary and data requirements, including periodic or account-based acceptance of any licenses, permits and certificates;
- (b) low rate of physical inspections and examinations, ~~as appropriate;~~
- (c) rapid release time, ~~as appropriate;~~
- (d) deferred payment of duties, taxes, fees, and charges;
- (e) use of comprehensive guarantees or reduced guarantees;
- (f) a single customs declaration for all imports or exports in a given period; and
- (g) clearance of goods at the premises of the authorized operator or another place authorized by customs.

### **Appendix 4: GEA-suggested text for JSI signatories, based on WTO Trade Facilitation Agreement, article 23.1**

The Committee shall maintain close contact with other international organizations and the private sector in the field of e-commerce with the objective of securing the best available advice for the implementation and administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided. To this end, the Committee may invite representatives of such organizations or their subsidiary bodies, and the private sector, to:

- (a) attend meetings of the Committee; and
- (b) discuss specific matters related to the implementation of this Agreement.