

# IMPORT DUTIES RELATING TO CROSS-BORDER E-COMMERCE IN A CHINESE CONTEXT

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*Abstract: The Article discusses the imposition of import duties, in particular, the Tax on Taxable Travelers' Luggage Articles and Personal Mailed Parcels and on products purchased through cross-border E-commerce enterprises in China. It provides suggestions on the balance and harmonization of the tax burden between E-commerce and non-E-commerce enterprises in China.*

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## I. INTRODUCTION

The Internet has brought about a radical revolution in the ways in which we live, learn, and conduct daily business. As opposed to conducting commerce in the more traditional settings (i.e., physical stores or shops), buying or selling products and services over the Internet is instantaneous, boundless, highly efficient and selective, and cost-saving. Because consumers can order products or services directly from the manufacturers or service providers, the involvement and cost for sales agents, wholesalers, retailers, and warehousing are reduced significantly.

The United Nations (U.N.) defines the term E-commerce to include “[c]ommercial activities conducted through an exchange of information generated,

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stored, [or] communicated by electronic, optic, or analogous means.”<sup>1</sup> The U.S. Department of the Treasury defines E-commerce as “the ability to perform transactions involving the exchange of goods or services between two or more parties using electronic tools and techniques.”<sup>2</sup> In its narrowest sense, cross-border E-commerce equates to cross border online retailing—the transaction conclusion, payment, and settlement via the Internet by parties located in different country’s territories and the delivery of products to customers through courier services or parcels or other cross-border logistics. For the purpose of this article, E-commerce is defined as any commercial transaction conducted wholly or partly by using the Internet, which includes both business-to-business (B-to-B) transactions and business-to-consumer (B-to-C) transactions.

Consumers in the People’s Republic of China have been enjoying the benefits of conducting international trade online since China accessed the Internet in 1995. The number of online shopping users reached approximately 161 million by December 2010, and the figure is estimated to have doubled since 2013.<sup>3</sup> Given the rising consumption capacity powered by the huge population, many domestic and international companies—whether they are multinational corporations or small- to medium-sized enterprises—see China as a sales market that offers great potential and, not surprisingly, has taken the lead in the Internet-based E-commerce.

China is trying to nurture its cross-border E-commerce business by offering favorable tax policies, especially in the area of import duties. Thus, shopping with cross-border E-commerce importers enjoys further advantages over shopping at physical stores or shops. The continued growth of cross-border E-commerce’s market share raises the issue of balancing and harmonizing the tax burden between E-commerce and non-E-commerce enterprises.

## II. IMPORT DUTIES RELATING TO INWARD PRODUCTS

One of the most important issues facing companies conducting trade with China is the subject of taxes and duties. This is a complex subject, and while rates and regulations differ from product to product, there are general tax principles to follow. China divides all inward and outward products into two categories: goods and articles.<sup>4</sup> Different import duties apply to each.

<sup>1</sup> See Richard Hill & Ian Walden, *The Draft UNCITRAL Model Law for Electronic Commerce: Issues and Solutions*, 13 *COMPUTER L.* 18 (1996).

<sup>2</sup> DEP’T OF THE TREASURY OFFICE OF TAX POLICY, *SELECTED TAX POLICY IMPLICATIONS OF GLOBAL ELECTRONIC COMMERCE* 8 (1996).

<sup>3</sup> *Statistical Report on Internet Development in China*, CHINA INTERNET NETWORK INFORMATION CENTER 41 (Jan. 2011), <http://www1.cnnic.cn/IDR/ReportDownloads/201209/P020120904420388544497.pdf>.

<sup>4</sup> See *Zhonghua Renmin Gongheguo Haiguan Fa* (中华人民共和国海关法) [Customs Law of People’s Republic of China] (promulgated by the Standing Comm. of the Nat’l People’s Cong., Jan. 22, 1987, effective July 1, 1987, amended July 8, 2000),

Before 2001, China adopted a foreign trade agency system in which only specially approved enterprises had trading rights, i.e., were allowed to engage in import and export.<sup>5</sup> A limited number of manufacturing firms and research institutes were also granted special approval, however, for exporting their own products and importing technologies, equipment, components and raw materials for their own production needs only.<sup>6</sup> Domestic distributors were not allowed to import products from overseas directly unless buying from those specially approved importers. An examination and approval system existed to grant the right to import and export to certain enterprises. When China sought accession to the World Trade Organization (WTO) in 2001, China undertook to “provide the same treatment to Chinese enterprises, including foreign-funded enterprises, and foreign enterprises and individuals in China” and further committed that “within three years after accession, all enterprises in China shall have the right to trade in all goods throughout the customs territory of China, except for those goods listed in Annex 2A, which continue to be subject to state trading in accordance with this Protocol.”<sup>7</sup> As such, the examination and approval system was to be aborted within a three-year period and transformed into a registration system in which all types of enterprises were allowed to conduct foreign trade after registration.<sup>8</sup>

In 2001, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), the predecessor of China’s Ministry of Commerce (MOFCOM), enacted the Management Rules on Import and Export Enterprises Operation Qualification. These rules largely divided enterprises qualified to import and export into manufacturing enterprises and distribution enterprises.<sup>9</sup> Manufacturing enterprises may export self-manufactured products and similar products, but their imports are limited to materials, equipment, and spare parts needed for manufacturing. Apart from domestic sales, distribution enterprises may engage in the import and export of all kinds of products and technologies on behalf of domestic wholesalers or retailers that lack either properly trained personnel or experience in the import business.<sup>10</sup> As such, a majority of products are imported by manufacturing and distribution enterprises by way of general trade. These products are called goods and are to be used for manufacturing, processing, or resale in domestic markets.

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<http://english.mofcom.gov.cn/aarticle/policyrelease/internationalpolicy/200705/20070504715848.html>.

<sup>5</sup> See Temporary Rules on Foreign Trade Agency System, promulgated by China’s Ministry of Foreign Trade and Economic Cooperation and effective August 29, 1991, annulled by Ministry of Commerce on January 29, 2008.

<sup>6</sup> *Id.*

<sup>7</sup> Protocol on the Accession of the People’s Republic of China, part (D)(5)(1), Dec. 11, 2001, 2182 U.N.T.S. 142.

<sup>8</sup> *Id.*

<sup>9</sup> *Management Rules on Import and Export Enterprises Operation Qualification*, Ministry of Foreign Trade and Economic Cooperation, July 10, 2001.

<sup>10</sup> *Id.*

The duties and domestic taxes that apply to goods are labeled Customs Duty; specifically, they are the Value-added Tax (VAT) and Consumption Tax (CT) where applicable. The import duty part of Customs Duty taxes a total of 8,294 items, according to China's 2016 Customs Tariff Implementation Plan (2016 Tariff Plan).<sup>11</sup> Customs duties are computed either on an *ad valorem* basis or quantity basis. The former is calculated based on the actual transacted price or value of the imported goods, with certain required adjustments, called the duty paying value (DPV). Though China is committed to gradually lowering its Customs Duty, the applicable Customs Duty, even under most favored national treatment, is over five percent for most imported goods.<sup>12</sup> The VAT for imported goods to China has an applicable tax rate that is the same when applied to goods sold within the domestic market, 17%, or 13% for certain goods like agricultural goods.<sup>13</sup> The rationale behind these taxes is to make imported goods equal in terms of the tax burden of goods manufactured in China.

Further, certain imported goods are subject to CT. These include luxury products such as high-end watches, cosmetics and skin care, hair care products, non-renewable petroleum products such as diesel oil, and high-energy consumption products such as passenger cars and motorcycles.<sup>14</sup> Import CT is collected either on an *ad valorem* basis or a quantity basis, with tax rates and amounts varying greatly. The rationale of the CT is to limit citizens' consumption of such luxury products or energy consumption products. Due to the amount involved in paying the addition of Customs Duty and VAT, imported goods will normally incur import duties equaling 25-30% of its overseas-transacted price. For luxury products such as cosmetics, the import duties including CT may add up to over 50% of their purchasing price.<sup>15</sup> It is not a surprise to see an imported cosmetics product sold in China double, or even triple, its selling price in its origin country.

As opposed to the general trade import, the only other legitimate way of bringing products inward to China is by way of traveler luggage and/or personal parcels. As personal articles, these products are non-tradable, non-resalable, and non-leasable. In place of the Customs Duty, VAT, and CT, China's Customs levies an integrated import duty on personal articles, called the Tax on Taxable Travelers' Luggage Articles and Personal Mailed Parcels (Tax on Luggage and

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<sup>11</sup> 2016 Customs Tariff Implementation Plan, General Administration of Customs (Dec. 28, 2015), <http://www.customs.gov.cn/publish/portal0/tab399/info782988.htm>.

<sup>12</sup> *Notice on Policies for Reform and Adjustment of Import Tax (Summary)*, STATE COUNCIL (Dec. 26, 1995), <http://chinabidding.org/law/344823>.

<sup>13</sup> Interim Regulations on Value-added Tax (promulgated by the State Council of the P.R.C., Nov. 10, 2008, effective Jan. 1, 2009) (China); The Implementation Rules of the Interim Regulations on Value-added Tax (promulgated by the Ministry of Finance and State Administration of Taxation, Dec. 15, 2008, effective Jan. 1, 2009).

<sup>14</sup> Interim Regulations on Consumption Tax, State Council (promulgated by the State Council of the P.R.C., Dec.13, 1993, effective Jan. 1, 1994) (amended Nov. 10 2008).

<sup>15</sup> *Id.*

Mails or TLM).<sup>16</sup> The applicable tax rates are divided into four rates corresponding to the product as follows:<sup>17</sup>

Food and beverage, leather clothing and accessories, bags and shoes, gold, silver, jewelries and art collections, books, newspapers and publication, photography and video tapes.	10%
Textiles and finished products, video cameras, digital cameras and electrical appliances, bicycles, watches and spare parts.	20%
Golf balls and utensils, watches (over \$10,000 RMB).	30%
Cigarettes, alcohol, cosmetics.	50%

### III. OVERSEAS SHOPPING REPRESENTATIVES

Due to the price differences between overseas products sold in their origin country and those imported and sold in China, Chinese customers turn to the Internet to satisfy their desire for products manufactured overseas. Purchasing via the Internet is becoming so common in China that it has spawned large quantities of overseas shopping representatives, or “purchasing agents,” who make a living selling tax-free foreign products to Chinese buyers over the Internet. Luxury products, cosmetics, and baby care products are among those in high demand by Chinese customers.

These shopping representatives are generally individuals living or frequently traveling overseas or small companies run by such individuals. Although the Customs requires that all enterprises and individuals engaging in cross-border E-commerce provide a list of imported and exported items to the customs authorities and go through the process of customs declaration, these individuals and small companies acting as overseas shopping representatives do

<sup>16</sup> *Customs Procedures of the People's Republic of China for the Levying of Import Tax on Travellers' Luggage Articles and Personal Mailed Parcels, General Administration of the Customs, March 5, 1991*, <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/customs-importexport-and-trading/customs-procedures-of-the-peoples-republic-of-china-for-the-levying-of-import-tax-on-travellers-luggage-articles-and-personal-mailed-parcels-1991.html> (last visited Dec. 13, 2015).

<sup>17</sup> 海关总署解读进出境个人邮递物品管理措施调整 [Interpretation of the General Administration of Customs on the Adjustment to the Administration Measures of Individual Postal Items], GENERAL ADMINISTRATION OF CUSTOMS OF THE PEOPLE'S REPUBLIC OF CHINA, <http://www3.customs.gov.cn/publish/portal0/tab7985/info234600.htm> (last visited Dec. 13, 2015).

not usually play by the rules. They either smuggle the products into China's border by carrying them in traveler luggage without declaration, or they send mail and parcels with a hugely undervalued declaration to minimize any possible TLM. Due to the large quantities of travel luggage and parcels going through the Customs, it is not likely that Customs will review every package during the selective examination. Even if the Customs levies the TLM, the overall taxes recipients pay are much lower than if the products are imported by general trade. This is the true reason why Chinese shoppers choose to purchase online through overseas shopping representatives. As such, foreign products are considered "tax-free" to Chinese online shoppers. Thus, to some extent, overseas purchasing agents may be seen as the predecessors of China's cross-border E-commerce importers.

However, from a legal perspective overseas shopping representatives practice in the gray areas of China's booming overseas E-commerce market. In 2012, an air stewardess who took advantage of her frequent overseas flying and acted as an overseas purchase agent was found guilty of tax evasion and smuggling. She was initially sentenced to 11 years in jail at trial.<sup>18</sup> After the appeal in 2013, she and her colleagues were each sentenced to two to three years in jail for evading taxes of over \$80,000 RMB.<sup>19</sup>

#### IV. CROSS-BORDER E-COMMERCE IMPORTERS

The surging demand for overseas products is irreversible. Statistics from the Hangzhou-based China E-commerce Research Center show the market for online purchasing agency amounted to \$48.3 billion RMB in 2012 and \$74.4 billion RMB in 2013.<sup>20</sup> This gray E-shopping market is estimated at \$100 billion RMB (\$16.23 billion USD) in 2014, roughly 20% of all legitimate E-commerce imports.<sup>21</sup>

The Chinese government has realized that cross-border E-shopping creates jobs, stimulates the development of international logistics and airlines, breaks trade barriers, and benefits the circulation of commodities and funds. If cross-border E-commerce can become a major business model, it may bring large tax revenues. In an effort to legalize purchases through overseas purchasing

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<sup>18</sup> 北京“前空姐代购走私案”重审改判 判刑3年 [Beijing “Pre-flight Attendants Purchasing Smuggling” Retrial Commuted Sentenced to Three Years], XINHUA (Dec. 18, 2013, 7:46 AM), [http://news.xinhuanet.com/overseas/2013-12/18/c\\_125875925.htm](http://news.xinhuanet.com/overseas/2013-12/18/c_125875925.htm) (last visited Mar. 6, 2016).

<sup>19</sup> *Id.*

<sup>20</sup> 2014 China E-commerce Market Data Surveillance Report, CHINA E-COMMERCE RESEARCH CENTER, Apr. 8, 2015, <http://www.100ec.cn/zt/2014bndbg/> (last visited Feb. 14, 2016).

<sup>21</sup> Meng Jing, *Customs Cracks Down on Trade by Private Daiguo*, CHINA DAILY USA (Aug. 8, 2014), [http://usa.chinadaily.com.cn/epaper/2014-08/08/content\\_18274664.htm](http://usa.chinadaily.com.cn/epaper/2014-08/08/content_18274664.htm).

agents by having online shoppers pay reasonable taxes, MOFCOM, jointly with eight other ministries, issued new policies in 2013 supporting enterprises in seven pilot cities to engage in cross-border E-commerce importing.<sup>22</sup>

These pilot schemes in the seven cities (such as the Cross-border Expert in Shanghai free trade zone or the One Step Cross-border in Hangzhou bonded zone) generally take the following two business models: the direct mail model or the free trade model. In the direct mail model, consumers may purchase overseas products. The enterprises send the products via international transport directly to the consumers. The entities set up in the designated pilot areas are service centers or liaison centers rather than distribution or dispatching centers. In the free trade model, the E-commerce enterprises set up warehouses or storage centers in the designated pilot areas and import products in advance as consolidations of goods.<sup>23</sup> These products are stored in the bonded warehouses and only when they are sold and ready for delivery to domestic customers via domestic logistics do the E-commerce enterprises make the Customs declaration.<sup>24</sup> No matter which model the enterprises adopt, the new policies allow the treatment of such products as personal articles and the E-commerce enterprises pay the TLM on the customers' behalf during the Customs declaration.

Recall that, except for cosmetics projects, the TLM for most articles is 10%-20%.<sup>25</sup> Thus, compared with goods, for the customers or eventual recipients of the products, articles enjoy a 20-25% tax saving on import duties.<sup>26</sup> It is therefore estimated that cross-border E-commerce will enjoy an average 30% annual growth in sales volume and will largely increase its share in import and export trading.<sup>27</sup> According to MOFCOM, in 2014 there were over 200,000 cross-border E-commerce enterprises, among which 5,000 were platform enterprises, contributing to an import volume of \$476 billion RMB.<sup>28</sup> Large online platforms such as NASDAQ-listed JD.com and the TMall Global, run by NYSE-listed Alibaba, are interested in this E-commerce market and have established direct links between overseas merchants and Chinese buyers. Apart from JD.com and TMall, large E-commerce business operators such as Suning, Yihaodian, NYSE-listed Jumei, and Dangdang each have taken up a major share of the market.

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<sup>22</sup> Department of Commerce Press Office, 关于实施支持跨境电子商务零售出口有关政策的意见 [Opinions on the Implementation of Policies Supporting Cross-border E-commerce Retail Export], MINISTRY OF COMMERCE (Aug. 21, 2013).

<sup>23</sup> *Id.*

<sup>24</sup> Yu Xiao, *Analysis on the Tax Issues Relating to Cross-border E-commerce Innovation Policies*, FIN. AND ACCT. MONTHLY (2015) 14, 85-87.

<sup>25</sup> Interpretation of the General Administration of Customs on the Adjustment to the Administration Measures of Individual Postal Items, *supra* note 17.

<sup>26</sup> *Id.*

<sup>27</sup> *2014 China E-commerce Market Data Surveillance Report*, *supra* note 20.

<sup>28</sup> *More than 200,000 Chinese Foreign Trade Enterprises to Develop Cross-Border E-commerce*, XINUAH, [http://news.xinhuanet.com/world/2015-08/30/c\\_1116416005.htm](http://news.xinhuanet.com/world/2015-08/30/c_1116416005.htm) (last visited Feb. 14, 2016).

International shopping giants, such as Metro AG and Amazon, have also set up foreign investment enterprises in China, investing large sums to conduct overseas shopping agency businesses, and making cross border E-commerce their key online-to-offline (O-to-O) strategy.

## V. PRACTICAL ISSUES RELATING TO THE TLM

However, the rapid growth of cross-border E-commerce market in China and the treatment of E-commerce imports as articles instead of goods have raised several issues in practice. First, the institution of TLM does not fully comply with China's WTO commitments. Pursuant to the General Agreement on Tariffs and Trade, no prohibitions or restrictions other than duties or domestic taxes and charges shall be instituted or maintained by contracting countries on the importation of any product.<sup>29</sup> Such a provision applies to all inward and outward products and does not make a distinction between non-profitting articles and profiting good. Strictly speaking, TLM is not a "duty" but a convenient replacement of Customs Duty, VAT, and CT combined. The taxing of electronic products—the most popular products Chinese people buy from overseas or through E-commerce importers—also raises an argument. For example, for an iPad purchased in the United States, Chinese Customs levies a TLM of 20%, or \$1,000 RMB, based on an assumed DPV of \$5,000 RMB, despite the actual transacted price being lower than \$4,000 RMB. According to the WTO's Information Technology Agreement (ITA), for which China is a contracting party, since 2005 a large number of high technology products, including computers, chips, telecommunication equipment, semiconductors, software, scientific instruments, as well as their parts and accessories, were to enjoy the complete elimination of duties and the cancelation of consumption tax.<sup>30</sup> An expansion of elimination of tariff on another 201 products has been under discussion since 2015.<sup>31</sup> Such products include telecommunication devices, computers, and chips.<sup>32</sup> Would the treatment of such inward electronic products, as self-use articles, thus levying TLM, constitute a violation to China's ITA obligations? The argument that the TLM levied on electronic products contains no Customs Duty or CT does not stand either. Even if the TLM levied on electronic products is a reflection of VAT only, it fails the fairness text. The applicable TLM tax rate of

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<sup>29</sup> GATT 1994: General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 17 (1999), 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994) [hereinafter GATT 1994].

<sup>30</sup> *Information Technology Agreement—An Explanation*, WORLD TRADE ORGANIZATION, [https://www.wto.org/english/tratop\\_e/inftec\\_e/itaintro\\_e.htm](https://www.wto.org/english/tratop_e/inftec_e/itaintro_e.htm) (last visited Feb. 7, 2016).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*



20% carries a punitive nature in that it is notably higher than the 17% general VAT rate.

Second, favoring cross-border E-commerce importers by treating the products as articles and levying TLM causes a conflict with the nature of the transaction. The purpose of the cross-border E-commerce importers making purchases from overseas and engaging in imports is to resell such products. Thus, in nature these products are not self-use articles but are tradable goods that importers resell for profit. The same is true of overseas purchase agents, who were generally considered to be committing illegal tax evasion. Even if the cross-border E-commerce importers bring a B-to-C defense—claiming that their business targets end customers—that would not change the nature of their transaction. As more and more buyers, including domestic distributors and wholesalers, seek to lower costs by purchasing from cross-border E-commerce enterprises, it is difficult to distinguish each sale cross-border E-commerce enterprises make as B-to-B or B-to-C. From a business point of view, there is no impetus for cross-border E-commerce enterprises to treat any purchase differently or to request any B-to-B buyer to pay Customs Duty, VAT, and CT instead of TLM.

Third, an imbalanced tax burden is another barrier for cross border E-commerce enterprises to bring high value and high demand products into China. In 2010, China's Customs lowered the TLM exemption amount from 500 RMB to 50 RMB.<sup>33</sup> As a result, taxes on a purchase of cosmetics, subject to the 50% TLM rate, of over \$100 RMB raise the cost to over \$150 RMB. But, a purchase of clothing is not taxed unless the value of the clothing is over \$500 RMB.<sup>34</sup> So, cross-border E-commerce importers have no incentive to bring large quantities of goods like cosmetics into China even though these goods are in high demand by Chinese customers. Thus, Chinese consumers seek tax savings on these goods through overseas shopping representatives. As a result, these luxury products remain the main focus of overseas shopping representatives.

## VI. REFORMING THE IMPORT DUTIES

This article suggests three legal reforms to prevent cross-border E-commerce importers from taking unfair advantage over general trade importers and to reduce tax evasion actions such as purchasing through overseas shopping representatives. First, the Chinese government should eliminate the TLM system and stop differentiating goods and articles from imported products. Internationally, it is common practice to impose duties on imported products. However, most countries do not make a differentiation between goods and articles, but apply a uniform import duty or customs duty on all imported

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<sup>33</sup> Interpretation of the General Administration of Customs on the Adjustment to the Administration Measures of Individual Postal Items, *supra* note 17.

<sup>34</sup> *Id.*

products. At the same time, they give tax favors or exemptions to low-valued products or minimum-value products. These countries include the United States, Britain, and Australia. For example, in the United States, there is no difference between goods and articles. Imported products with a value of less than \$200 USD are duty exempt, while imported products valued between \$200 USD to \$2,500 USD may go through a simplified Customs declaration procedure that greatly increases the speed of clearance.<sup>35</sup> New Zealand is similar in this respect. Items sent to or brought into New Zealand are subject to a Goods and Services Tax (GST) of 15%, and possibly Customs duty where applicable.<sup>36</sup> Concessions are given for genuine gifts and personal items like clothing or jewelry valued at no more than \$110 NZ each.<sup>37</sup> Considering these common practices along with China's potential breach of its WTO obligations, the Chinese government should consider equalizing all imported products. The trading system should stop viewing and taxing goods and personal articles differently. Instead, it should apply a uniform Customs Duty, VAT, and CT system.

Second, the imposition of a high CT makes more sense as a vehicle for the government's "rent seeking" rather than a means to adjust customer preferences, and should be reformed next. As time has passed, non-necessities like cosmetics, skin and hair care products, high consumption high-end products, such as passenger cars, car tires, and non-renewable petrol products such as gasoline and diesel, have become the daily necessities of common citizens. A high CT only compels customers to turn to affordable overseas products purchased through the gray channel overseas shopping representatives to obtain these goods, rendering local manufacturers to a disadvantaged state. These tax-cut measures could take a two-step walk. For one step, the imposition of CT on some daily necessities such as skin and hair care products and low-end cosmetics should be canceled. For the other, it is imperative to lower the tax rate or adjust upwards the taxable threshold on some other products that are becoming more common.

Third, with a uniform Customs Duty, VAT, and CT system, China should fundamentally lower the tax burden so that citizens are encouraged to either purchase domestic products or make purchases through legitimately founded E-commerce importers. China has been lowering the transactional taxes by transforming the Business Tax (BT) to VAT since 2012.<sup>38</sup> This allows companies previously subject to BT to pay VAT instead and enjoy the VAT deduction as the manufacturing companies do. This is evidence that the Chinese

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<sup>35</sup> GATT 1994, *supra* note 29.

<sup>36</sup> *Gifts & Personal Belongings*, N.Z. CUSTOMS SERV. (Apr. 15, 2011), <http://www.customs.govt.nz/inprivate/sendingitemstonz/giftsandbelongings/Pages/default.aspx>.

<sup>37</sup> *Id.*

<sup>38</sup> *Value-Added Tax Pilot Program In China—Expansion From Shanghai To Other Provinces*, BLANK ROME (Jan. 2013) <http://www.blankrome.com/index.cfm?contentID=37&itemID=2971> (last visited Mar. 6, 2016).

government has realized the negative effect of a high tax rate on the development of the social economy.

The imposition of TLM instead of the Customs Duty and VAT or BT on products purchased through cross-border E-commerce enterprises is a special policy favor meant to promote development of cross-border E-commerce enterprises in China. However, it is not without issues such as potential violation of China's WTO commitments, confusion on the nature of the transaction and hindrance to import of high value products, and so on. To mitigate the above issues, to minimize the unfair competition advantage enjoyed by cross-border E-commerce enterprises, and to reduce tax evasion actions such as purchasing through overseas shopping representatives, legal and tax reforms should be instituted all around. Cancellation of the TLM, Customs Duty, and CT reduction, as well as an integrated reformation of the VAT system, should be Chinese policy makers' focus.



