

A DBCFT Can be WTO-Compatible

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May 18, 2017

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Key WTO Rules Pertinent to DBCFT Analysis

- The WTO imposes “disciplines” on both imports and exports
 - These rules are not symmetric
- Meaningful legal analysis requires thinking about disciplines on imports and exports separately

Rules on Exports

- The main WTO limitations on export supports arise out of the Agreement on Subsidies and Countervailing Measures.
 - Article 1's main rule prohibits government financing from subsidizing exports
 - Tax measures are subsidies if "government revenue that is otherwise due [that] is foregone or not collected."
 - Via Article III, "Illustrative list" of export subsidies provides that "the rebate on the export of a good or service must not exceed the amount levied on the same good or service when sold for domestic consumption."
 - Also prohibits "full or partial exemption, remission, or deferral, specifically related to exports, of direct taxes."

Rules on Exports

- FSC / ETI precedent (the most prominent US loss in the WTO):
- “[T]he word ‘foregone’ suggests that the government has given up an entitlement to raise revenue that it could otherwise have raised. This cannot, however be an entitlement in the abstract, because governments, in theory, could tax *all* revenues. There must, therefore, be some defined normative benchmark against which a comparison can be made between the revenue actually raised and the revenue that would have been raised ‘otherwise’ .”
 - If DBCFT is a tax on domestic consumption, normative benchmark should be the domestic consumption base.

Rules on Imports

- National Treatment is the centerpiece of the WTO import regime.
- "internal taxes and other internal charges ... should not be applied to imported or domestic products so as to afford protection to domestic production."
 - Amount of tax formally levied on imports once cleared customs cannot exceed the amount of tax levied on the same good or service if produced domestically.

American Jobs Credit Plan: Alternative Structure to Solve Import Issue

- Subtraction-method consumption tax
 - Business-level “American Job Credit”
 - Flat-rate credit provided to the employer equal to amount of wages paid to qualifying workers multiplied by the tax rate
 - Individual-level subsidies would also work

Greenprint:

Five Legal Rules to Solve Import Issue

- Each business that sells anything for use in the country required to file a DBCFT tax return / “register”
- Deduction available to all DBCFT taxpayers for all wages paid to taxpayers resident in the country.
- DBCFT taxpayers can deduct non-financial payments made to other DBCFT taxpayers
- Except for taxpayers legally organized in-country, every business otherwise required to file a DBCFT return can elect not to be a DBCFT taxpayer.
 - Must affirmatively forfeit the right to have purchases from that business be deductible for other DBCFT taxpayers.
- DBCFT taxpayers are disallowed from taking deductions for payments made to entities that are not registered / do not file DBCFT returns.

Draft Paper Available on SSRN

- Itai Grinberg, “The House GOP Blueprint Can Be Drafted to Comply with WTO Rules”
- https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2956048