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# **DUTIES AND TAXES FOR CROSS-BORDER E-COMMERCE: A COMPARATIVE ANALYSIS OF THE *DE MINIMIS* THRESHOLD**

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## LIST OF ABBREVIATIONS

ATO	Australian Taxation Office
APEC	Asia Pacific Economic Cooperation
B2C	Business to consumers
CBP	U.S. Customs and Border Protection
EC	European Commission
EU	European Union
GST	Goods and service tax
ICC	International Chamber of Commerce
NAFTA	North American Free Trade Agreement
OECD	Organization for Economic Co-operation and Development
OSS	One Stop Shop
SME	Small and medium-sized enterprise
UNCTAD	United Nations Conference on Trade and Development
USMCA	U.S.-Mexico-Canada Agreement
USTR	U.S. Trade Representative
VAT	Value added tax

This paper is Takashi Nakao's academic work conducted during his stay at the Program on U.S.-Japan Relations. The opinions expressed in this paper are the author's own and do not reflect the view of an organization to which the author belongs.

## Introduction

Electronic commerce (e-commerce)<sup>1</sup> is expanding at rapid speed all around us, and no one believes that this trend will be reversed.<sup>2</sup> According to estimates by the United Nations Conference on Trade and Development (UNCTAD), at the global level, 1.45 billion people engaged in online purchase in 2018, a 9 percent increase over 2017.<sup>3</sup> Thus, it can easily be assumed that this figure will keep rising, especially with the current COVID-19 pandemic, during which time more and more people are shopping remotely. According to the same estimate, cross-border dealings comprise 23 percent of the overall transactions, with 330 million people worldwide having purchased goods online in 2018. This is 19 percent higher than in 2017, indicating that cross-border transactions are growing faster than domestic online shopping.

As e-commerce/online-shopping expands, it will be accompanied by a significant increase in the number of parcels, which are usually delivered to purchasers by international courier services such as FedEx, DHL and UPS. Worldwide total parcel volume<sup>4</sup> in 2013 was 36 billion, and, after having grown at around 19 percent annually, this figure reached 103 billion in 2019 (Figure 1).<sup>5</sup> It was not possible to divide this into domestic and international delivery. Nevertheless, considering that the cross-border e-commerce transactions are growing, it is not difficult to assume that international shipping will continue to increase as well. In the United States (U.S.), for example, the statistics indicate that more than 600 million international express

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<sup>1</sup> The definition of e-commerce varies. In this paper, e-commerce simply means goods and services sold online and delivered online in some cases.

<sup>2</sup> Global e-commerce sales were estimated to have been \$29 trillion in 2017. (UNCTAD press release March 29, 2019), <https://unctad.org/press-material/global-e-commerce-sales-surged-29-trillion>.

<sup>3</sup> UNCTAD, UNCTAD estimates of global e-commerce 2018, UNCTAD technical notes on ICT for development No. 15, p 5.

<sup>4</sup> The parcel volume is measured in 13 major countries; the United States, Canada, Brazil, Germany, the UK, France, Italy, Norway, Sweden, China, Japan, Australia and India.

<sup>5</sup> Pitney Bowes Parcel Shipping Index, [Pitney Bowes Parcel Shipping Index](#).

consignments and mail shipments were handled by the Customs administration in FY 2019, 168 percent larger than in FY 2013.<sup>6</sup> Not only the United States, but also many other countries are confronted with a surge of imports and exports of small consignments nowadays.

Since these express consignments tend to be of low value, the level of the *de minimis* threshold, below which duties and/or taxes are not imposed on imported goods,<sup>7</sup> has impacts on government revenues and business operations among other things. In particular, as it is foreseen that cross-border e-commerce will continue to grow and that more and more low-value consignments will move across borders, these impacts are likely to be even greater. Reflecting this situation, some governments feel that it is necessary to review their threshold and examine whether the current level should be maintained.

International convention underscores that each contracting party should specify its *de minimis* threshold, and many countries and regions including non-contracting parties have their own *de minimis* thresholds nowadays.<sup>8</sup> Nevertheless, the convention does not stipulate the level itself; thus, the level of threshold varies by country. As can be seen in Table 1, the United States and Australia are among countries that have the highest threshold. The United States reached that position in 2016 after raising its *de minimis* value to \$800 from \$200. It has been claimed that a higher threshold would reap economic benefits through, for example, less paperwork and expedited clearance for many small consignments at the border.

Conversely, some movements in the other direction have been observed. In spite of the suggested benefits from the increase in the threshold, some governments have reduced or

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<sup>6</sup> U.S. Customs Border Protection Trade and Travel Report FY 2019.

<sup>7</sup> Usually, some goods such as tobacco or alcohol are not entitled to the exemption.

<sup>8</sup> The International Convention on the Simplification and Harmonization of Customs Procedures (as amended) stipulates that “national legislation shall specify a minimum value and/or a minimum amount of duties and taxes below which no duties and taxes will be collected” (Chapter 4, Duties and Taxes, Transitional Standard 4.13). According to the World Customs Organization (WCO), there are 124 contracting parties (as of Oct. 19, 2020).

eliminated their thresholds in recent years. The question is why this contrast exists in determining the level of the *de minimis* threshold. One strong driving force has been to rectify unfairness in taxation. This paper aims to articulate and make a comparison of these two different approaches. The paper will also try to analyze and predict which direction will be taken by governments in the future.

According to the International Chamber of Commerce (ICC), *de minimis* threshold can be defined as “a valuation ceiling for goods, including documents and trade samples, below which no duty or tax is charged and clearance procedures, including data requirements, are minimal.”<sup>9</sup>

It is important to specify the difference between “duty” and “tax” at this stage. Each country has different duty and tax systems, and it would be difficult to find a perfect definition of these terms. Nonetheless, the following explanation will aid in making a distinction; in the argument on a *de minimis* threshold, “*duty*” is generally used as a synonym for tariff imposed on imported goods,<sup>10</sup> and “*tax*” indicates a national tax called Value Added Tax (VAT) or Goods and Service Tax (GST), which are named differently in different countries. Some countries establish thresholds for duty and tax separately. This distinction between duty and tax is important in this paper, and I will come back to this point in the latter part.

The above definitions include the application of minimum clearance procedures, but this is not necessarily a prerequisite for a *de minimis* threshold. There are countries that do not have simplified procedures. In some countries, the application of such streamlined procedures is

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<sup>9</sup> ICC “Global baseline de minimis value thresholds.” ICC Policy Statement, 2015, <https://iccwbo.org/content/uploads/sites/3/2015/02/ICC-Policy-Statement-on-Global-Baseline-De-Minimis-Value-Thresholds-2015.pdf>.

<sup>10</sup> In addition to tariffs, other duties such as antidumping duties and countervailing duties can be collected by the customs administration.

admitted at a value threshold based on rules other than *de minimis* regime regulation.<sup>11</sup> It would be fair to say, however, that, as these value thresholds are usually higher than the *de minimis* threshold, simplified customs procedures are generally applicable to imported goods under the level of *de minimis*. It is also common that faster delivery to purchasers is requested for these consignments, and customs administrations have been trying to meet that need while maintaining enforcement at borders.

This paper is organized as follows. Part 1 argues the economic benefits from increases in *de minimis* thresholds. Previous literature and the U.S. case are investigated in this section. Part 2 examines both Australia and the European Union, as instances of lowering or eliminating thresholds. Here, new tax collection approaches in these examples are explored. Part 3 tries to clarify the position of the United States regarding taxation on e-commerce through an analysis of trade negotiations and sales tax. This section also considers whether the threshold will shift up or down in the future.

## **Upward shift of the *de minimis* threshold**

### *Economic benefits from raising the threshold*

When a country decides to increase its *de minimis* threshold, this means that more consignments will be exempt from duties and taxes, and, therefore, part of revenue that used to be collected at the old threshold is expected to disappear. The loss of revenue can be larger if the margin of raising the threshold becomes substantial. Existing literature, however, has pointed out that economic benefits derived from this increase would be larger than the revenue loss.

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<sup>11</sup> For example, in the United States, merchandise value at less than \$2,500 may qualify for informal entry including expediting customs processes.

Focusing on the case of the United States, Hufbauer and Wong (2011) argued that, raising the threshold will reduce the cost borne by express firms and postal services since simplified procedures are applied to a consignment that is lower than the threshold.<sup>12</sup> Holloway and Rae (2012) analyzed the *de minimis* arrangements in Asia Pacific Economic Cooperation (APEC) economies,<sup>13</sup> and calculated the economic impacts from the different levels of *de minimis* thresholds.<sup>14</sup> Taking the case study of Canada, Latipov et al. (2017) also evaluated the impacts, and they calculated the effects on government, consumers and businesses, respectively, by using statistical data.<sup>15</sup>

Even though these three articles took up different countries as targets for their analyses and used different data and figures to calculate gains, they suggested similar advantages from increasing the threshold from existing levels. The main benefits outlined by the articles can be briefly summarized as follows:

**Government cost savings:** The cost borne by customs administrations of collecting a small amount of duties and taxes will be eliminated. Customs officials do not need to assess consignments below the price of the newly established threshold. The assumption was made by Hufbauer and Wong that the labor costs for one customs official is around \$34 per hour in the United States, and it takes around two minutes to complete the paperwork for one parcel. They calculated the savings based on these figures. Holloway and Rae employed the user charges and fees imposed by customs as a cost, and they estimated the amount of government savings. Since

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<sup>12</sup> Hufba Latipov, Olim, et al. "The *de Minimis* Threshold in International Trade: The Costs of Being Too Low." *The World Economy*, Vol. 41, No. 1, 2018, pp. 337-56. Wiley Online Library, doi:[10.1111/twec.12577](https://doi.org/10.1111/twec.12577).uer, Gary Clyde, and Yee Wong. "Logistics Reform for Low-Value Shipments." Policy Brief No. PB 11-7, 2011, Peterson Institute for International Economics.

<sup>13</sup> Six economies, namely Canada, Indonesia, Japan, Malaysia, the Philippines and Thailand, are analyzed.

<sup>14</sup> Holloway, Stephen, and Jeffrey Rae. "De Minimis Thresholds in APEC." *World Customs Journal*, Vol. 6, No. 1, Citeseer, 2012, pp. 31-62.

<sup>15</sup> Latipov, Olim, et al. "The *de Minimis* Threshold in International Trade: The Costs of Being Too Low." *The World Economy*, Vol. 41, No. 1, 2018, pp. 337-56. Wiley Online Library, doi:[10.1111/twec.12577](https://doi.org/10.1111/twec.12577).

the charges are no longer imposed, the saved costs are considered as benefits. A similar approach was taken by Latipov et al., and the savings in Canada were determined based on the hypothetical charges and fees as \$38.74 per consignment.<sup>16</sup> Latipov et al. also argue that the human resources who used to engage in handling low-value parcels can be redirected to the assessment of high-value parcels, and this could generate additional revenue.

**Business cost savings:** Business sectors, in particular, the express delivery industry, will benefit from simplified procedures and less paperwork in importing consignments. The concept of opportunity cost is applied to calculate the economic benefits. According to a survey conducted by Hufbauer and Wong, it takes 0.15 hour (9.2 minutes) for the paperwork of one consignment clearance, and the costs incurred by this work will be saved (time multiplied by hourly wage). In the same way, Latipov et al. argued that paperwork and administrative tasks for customs procedures would be eliminated for business firms. In addition, they pointed out that duties and brokers' fees can be considered as savings since those duties and fees are no longer paid. Holloway and Rae used a different figure (0.25 hour per parcel), but the basic calculation is the same.

It is worthwhile to emphasize that small and medium-sized enterprises (SME) would have greater gains from an increase in the *de minimis* threshold, as they tend to deal with small consignments. Reducing the costs for paperwork or clearance will lead to maintaining the price of production and goods at lower levels, which will have positive effects on SMEs. Moreover, e-commerce assists SMEs to sell goods over the internet. This greater access to the global market is a valuable business opportunity for SMEs (Huria, 2019).<sup>17</sup>

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<sup>16</sup> In reality, customs (Canada Border Service Agency) do not impose any charges or fees for clearance of cargos.

<sup>17</sup> Huria, Ankur. "Facilitating Trade and Logistics for E-Commerce: Building Blocks, Challenges, and Ways Forward." World Bank, 2019, doi:[10.1596/33174](https://doi.org/10.1596/33174).

**Time savings:** As a result of raising the *de minimis* threshold, consignments under the new threshold will be delivered faster than before due to the application of simplified procedures, leading to economic benefits. For the calculation of the benefits, Hufbauer and Wong assumed that one extra day will be saved due to this expedited process in the United States, and used the estimation that 0.4 percent of the consignment value would be the savings from a one day cut.<sup>18</sup> In the meanwhile, Holloway and Rae used 0.5–2.4 days reduction per consignment in six APEC economies, and 1.08 percent savings for one day. In the case of Canada analyzed by Latipov et al., 3.7 days reduction was assumed for postal parcels and 1.0 percent savings for each additional day.

**Consumer benefits:** Latipov et al. argued that, in addition to savings from rapid delivery, consumers do not need to pay duties and taxes, and no longer pay fees to customs brokers for consignments below the new *de minimis* threshold. Therefore, these savings are considered to be economic benefits.

The authors of these articles explained that data and statistics, such as the volume of consignments at various price ranges, were not available, so most of the calculations in the literature cited needed to be done based on assumptions and predictions. With this limitation, the literature agreed that the outcome from the calculation of raising the *de minimis* threshold was that economic benefits from saving costs and time would be greater than the revenue forgone. Estimated net gains for the United States were \$17 million annually in the case of raising its threshold to \$800.<sup>19</sup> If Canada were to increase its threshold to C\$200, the economic benefits

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<sup>18</sup> In other words, 0.4 percent of the consignment value will be added for each day of delay.

<sup>19</sup> Hufbauer, Gary Clyde, and Yee Wong. “*Logistics Reform for Low-Value Shipments*.” Policy Brief No. PB 11-7, 2011, Peterson Institute for International Economics, p.13.

would rise from C\$361 million to C\$648 million.<sup>20</sup> Furthermore, according to Holloway and Rae, the revenue loss is regarded as insignificant for six countries if the threshold were raised up to \$200. The estimated revenue forgone corresponds to only 1.0 percent of the cost savings or less than 1.0 percent. A detailed analysis of the calculation of economic benefits is outside the scope of this study, but I will come back to this point in Section 1.3.

### *Case of the United States*

In 2016, the United States increased its *de minimis* threshold from \$200 to \$800, after the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, which contains Section 901 on a *de minimis* value. In specific terms, the *de minimis* threshold in the United States is admission of articles free of duty or tax, stipulated in Section 321 (a) (2) (c) of the Tariff Act of 1930. The exemption of duty or tax will be applied to the articles on the condition that “the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from the payment of duty shall not exceed \$800.”<sup>21</sup>

The remainder of this section will explore the objective of this increase in threshold, and, for that purpose, examine the Congress reports on the Trade Facilitation and Trade Enforcement Act of 2015, which are helpful in understanding the intention of the threshold change.

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<sup>20</sup> Latipov, Olim, et al. “The *de Minimis* Threshold in International Trade: The Costs of Being Too Low.” *The World Economy*, Vol. 41, No. 1, 2018, pp. 337-56. Wiley Online Library, doi:[10.1111/twec.12577](https://doi.org/10.1111/twec.12577).

<sup>21</sup> U.S. Customs and Border Protection website, <https://www.cbp.gov/trade/trade-enforcement/tftea/section-321-programs>.

The Senate Finance Committee report<sup>22</sup> asserts that balancing revenue from tariff imposition with administrative costs for collecting the duties is the objective of the *de minimis* threshold. It also notes that this is a reflection of the Congress' view that excessive burdens on small companies should not be imposed by customs regulations. In addition, the reasons for the change to \$800 are explained in a report by the House Committee on Ways and Means.<sup>23</sup> It claims that Section 901 will achieve simplification of the customs entry process and benefit the Customs administration (U.S. Customs and Border Protection [CBP]). Raising the threshold will lead to the reduction of paperwork for dealing with low-value consignments. The report also contends that simplifying and streamlining the entry process for low-value shipments will help to stimulate the economy, facilitate legitimate trade, and free CBP resources to focus on enforcement efforts in high-risk trade.

With regard to the level of \$800, the report indicates that the increase from \$200 is to create a balance between articles that are brought in by travelers and those that are shipped from abroad. U.S. citizens are allowed to bring in articles purchased abroad valued at up to \$800 free of duties, whereas, if they decide to ship articles to the United States, duties needed to be paid for articles over \$200. Therefore, in order to change this inconsistent treatment, the threshold value was increased from \$200 to \$800.

In addition, the amount of revenue forgone from this change is estimated in the report. According to the Congressional Budget Office, the revenue loss for the period of 10 years (from 2015 to 2025) is expected to be \$179 million as a result of the increase in the *de minimis*

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<sup>22</sup> Senate Report 114-45, Trade Facilitation and Trade Enforcement Act of 2015 (May 13, 2015), in Manz, William H., Editor. *Trade Facilitation and Trade Enforcement Act of 2015: A Legislative History of Public Law No. 114-125.* Getzville, William S. Hein & Co., Inc. HeinOnline, (Doc. No 40).

<sup>23</sup> House of Representatives Report 114-114 Part 1, Trade Facilitation and Trade Enforcement Act of 2015 (May 14, 2015).

threshold to \$800. This figure takes into account the growth of imports and it is estimated that the revenue forgone will go up from \$14 million in 2016<sup>24</sup> to \$22 million in 2025.

As can be seen, the background of raising the *de minimis* threshold in the United States seems to echo the arguments in the literature outlined in the previous section. In fact, Section 901(a) (2) of the Trade Facilitation and Trade Enforcement Act of 2015 stipulates that higher thresholds “provide significant economic benefits to businesses and consumers in the United States and the economy of the United States through costs savings and reductions in trade transaction costs.” Conversely, I would like to point out that a key question is not answered in the Congress reports: What are the estimated economic benefits derived from a higher *de minimis* threshold? Do the benefits expect to outweigh the revenue forgone that is estimated at \$179 million over 10 years?

It is also noteworthy that, in Section 901 (b)<sup>25</sup> of the Trade Facilitation and Trade Enforcement Act of 2015, the Congress has requested the U.S. Trade Representative (USTR) to encourage other countries to establish commercially meaningful *de minimis* values, even though it does not clearly say what is meant by this.

#### *How to calculate cost savings*

The argument in Section 1.1, which identifies the economic benefits attained by raising thresholds, seems to be a reasonable explanation, and the calculated benefits appear to compensate for the revenue forgone. In my view, however, the details should be examined

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<sup>24</sup> The estimated loss in 2015 is \$3 million, as this Act was expected to be enacted by July 1, 2015.

<sup>25</sup> Section 901 (b): It is the sense of Congress that the USTR should encourage other countries, through bilateral, regional, and multilateral fora, to establish commercially meaningful *de minimis* values for express and postal shipments that are exempt from customs duties and taxes from certain entry documentation requirements, as appropriate.

carefully before confirming the advantages. Taking the example of the United States, this section explores these economic benefits, namely (i) government cost savings, (ii) business cost savings, (iii) time savings, and (iv) consumer benefits in turn.

(i) Government cost savings

In theory, personnel devoted to collecting duties and taxes may be reduced after a new threshold level is introduced, and this saving of labor costs can be added to the economic benefits. Nevertheless, in reality, it should be underscored that customs officials still need to keep an eye on all consignments even if their values are under the new *de minimis* threshold. All parcels and consignments do not go through without any intervention or examination by customs officials. It is their duty to stop smuggling of illegal goods such as narcotics at the border and to prevent counterfeit goods from entering the country. Customs officials are also required to make sure that the declared price is not less than the actual value and there is no evasion of duties and taxes.<sup>26</sup>

These multiple task requirements imply that human resources will not be simply reduced or redirected by introducing higher *de minimis* thresholds; therefore, it is possible that governments may not be able to achieve cost savings. On the contrary, since raising the threshold aims to promote further trade, this may induce a further increase in small parcels coming from abroad. In this case, it is conceivable the number of consignments that require more intervention and examination may increase, and this would add pressure to have additional personnel at the borders. Looking at the instance of the United States, it was stated that raising the threshold

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<sup>26</sup> The CBP Acting Commissioner said: “The exponential growth of e-commerce has provided illicit sellers with an extraordinary opportunity to evade duties and sell unsafe and unregulated products to U.S. consumers... The CBP will not sit idly by and allow these bad actors to evade duties, report false values, and harm American businesses and consumers.” (Press release, August 3, 2020) [https://www.cbp.gov/newsroom/national-media-release/cbp-enhances-accountability-e-commerce-through-ruling-duty?\\_ga=2.2049593.964608388.1603316757-825780902.1599141713](https://www.cbp.gov/newsroom/national-media-release/cbp-enhances-accountability-e-commerce-through-ruling-duty?_ga=2.2049593.964608388.1603316757-825780902.1599141713).

would help CBP resources to be redirected to other work on high-risk trade.<sup>27</sup> Yet, this may not happen as anticipated.

(ii) Business cost savings

In order to analyze the benefits, the business sector can be divided into several groups. First and foremost, the express delivery industry would be a beneficiary of a higher threshold. Since the industry handles a huge number of small parcels, it will enjoy a benefit from simplified procedures and a smaller workload for border clearance. In addition, their reputation and customer satisfaction are likely to be enhanced if parcels are delivered faster than before. Furthermore, the work pertaining to duties or tax payments is expected to decline. It is also possible that express firms will deal with more consignments because the total number of small parcels is anticipated to surge after the threshold is raised. As more parcels are involved, greater economic benefits are likely to be gained by express companies wherever they are located internationally. Taking the case of the United States, a representative of UPS, a large express delivery company, explained its strong advocacy for raising the *de minimis* threshold to \$800 in a hearing before the Senate Finance Committee.<sup>28</sup> UPS claimed that this raise will reduce their work and expedite trade. It also supported the idea that other countries such as Canada and Mexico will increase their thresholds for further trade promotion. Nonetheless, it should be noted that the amount of duties and taxes saved from a higher threshold would not necessarily result in benefits to the express delivery industry. Importers or consumers are supposed to pay the duties and taxes, and the benefits of exemption of these duties and taxes would go to them.

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<sup>27</sup> House of Representatives Report 114-114 Part 1, the Trade Facilitation and Trade Enforcement Act of 2015 (May 14 2015).

<sup>28</sup> Hearing before the Senate Finance Committee 113-215, Trade Facilitation and Trade Enforcement Act of 2013 (May 22, 2013), in Manz, William H., Editor. *“Trade Facilitation and Trade Enforcement Act of 2015: A Legislative History of Public Law No. 114-125.”* Getzville, William S. Hein & Co., Inc. HeinOnline. (Doc. No 44).

Other business sectors that are engaging in importing small consignments are also potential beneficiaries of simplified procedures, insofar as they handle substantial numbers of small parcels. Some domestic companies such those as in the manufacturing, apparel or textile industries, can benefit from the savings of duties when importing samples of goods. These benefits from higher thresholds, however, could be minimal. In the United States, there is a condition attached to using the *de minimis* threshold, which is its application to articles imported by one person on one day. Therefore, from the perspective of a company, the advantage of applying the threshold may not be so attractive with regard to gaining benefits from simplified processes and duty exemptions. For example, manufacturing companies that purchase parts and samples from abroad, or retail companies that sell foreign products will have limited financial benefits. The amount that \$800 multiplied by duty or tax rate is the maximum savings for one day. Therefore, when benefits for these companies in the United States are assessed, it is necessary to consider how much the firms are involved in import procedures and how many small parcels they are dealing with.

The fact that raising the threshold will be a good business opportunity for overseas, not domestic, suppliers, to export their products to a country with a higher threshold should not be ignored.<sup>29</sup> As will be seen in later arguments, higher thresholds can be business opportunities for exporting firms, and SMEs engaging in exportation are likely to gain large benefits from that opportunity. Hence, U.S. exporters would be able to increase their sales if other trade partners establish higher *de minimis* thresholds. This indicates, at the same time, that domestic firms do not always reap benefits from higher *de minimis* thresholds. From the point of view of domestic

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<sup>29</sup> According to a UPS notification dated March 10, 2016, “this change [increase in the *de minimis* threshold in the U.S.] will benefit Asian exporters by reducing paperwork for faster clearance and improved transit time to the U.S.” <https://www.ups.com/cn/en/about/news/20160310-de-minimis.page>.

companies, increases in imports may create pressure for promoting competition and for lowering the prices of goods in the domestic market, which can be interpreted as either positive or negative.

Furthermore, some noticeable adverse effects for businesses in the domestic market will possibly emerge if the *de minimis* threshold is raised. Unfairness of taxation is one of the major negative impacts from higher thresholds. This will be further explored in the remainder of this paper, but I would like to indicate at this stage that the negative effects on domestic business are not necessarily taken up and reflected well in the articles cited in Section 1.1.

(iii) Time savings

It would be reasonable to say that every consumer and business has a preference for faster delivery. Arguing the economic benefits gained from reduced delivery time, however, is not my intention here. Instead, I would like to touch upon how much the raising the *de minimis* threshold can contribute to shorten the time.

As can easily be assumed, express service providers are characterized by delivering time-sensitive or time-definite consignments. Hence, this industry is building its business models to meet this demand for faster delivery. Customs administrations are also trying to meet this requirement by means such as introducing expedited processes for express cargos including small parcels under the *de minimis* threshold. As a result, delivery times have already tended to be reduced in many countries, especially in advanced economies.

According to the Korea Customs Service, the customs clearance time for e-commerce goods in that country averages four hours.<sup>30</sup> Japan Customs conducts surveys on release times of goods every three years, and the latest result, from 2018, shows that the average customs

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<sup>30</sup> WCO “Let Cross-Border E-Commerce Be an Engine for Growth.” *WCO News* 78: 50-52, 2015, [http://www.wcoomd.org/-/media/wco/public/global/pdf/media/wco-news-magazines/wconews\\_78\\_uk.pdf](http://www.wcoomd.org/-/media/wco/public/global/pdf/media/wco-news-magazines/wconews_78_uk.pdf).

clearance time for international express consignments is 0.4 hours (24 minutes), and the average time from the arrival of the cargo plane to the completion of customs clearance is 10.4 hours.<sup>31</sup> Publicly available data for this kind of release time are limited, so it is difficult to assert that most advanced economies have already achieved swift clearance time for small parcels. Some countries, particularly those in the developing world, have room to newly introduce expedited processes, and these economies are likely to have benefits from time savings. It is assumed, however, that the introduction of higher *de minimis* thresholds will result in only fairly limited savings of time at least for advanced economies. In my view, it is doubtful if the time savings could be larger than, for example, one day. Therefore, the estimates in the literature cited in Section 1.1 need to be further examined.

#### (iv) Consumer benefits

It has been widely pointed out that consumer will benefit from e-commerce in the form of business-to-consumers (B2C). Consumers will be able to access a wide choice of products, and to purchase goods that are unavailable at nearby shops or goods of better quality.<sup>32</sup> E-commerce also affords the convenience of not having to go out shopping, provided the goods are delivered within a reasonable time.

When the *de minimis* threshold is raised, consumers will have a chance to save money since more products are likely to be exempt from duties and taxes. This may give purchasers an additional incentive to move to cross-border e-commerce. Nonetheless, if more and more

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<sup>31</sup> Japanese Ministry of Finance, Time release study for import customs clearance (輸入通関手続の所要時間調査 (*yunyu tsukan tetsuduki no shoyou jikan chousa*)), 2018.

[https://www.mof.go.jp/customs\\_tariff/trade/facilitation/ka20180706.htm](https://www.mof.go.jp/customs_tariff/trade/facilitation/ka20180706.htm) (Japanese only).

<sup>32</sup> United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), “*Selected Issues in Cross-Border E-Commerce Development in Asia and the Pacific*” Studies in Trade, Investment and Innovation No. 91, 2019. <https://www.unescap.org/publications/studies-trade-investment-and-innovation-no-91-selected-issues-cross-border-e-commerce#>.

consumers purchase goods through cross-border e-commerce for the above reason, this could end up profiting foreign suppliers. As stated before, it would be overseas vendors who are likely to increase their sales to consumers in a country that has a higher threshold. This impact would need to be taken into consideration when evaluating the economic benefits of raising the *de minimis* threshold. On the other hand, this consumer benefits from a higher threshold and exemption would mean the loss of government revenue. Can we consider this transfer from government to consumer as an economic benefit?

In sum, this section has examined the economic benefits of raising the *de minimis* threshold, and previous literature has argued that the benefits could outweigh the revenue loss. The cost savings from higher thresholds and the simplified procedures seem to be promising in some industries, particularly express delivery. Perhaps in some countries where there is room to improve and expedite the border process, time savings from higher threshold could be sizeable. Also, the United States is of the view that higher thresholds would benefit small businesses as well as consumers. It seems, however, that calculating the impact of raising the threshold could be a difficult task as the effects can be diversified. As argued earlier, governments may not be able to save enough, and there could be negative effects on domestic business. Time savings may not be so large as expected in advanced economies, and consumer benefits could be canceled out. Even though the analyses conducted in previous articles should be respected since the authors attempted to calculate the benefits with limited availability of data, their estimates seemingly do not take into consideration these adverse factors, which need to be taken into account. Recalculating economic benefits from raising the *de minimis* threshold is not within the scope of this paper, yet I would like to argue that these benefits may not be so high as previous works have predicted, and that they are not necessarily decisive.

Now, let me turn to an opposite approach, i.e., lowering the *de minimis* threshold.

### **Downward shift of the *de minimis* threshold**

Before arguing the effects of reducing the threshold, this section starts with a question; why is a *de minimis* threshold established in many countries? Setting a *de minimis* threshold aims at balancing the revenue from duties and taxes and the costs of collecting them.<sup>33</sup> If collecting a small amount of duties and taxes requires costly paperwork or resources, these revenue collection efforts will be considered inefficient. In other words, the key point is how much additional revenue would be gained after deducting the costs for those revenue collection efforts. It would be fair to say that this cost-and-benefits argument has been a major issue, and some governments have been careful to review their threshold levels, in particular, to shift them downward. Bearing the costs in mind, the sections below will explore the instances of Australia and the European Union.

#### *Case of Australia*

In 2011, the Productivity Commission, an independent research and advisory body of the Australian government, estimated additional revenue from lowering its threshold of A\$1,000 (around \$770) and analyzed costs for collecting duties and tax, the GST, from low-value goods at the border. According to the Commission report, were the threshold reduced from A\$1,000 to A\$100, a number of consignments that used to be exempted from duties and 10 percent GST would become taxable. This would then generate around an estimated A\$495 million in extra

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<sup>33</sup> United Nations ESCAP, “*Selected Issues in Cross-Border E-Commerce Development in Asia and the Pacific*” Studies in Trade, Investment and Innovation No. 91, 2019, <https://www.unescap.org/publications/studies-trade-investment-and-innovation-no-91-selected-issues-cross-border-e-commerce#>. Accessed 20 Sep 2020.

revenue for the Australian government. At the same time, costs incurred by the government (customs administration) would be A\$378 million and business (express delivery and postal service) would be A\$228 million. After customs brokers fees (A\$630 million) are added to these, the costs total over A\$1.2 billion for collecting the additional revenue.<sup>34</sup> Not surprisingly, this analysis is similar to the argument in Section 1.1, albeit the gains and losses are the other way around. The report concluded that, from the standpoint of cost effectiveness, the current threshold should not be reduced.

For a decade, however, Australia had been seeking alternative revenue collection models that could possibly minimize these costs. After examining different models, the decision was made in 2017 that Australia would adopt a vendor collection model<sup>35</sup> to collect GST from small consignments.<sup>36</sup> Under this model, overseas suppliers are responsible for collecting GST and remitting it to the Australian Taxation Office (ATO). More specifically, in terms of online sales, foreign suppliers with over A\$75,000 in annual sales to Australia are responsible for charging, collecting and remitting the GST regarding the goods of A\$1,000 or less. The overseas suppliers are not limited to vendors, but also include online platforms such as Amazon and eBay, and re-deliverers that engage in providing shopping and mailbox services and assist in bringing goods into Australia. Also, this applies only to cases in which the recipients of these goods are consumers in Australia, not to business-to-business sales. Furthermore, overseas suppliers with less than A\$75,000 turnover do not need to collect and remit GST on low-value goods.

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<sup>34</sup> Productivity Commission. “*Economic Structure and Performance of the Australian Retail Industry.*” Report No. 56, 2011, pp 199-200, <https://www.pc.gov.au/inquiries/completed/retail-industry/report>.

<sup>35</sup> It is also called “a legislated model.”

<sup>36</sup> With the background of adapting this model, it is noteworthy that the Australian government decided to introduce the vendor collection model for collecting GST for cross-border transactions of intangible goods (digital products and services) from July 2017.

As to the outcome of this vendor collection model, it was estimated that additional GST revenue would be A\$300 million for three fiscal years (2017–19). The expenditure for the ATO to implement this measure was calculated at A\$13.1 million for four fiscal years starting from 2016. This shows that a GST revenue increase of around A\$287 million can be expected by the government over three fiscal years.<sup>37</sup> This model clearly incurs costs to business, in particular overseas vendors, for collecting and remitting GST. Precise estimated costs for business, however, were not shown in the report, as the calculation varies from various analyses, ranging from A\$6.5 million to A\$350 million for fixed set-up costs, and from A\$1 million to A\$50 million for annual operational costs.<sup>38</sup>

With strong support from retail industries in Australia, this legislation was enacted on July 1, 2018, and the GST started to be levied on import consignments under A\$1,000. It should be noted here that only GST (tax) is imposed, and the duty is still exempted. The Australian government officially claims that the threshold of A\$1,000 *at the border* for GST and customs duties has not been changed, and consignments shipped by overseas suppliers whose sales are less than A\$75,000 still enjoy the exemption.<sup>39</sup> After the launch of this GST collection, nevertheless, it would be reasonable to say that, in Australia, the threshold for GST was removed from (some) low-value consignments in practice.

As described above, there seemed to be no firm assertion that additional GST revenue would outweigh the costs of implementing this vendor collection model. In addition, some challenges were anticipated by introducing this system. In spite of all this, I would like to

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<sup>37</sup> Productivity Commission. “*Collection Models for GST on Low Value Imported Goods - Productivity Commission Inquiry Report.*” Report No. 86, 2017, <https://www.pc.gov.au/inquiries/completed/collection-models/report>, p 43.

<sup>38</sup> *Ibid*, pp 59-60.

<sup>39</sup> Australian Government, Department of Home Affairs Notice No. 2018/13, 4 May 2018, <https://www.abf.gov.au/help-and-support-subsite/CustomsNotices/2018-13.pdf>.

highlight the fact that Australia decided to introduce the new GST collection scheme primarily due a desire to pursue the creation of a level playing field between overseas suppliers and domestic retailers. Here is a strong motivation to achieve the goal: it was determined that a substantial number of Australian consumers engaged in online shopping on overseas websites in 2010,<sup>40</sup> and Australian retailers had been expressing concerns that international retailers have the advantage in price competition as they are benefitted by the exemption of tax. Goods sold by local companies still need to pay GST even if the price is under A\$1,000 and, as a result, Australia has had to deal with this unfairness for a decade. Moreover, this concern was intensified as the volume of imports of small goods was growing year by year after further development of B2C e-commerce at the global level.

It was pointed out that there are some challenges involved in implementing this collection model. One of them is that the government would face difficulty in enforcing this model as the Australian legal system does not reach outside its jurisdiction; thus, the model needs to rely on voluntary cooperation by overseas suppliers. With some uncertainties or concerns, the new GST collection model started in Australia, and this model is supposed to be reviewed in 2023.

### *Case of the European Union*

In 2017, the European Union (EU) decided to eliminate its *de minimis* threshold on VAT, currently set as up to EUR 22 (around \$27).<sup>41</sup> Starting from July 2021, VAT will be imposed on all small consignments imported from outside the EU and delivered to customers within the EU,

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<sup>40</sup> According to a 2011 Productivity Commission Report, 20 to 50 percent of online sales were estimated as the overseas proportion in 2010.

<sup>41</sup> Twenty out of 28 EU member states set EUR 22 as a threshold, and the rest varied from EUR10 to less than EUR22.

even if the value of the goods is below EUR 22. The EU gave the reason for this policy change as follows: “in order to avoid distortion of competition between suppliers inside and outside the Community and to avoid losses of tax revenue, it is necessary to remove the exemption for imports of goods in small consignments of negligible value” (EU Council Directive).<sup>42</sup>

As you notice, even though the term “distortion of competition” is used, the EU is in pursuit of providing a level playing field between EU and non-EU businesses, which has the same objective as Australia. In addition to this, revenue loss is highlighted as the reason to change the system. The amount of VAT forgone by the exemption was estimated to have reached EUR 1 billion in 2015, and if the current level of *de minimis* threshold is maintained, this would rise to EUR 1.3 billion in 2020.<sup>43</sup>

Apart from these issues, VAT fraud has been identified as a problem under the current exemption system. For instance, high-value goods such as mobile phones and tablets can be declared at values of less than EUR 22 to avoid VAT, and this undervaluation has been recognized as one of the causes of revenue loss in the EU. Possible relocation of EU firms that seek to benefit from VAT exemption to outside of the EU may also be an issue. The high VAT rate in the EU, which is up to 27 percent,<sup>44</sup> seems to have increased the allure of this misbehavior or relocation.

The elimination of the *de minimis* threshold on VAT comes together with other measures under the initiative of modernizing VAT for cross-border e-commerce in the EU.<sup>45</sup> In

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<sup>42</sup> COUNCIL DIRECTIVE (EU) 2017/2455 of 5 December 2017, amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods, (11).

<sup>43</sup> European Commission. “*Impact Assessment, accompanying the document proposal for a Council Directive, a Council Implementing Regulation and a Council Regulation on Modernizing VAT for cross-border B2C e-Commerce.*” SWD(2016)379, 2016, p 15, 29.

<sup>44</sup> In 26 out of 28 EU members, the VAT rate ranges between 19 percent and 27 percent.

<sup>45</sup> The details can be found on the European Commission website; [Modernising VAT for cross-border e-commerce | Taxation and Customs Union \(europa.eu\)](https://ec.europa.eu/taxation_customs/modernising-vat).

this new system commencing in 2021, non-EU suppliers or electronic interfaces including a marketplace and platform will be responsible for charging and collecting VAT from purchasers, and remitting it to EU member states by using an electronic declaration system called the Import One Stop Shop (OSS). Sales of small consignments under the value of EUR 150 (around \$181) will be allowed to make use of this Import OSS for VAT payments, and consequently no VAT will be collected at the border after registration. In cases in which overseas suppliers neither register in nor use the Import OSS,<sup>46</sup> VAT on small consignments will be collected by the customs administration at the border.

It should be noted that the EU introduced the electronic VAT declaration system called Mini OSS in 2015 for both EU and non-EU suppliers of services, namely telecommunications, broadcasting and electronic services. This existing system has shown the effectiveness of VAT collection from these service providers, and, therefore, it can be said that this success will be one of the drivers of furthering VAT reform including the abolishment of the *de minimis* threshold on VAT in the EU.

In terms of the costs for collecting VAT, there is a similar challenge as seen in the Australian case. The tax collection regime put additional burdens on businesses, in particular non-EU firms, since they will be responsible for charging and collecting VAT on their sales. Despite this, the European Commission (EC) predicts that administrative costs for these businesses will be reduced, rather than increased, compared with the status quo. This is mainly because non-EU suppliers will enjoy faster customs procedures at the border and will also benefit from reduced paperwork based on consolidated sales during a certain period, instead of

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<sup>46</sup> The use of the Import OSS is not mandatory.

the normal paperwork based on each transaction.<sup>47</sup> The EC also makes a prediction that the impact on government will be positive. Since there is already an existing electronic VAT collection system, significant costs are not anticipated for the development of IT systems. The OSS system will also promote closer cooperation between agencies in the EU through VAT information exchanges, and it is expected that this cooperation will reduce non-compliance and fraud by some firms.<sup>48</sup>

### *Costs of implementing a new model*

The previous sections have illustrated that both Australia and the EU have faced certain difficulties in the expansion of cross-border e-commerce, and creating a level playing field between domestic and non-domestic firms has been one of major incentives for those governments to lower their *de minimis* thresholds. The challenges caused by the surge of small and low-value consignments are recognized internationally, not only in Australia and the EU, and measures to deal with this have been widely discussed. The Organization for Economic Cooperation and Development (OECD) has noted some concerns related to the exemption of VAT/GST under the *de minimis* threshold: revenue loss, possible relocation of domestic suppliers to offshore jurisdictions, as well as unfair competitive environments for domestic suppliers. Reflecting these, possible approaches to collecting VAT/GST from low-value imported goods in an effective manner were analyzed in the OECD report.<sup>49</sup> Among those approaches, the report suggests that a vendor collection model in which non-resident vendors are

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<sup>47</sup> European Commission. “*Impact Assessment, accompanying the document proposal for a Council Directive, a Council Implementing Regulation and a Council Regulation on Modernizing VAT for cross-border B2C e-Commerce.*” SWD (2016)379, 2016, pp 37-38.

<sup>48</sup>*Ibid*, p 39.

<sup>49</sup> OECD. “*Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report.*” OECD, 2015.

responsible for collecting and remitting VAT/GST, and an intermediary collection model in which intermediaries such as express carriers and e-commerce platforms are obliged to do this, could increase the efficiency of collecting taxes, and, therefore, provide a chance to eliminate or reduce the *de minimis* threshold for VAT/GST. Both Australia and the EU seem to have a combination of the vendor and the intermediary collection models defined by the OECD.

Both cases also have the common feature of imposing VAT/GST in B2C transactions as follows: overseas suppliers providing digital services and intangibles including music, movies and gaming to consumers are required to register and collect VAT/GST. This collection system was already introduced before the new VAT/GST collection for low-value goods; hence, it can be asserted again that previous experiences with the collection from overseas suppliers of services assisted both governments to move to the new collection models. It should be noted that electronic processes and the application of technology are also drivers for the effective and efficient implementation of these collection models.

In the remainder of this section, I would like to explore the costs of implementing the new tax collection model, i.e., foreign suppliers collect VAT/GST on small consignments and no VAT/GST is imposed at the border, by focusing on four factors: business, consumer, time and government.

In both the Australian and the EU cases, *businesses*, in particular non-domestic suppliers and platforms, are likely to spend more time and money to adapt the new scheme, for example, through changes in IT systems for collecting taxes. The OECD highlighted the importance of mitigating the burden for businesses by introducing such systems as a simplified electronic process for registration, electronic payment of taxes and electronic record-keeping.<sup>50</sup> In fact, we

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<sup>50</sup> *Ibid*

can find some measures taken by both governments to reduce the implementation costs for non-domestic firms. For instance, Australia is not requiring overseas suppliers to appoint intermediaries within their territory to lower the costs borne by those suppliers. No registration is required with sales of less than A\$75,000, and it is believed that this turnover rule will help SMEs ease the burden of GST collection. Monthly VAT payments will be accepted by the EU, and, as mentioned earlier, this consolidated work is likely to lessen the workload for business firms. They are currently dealing with customs procedures based on individual transactions and making VAT payments according to the transaction.<sup>51</sup>

The costs of implementing a new collection model tend to vary from firm to firm, hence making it a challenging task to estimate overall economic costs for businesses. In the case of Australia, some overseas suppliers (online platforms) claimed that they may prohibit Australian users from shopping online using their websites because the costs of changing their business models could be high.<sup>52</sup> This implies that, if overseas suppliers face costs for GST collection that outweigh the economic earnings, these suppliers may decide to terminate their business in the Australian market. This would result in the decline of the number of foreign suppliers in the online shopping market. Monitoring the number of international suppliers in the market, therefore, might help to estimate the costs shouldered by individual firms to implement the new tax collection model. On the other hand, by focusing on domestic business, positive impacts can be expected from more fair competition in the market. Sales of domestic companies might increase, as overseas companies will lose the price advantage. This complexity makes it more

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<sup>51</sup> European Commission, Modernising VAT for e-commerce: Question and Answer, December 2017, [Modernising VAT for e-commerce \(europa.eu\)](#).

<sup>52</sup> Productivity Commission. “Collection Models for GST on Low Value Imported Goods - Productivity Commission Inquiry Report,” Report No 86, 2017, <https://www.pc.gov.au/inquiries/completed/collection-models/report>. pp 53-54.

difficult to estimate overall economic costs for business, and thereby, negative impacts from the new tax collection model are unlikely to be emphasized further.

It is *consumers* who will bear the tax burden as a result of reducing or eliminating *de minimis* thresholds. They are likely to face higher prices of goods provided by non-domestic suppliers through online shopping. It is difficult, however, to calculate costs for consumers as they would differ from person to person. Some consumers may cancel their purchase on a website because of a higher price than before, and this would have a negative impact on the economy. On the other hand, some consumers might divert an online purchase from non-domestic to domestic suppliers after comparing the prices, and this could be considered as positive, at least for the domestic firms.<sup>53</sup> Furthermore, we recall that, as more consumers buy higher-priced goods and pay taxes—some people describe this as costs—more tax revenues will go to governments, which would be regarded as a benefit for overall society. Hence, one should be cautious in concluding that, when it comes to the influence on consumers, the reduction or elimination of *de minimis* thresholds will have a negative impact on the economy.

In terms of *time* for clearing small consignments at borders, insofar as the taxes are collected in advance by overseas suppliers, delays are not anticipated as compared to the previous system. In the case of the EU, for instance, it is anticipated that faster clearance could be achieved than is now. VAT is currently imposed at the border on consignments of more than EUR 22, yet this will no longer apply to consignments valued up to EUR 150 in the new collection model. Those goods between EUR 22 and EUR 150 will have advantages from the new scheme, and this will be considered as a reduction of costs.

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<sup>53</sup> The EU indicates the positive impact as follows; Under the current situation, additional VAT or fees can be charged to consumers when they receive parcels because those parcels were declared at lower price at borders. This would not happen by introducing the new scheme.

Finally, let me explore the impact on *government* from the shift to lowering the threshold. The cases of both Australia and the EU suggest that the development or modification of an electronic tax declaration system would incur costs to the governments. As outlined above, it is anticipated that these costs would be smaller than the tax revenue earned from the new collection model. Moreover, initial estimates in both instances indicate that the introduction of the model would minimize the amount of work for government officials, and thereby costs borne by government would not be so large. Even though more and more imported consignments would be taxable than before, it is anticipated that the workload at the border would not increase. Instead of this, as mentioned above, burdens for businesses such as overseas suppliers could be larger. Before concluding that costs for government would be limited from the adoption of a new tax collection mode, I would like to point out some uncertainties from government perspectives. Firstly, non-EU suppliers can choose whether they use the OSS system, and, should a number of firms decide not to use the system, this could be a challenge for the EU. The workload for the government in the EU may be incremental because the customs administration needs to collect VAT at the border from those consignments that used to be exempt from VAT (under EUR 22). Secondly, there is an issue related to enforcement in this collection model. In cases of non-compliance in collecting or remitting taxes by foreign suppliers, examination and investigation of these cases could be costly for government bodies, such as tax agencies, since the suppliers are located outside their jurisdictions. In order to mitigate the risks of non-compliance by non-domestic suppliers, the OECD suggests measures such as the introduction of a simplified procedure of VAT/GST registration for these suppliers.<sup>54</sup>

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<sup>54</sup> OECD. “*Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report.*” OECD, 2015.

As a whole, with the new tax collection model, it might be possible to keep costs low while pursuing additional revenue from low-value goods. Costs borne by governments are likely to be limited, and there seems to be no strong argument for not introducing the model from the perspective of businesses and consumers at this stage. This would be good news for governments that are willing to move the level of the threshold downwards. In fact, some other countries are also launching this collection scheme.<sup>55</sup> In December 2019, New Zealand started to require foreign suppliers of low-value consignments to collect and remit GST. In April 2020, Norway introduced a similar collection model. In my view, nonetheless, we need to monitor how the above-mentioned issues will be handled as the new schemes in Australia and the EU are implemented. The financial costs of implementing these measures will also be clearer as time goes by. Until then, it will be too soon to evaluate the effectiveness of this collection model.

### **Future prospects for the *de minimis* threshold**

This paper has examined two opposite approaches to determining the level of the *de minimis* threshold. The United States decided to raise its threshold expecting further economic gains from the increase. In contrast, the EU and some other countries are now pursuing to lower or eliminate their thresholds, for taxes in particular. This is a reflection of policies aiming to realize fair competition and increase revenue from taxes. If there were no conflict between these two pathways, it would be easy to say that each jurisdiction can review and determine its threshold on its own according to its domestic circumstances. As mentioned at the outset, an international standard of the level of the *de minimis* threshold has not been established, and therefore, decisions in this regard rest with each country in principle. Nonetheless, the difference

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<sup>55</sup> OECD. “Consumption Tax Trends 2020: VAT/GST and Excise Rates, Trends and Policy Issues.” OECD, 2020.

of the threshold levels sometimes provokes arguments at the international level. This is partly because, in international trade, the level of the threshold mutually affects exports and imports.

### *The U.S.-Mexico-Canada Agreement and the de minimis threshold*

Some bilateral trade agreements concluded by the United States contain a provision on the level of the *de minimis* threshold. The U.S.- Korea Free Trade Agreement which entered into force in 2012, for example, stipulates that express shipments with values of lower than \$200 will be exempted from duties and taxes, and simplified procedures will be applied to these shipments. The Korean threshold was \$100, so the level was doubled for imports from the United States only.<sup>56</sup> The remainder of this section will explore the latest case of trade agreement in detail.

The U.S.-Mexico-Canada Agreement (USMCA) was signed in November 2018, and entered into force on July 1, 2020. This agreement contains the level of the *de minimis* threshold in Article 7.8.1 (f) on Express Shipments of Chapter 7 (Customs Administration and Trade Facilitation). The level of threshold stipulated in the provision is: (i) for the United States, \$800, (ii) for Mexico, \$117 for customs duties and \$50 for taxes, (iii) for Canada, C\$150 for customs duties and C\$40 for taxes. These are the results of the fact that Mexico raised its original threshold for duties from \$50, and Canada raised it from C\$20 (around \$16) for both duties and taxes. This provision did not seem to attract much public attention compared with other major issues such as labor standards in the USMCA, yet it appeared that the United States exerted great efforts on this issue and tried to raise the thresholds for Mexico and Canada as close as possible to the level of \$800. This intention is clearly stated in the document presented by the USTR.<sup>57</sup> As

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<sup>56</sup> At the time of the negotiation, the U.S. *de minimis* threshold was \$200. Apart from the Free Trade Agreement with Korea, the Trade Promotion Agreements with Peru (entered into force in 2009) and with Colombia (in 2012) contain the same provision on the level of the threshold.

<sup>57</sup> USTR, "Summary of Objectives for the NAFTA Renegotiation." July 17, 2017, [NAFTAObjectives.pdf \(ustr.gov\)](#).

one of the objectives for the renegotiation of the North American Free Trade Agreement (NAFTA), the document says that it would seek for a *de minimis* threshold that is comparable to the U.S. level. It may also be recalled that the Trade Facilitation and Trade Enforcement Act of 2015 tasked the USTR with encouraging other countries to establish commercially meaningful *de minimis* values.

It was agreed that the threshold in both Mexico and Canada would be raised to some extent, yet this degree of increase did not necessarily satisfy the United States. Further concessions sought by the United States did not seem to be achievable in the agreement. The dissatisfaction with the negotiation can be inferred from the statement by Ambassador Robert E. Lighthizer, USTR, in the hearings before the House Committee on Ways and Means.<sup>58</sup> In response to the questions raised by members of the House, he described the *de minimis* issue as follows:

We negotiated up till the very end, as you know, and finally got them to double what they had. It is still ridiculous to me that we let them bring in things at \$800, and we get to bring in things for \$50 or \$60 into their country. It just strikes me as a crazy imbalance, and I think it adds to the trade deficit.<sup>59</sup>

Unfortunately, their retail lobbyists are stronger, apparently, than our retail lobbyists. And so, after months and months and months, and as one of the last items, they made a small move in our direction, but not nearly sufficient. And the imbalance, to me, is very problematic.<sup>60</sup>

Although the details of the U.S. contention were not revealed, the outcome shows that the United States was unable to appeal Canada and Mexico with regard to its assertion that great economic benefits are reaped from raising the *de minimis* threshold. On the contrary, the instance

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<sup>58</sup> U.S. House of Representative, Committee on Ways and Means, *Hearing on the 2019 Trade Policy Agenda: Negotiations with China, Japan, the EU, and UK; new NAFTA/USMCA; U.S. Participation in the WTO; and other matters*, June 19, 2019, No. 116-27.

<sup>59</sup> *Ibid*, p 62.

<sup>60</sup> *Ibid*, p 72.

of Canada indicates that there was a strong concern over a surge of imports of low-value goods from the United States if Canada accepted a higher threshold. Chambers of Commerce in Canada, for example, appealed to the government to maintain the current level of the *de minimis* threshold to ensure that retailers in Canada would have a level playing field with U.S. businesses.<sup>61</sup> They pointed out that the raising the threshold could have a negative impact through job losses and sales declines in Canada as well as revenue losses for the government, which recalled similar arguments in Australia and the EU. As shown in the Lighthizer statement just above, the lobbying in Canada seemed to be robust, and the United States could not prevail.

It is important to emphasize that a higher *de minimis* threshold tends to benefit trading partner countries by promoting further exportation from those countries to a country with a high threshold. Hufbauer et al. (2018) calculated that, if a substantial increment of the *de minimis* threshold and streamlined border procedures are achieved, e-commerce shipments from the United States to Canada and Mexico would surge to \$34.4 billion,<sup>62</sup> which is more than the double the sales of \$16 billion in 2017.<sup>63</sup> Also, the U.S. International Trade Committee estimated that exports of low-value consignments from the United States would increase by \$332 million to Canada and \$91 million to Mexico as higher *de minimis* thresholds promote further trade.<sup>64</sup> This estimate is based on the levels agreed in the USMCA, so if the United States could convince Canada and Mexico to raise their thresholds to close to \$800, the estimated increases in exports would be much larger. Hence, the United States was expected to reap economic benefits from

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<sup>61</sup> Inside US Trade, Arlington, Vol. 35, Iss. 35, Sept. 1, 2017.

<sup>62</sup> It is also noted that consumers in Canada and Mexico would have the advantage of wider choices for shopping at lower prices.

<sup>63</sup> Hufbauer, Gary Clyde, Euijin Jung, and Zhiyao (Lucy) Lu. “*The Case for Raising de minimis Thresholds in NAFTA 2.0.*” Policy Brief No. 18-8, 2018, Peterson Institute for International Economics.

<sup>64</sup> U.S. International Trade Commission, “U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors,” April 2019, Publication No.4889, TPA 105-003, p 184.

higher level of Canadian and Mexican thresholds, and this would be a strong motivation to pursue an increase comparable to \$800. Nonetheless, along with the fact that Canada and Mexico have already benefited from high thresholds in the United States, the two countries seem to have little incentive to raise their thresholds substantially.

After the USMCA text was released, a footnote in the text became a controversial issue in the United States. The footnote indicates that, in terms of the level of the *de minimis* threshold, the contracting parties can take a reciprocal approach.<sup>65</sup> This means that the United States can decrease the threshold to the level set by Canada or Mexico in order to balance or secure fairness between U.S firms and those in Canada/Mexico. This reciprocal action seems to be one approach that the United States can take in the negotiations, since reciprocity is often valued in international bargaining. Conversely, views opposed to this reciprocal approach appeared to be dominant within the United States. Forty-three members of Congress<sup>66</sup> signed a letter to the USTR requesting that the U.S. threshold not be lowered. A similar letter was sent to the USTR by 12 business associations.<sup>67</sup> These letters claimed that a higher *de minimis* threshold is advantageous for U.S. consumers and sellers, in particular small businesses, and the threshold level should not be lowered regardless of the level of Canada and Mexico. They also emphasized that lowering the threshold would hinder U.S global leadership in e-commerce policy. Consequently, the United States chose not to lower the threshold, and the level of \$800 has been maintained so far. It should be noted that there is a robust view in favor of retaining a high *de*

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<sup>65</sup> Footnote 3 to Article 7.8.1 (f) says “Notwithstanding the amounts set out under this subparagraph [Article 7.8.1 (f)], a Party may impose a reciprocal amount that is lower for shipments from another Party if the amount provided for under that other Party’s law is lower than that of the Party.”

<sup>66</sup> The letter is dated December 21, 2018, [Congressman David Schweikert Leads Letter to Representative Lighthizer Seeking Higher \*De Minimis\* Threshold in Mexico and Canada Under USMCA | Congressman David Schweikert \(house.gov\)](#).

<sup>67</sup> The letter is dated November 6, 2018, [Multi-association Letter On USMCA Customs and \*De Minimis\* • Internet Association](#).

*minimis* threshold in the United States, and the United States is likely to continue to pursue higher thresholds with other trading partners.

### *The United States and the fairness of taxation*

We have observed that great emphasis has been placed on the fairness of taxation between domestic and international firms in the cases of Australia and the EU. As shown in the previous section, Canada has also adopted a similar stance. In order to redress unfair competition, decreasing or eliminating the *de minimis* threshold for taxes such as VAT and GST has been pursued in some countries, rather than increasing the threshold. Here, you may wonder whether the United States does not face similar problems. Why did the United States not have any concerns over a level playing field when raising its *de minimis* threshold in 2016?

First of all, it needs to be pointed out that the United States does not adopt VAT or GST, and sales tax is levied by the state or local governments. The sales tax is not imposed on consignments at the point of importation to the United States. This means that sales tax is not charged by the U.S. federal government (the CBP) at the border; hence, the *de minimis* threshold does not apply to sales tax.

In the United States, sales taxes that are imposed on retail sales have different rates depending on each jurisdiction. State (and local) governments require retailers to collect sales taxes on the sales in their jurisdictions and to remit the taxes to their governments. Based on the U.S. Constitution, however, if retailers or sellers do not have a substantial nexus or a physical presence in the taxing jurisdiction, they are not requested to collect and remit the sales tax. Therefore, in the case of online shopping, if suppliers are located outside a taxing jurisdiction and goods are delivered to customers in the taxing jurisdiction, the suppliers are not obliged to

collect the sales taxes. In order to compensate for the loss of these revenues, individual purchasers are required to remit the taxes to the local jurisdiction for their own purchases instead; this called a *use tax*.

Although individual consumers are liable for the payment of the use tax, it has been widely recognized that collecting use tax from these consumers entails difficult and inefficient tasks. In addition, as e-commerce has grown extensively, state governments started to be increasingly concerned about the revenue loss from the sales provided or shipped outside their states. Some vendors may choose not to locate their nexus in certain states to escape from sales tax collection. Another concern is unfair competition between local retailers and non-local suppliers.<sup>68</sup> With these challenges, some state governments have been trying for a decade to administer laws requiring suppliers or sellers located outside their states to collect and remit sales and use taxes through the enactment of the so-called “Amazon law.”<sup>69</sup>

A U.S Supreme Court decision in June 2018 advanced this movement.<sup>70</sup> Differing from previous decisions, the Supreme Court ruled that a state is allowed to collect sales or use taxes on sales delivered to customers in the state from suppliers who have no physical presence in the state. The significance of a level playing field between in-state and out-of-state businesses was highlighted in this decision. Following this, as of July 2020, 42 states enacted laws to require out-of-state suppliers to collect and remit sales taxes.<sup>71</sup>

These state governments require those suppliers who meet conditions such as a certain threshold of turnover or number of transactions to register and collect sales taxes, albeit the

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<sup>68</sup> Bruce, Donald, William Fox, and LeAnn Luna. “*State and local sales tax revenue losses from electronic commerce, 2009*,” State Tax Notes, 2009.

<sup>69</sup> New York was the first state to enact the “Amazon Law” in 2008.

<sup>70</sup> The case is known as “South Dakota v. Wayfair, Inc., et al.”

<sup>71</sup> The Streamlined Sales Tax Governing Board website, [Remote Seller State Guidance \(streamlinedsalestax.org\)](https://streamlinedsalestax.org).

conditions vary from state to state. In Massachusetts, for example, the following new requirements were instituted starting on October 1, 2019: vendors who makes sales to customers in Massachusetts of more than \$100,000 in a calendar year will be required to register with the state's Department of Revenue. The vendors are responsible for collecting sales and use taxes and remitting them to Massachusetts, and foreign vendors located outside the United States are not necessarily exempted from this requirement.<sup>72</sup> In the case of Mississippi, as another example, the threshold of sales is \$250,000. There are some states that have higher thresholds of sales than Mississippi, but many states set the threshold as \$100,000.<sup>73</sup>

This section has briefly explored the arguments related to sales and use taxes in cross-state online sales, and it turns out that there have been challenges concerning e-commerce in the United States, just as in other countries. Each state has been trying to deal with the challenges of a level playing field and revenue loss for a decade. Now, you may notice that this enhancement of revenue collection in each U.S. state has some commonalities with Australia. Overseas suppliers who are located outside of Australia and have sales to Australian consumers of more than A\$75,000 per annum are requested to register with the tax agency and collect and remit GST.

Going back to the initial question, the answer can be that the United States did not need to connect the level of *de minimis* threshold with unfair competition and revenue loss in raising the level in 2016, as sales taxes are not imposed on importation. As noted above, however, concerns over a level playing field together with sales tax revenue loss have been in existence at the state level for a decade. The 2018 decision by the Supreme Court was a key turning point to

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<sup>72</sup> Massachusetts Department of Revenue website, [Remote vendors FAQs for Sales and Use tax periods ending before October 1, 2019 | Mass.gov](#).

<sup>73</sup> The Streamlined Sales Tax Governing Board website, [Remote Seller State Guidance \(streamlinedsalestax.org\)](#).

underpin sales tax collection by suppliers outside a state. As each state government enforces the implementation of laws on sales tax, more foreign suppliers may be requested to collect and remit sales taxes to local governments. This implies that sales tax could be charged to consignments delivered from outside of the United States to consumers in a state even if the goods' value is lower than \$800. Hypothetically, if sales taxes were collected at the border, there seems to be a chance that the United States could not raise its threshold to \$800 in 2016 due to concerns over fair competition and revenue loss.

#### *Policy of the United States and future directions*

The instance of the USMCA shows the contention between the increase of the *de minimis* threshold and maintaining the threshold. Section 3.2 reveals that the United States is not an exception to confronting the challenges of the loss of taxes or unfair competition as a result of the expansion of e-commerce. Looking to the future, the arguments in Section 3.1 and 3.2 appear to have important implications for U.S. policy regarding the *de minimis* threshold and may also help to predict the movement of the threshold level.

As shown in Section 3.1, one of the key consequences of raising the *de minimis* threshold is that parties that are likely to gain economic benefits from this increase are other trading partners. In general, higher thresholds would provide a business opportunity to exporters situated outside of a country since they would have market access to a country with a higher threshold. I have argued in Parts 1 and 2 that effects on business from changing the threshold can be challenging to calculate since there could be both positive and negative impacts. Nonetheless, it would be more certain that raising the threshold by one country would positively affect other trading partners. It can be reemphasized that this would be a strong motivation for the United

States to press for higher thresholds in other countries. At the same time, however, this would induce a reluctance on the part of an individual country to move its threshold upward, since a voluntary increase by a country may encourage more imports of low-value consignments from overseas. In addition, the upward shift of a threshold causes problems such as the distortion of a level playing field and lost revenue.

With this dilemma in mind, for example, Suominen (2017) proposed that likeminded countries start to negotiate a *de minimis* plurilateral agreement.<sup>74</sup> In this agreement, participating governments commit to raise their thresholds to a certain level, so that reciprocal market access can be achieved. It is also believed that this would provide benefits to small businesses in particular. Nonetheless, if this proposal goes further, it would encounter some challenges including the tax rates differences in each country. Countries with high tax rates, in particular, need to be careful in increasing their threshold as they need to take into account the issue of unfair taxation between domestic and foreign business.

Another key finding in the USMCA case is that, in the United States, there is resistance against lowering the *de minimis* threshold at domestic level, and the United States is likely to continue to take a global leadership in e-commerce policy. As its own threshold is much higher than many other trading partners, the United States seems to be in a better position to initiate an increase of the level of the *de minimis* threshold at the global level. It should also be recalled that the Trade Facilitation and Trade Enforcement Act of 2015 advocates the U.S. policy of pushing the threshold upward. In order to seek higher thresholds in other trading partners, however, sales taxes could be an issue. It seems to me that the United States would need to reconcile a high *de minimis* threshold at the border and sales tax regulations that each state government has

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<sup>74</sup> Suominen, Kati. “*Silver Bullet to Fire Up Small Business Exports: Plurilateral Agreement on De Minimis.*” *Globalization 4.0* by Kati Suominen, Future of World Trade, 2017.

established. Other trading partners could argue that exporters located outside the United States may not be benefited by the exemption of taxes even if the value of a consignment is lower than \$800. Although these regulations are applied by state governments, not by the federal government, the exporting side may take this situation as no sales tax exemption in practice, and the U.S. position of encouraging an upward shift of the threshold could be jeopardized in international negotiations.

In response, it would be possible for the United States to claim that, since many state governments set \$100,000 as the minimum turnover for the requirement of the sales tax collection, small foreign business can still be free from duties and taxes. Another question then would be how could the United States persuade others to increase the level of the *de minimis* threshold. Creating a level playing field sounds like a robust concept for many countries. Even in the United States, this fairness is an important concept, and thereby it would make difficult for the United States to bring a counterargument to this. Hence, demonstrating to other countries the economic benefits that override the realization of fair competition will probably be a challenging task for the U.S. government. As a whole, unless some other countries appear to support the U.S. policy, it is assumed that an upward shift of the *de minimis* threshold is unlikely to become a mainstream action.

In the final part of this section, I would like to briefly touch upon the threshold for duties, i.e., “*tariff*.” The discussion on lowering the threshold for duties has not necessarily been centered in Australia and the EU. This is mainly because tariff is imposed only on imported goods, and domestic retailers/sellers do not need to add tariff to a price when they sell goods. This means that, when it comes to tariffs, unfair competition does not become a major concern for domestic companies. In addition, it is claimed that collecting duties will be more costly since

the determination of the amount of tariff entails complex processes such as tariff classification or rules of origin, which require technical knowledge to undertake.<sup>75</sup> If foreign suppliers are tasked with calculating the amount of tariff, they are likely to confront some challenges. Furthermore, governments may need to double-check the calculation to confirm the accuracy. Therefore, governments would be reluctant to require foreign suppliers to collect and remit tariff in the same way as tax collection. If governments collect tariffs at the border, lowering thresholds would increase the workload for customs officials.

It would be reasonable to say that resistance to reducing the *de minimis* threshold for duties appears to be stronger than that for taxes. This would be one reason why some countries have a higher threshold level compared with that for taxes. You may recall that both Australia and the EU have maintained the level of the *de minimis* threshold for duties. Canada raised its threshold for duties much higher than that for taxes in the USMCA negotiation.

One of the main objectives of imposing tariffs is to protect domestic industries from foreign competition. Considering this, small consignments are not necessarily seen as a menace because the amount of goods in these consignments is limited, and, therefore, it is less likely that the goods would be damaging to a domestic industry. This implies that tariff imposed on small and low-value goods could be removed without strong opposition from industry, albeit that the total number of imported goods needs to be monitored. Does this denote that the threshold for duties will move upward more easily?

Compared with taxes such as VAT and GST, it would be fair to say that the threshold for tariffs could be flexible and adjustable to increase. Nevertheless, in my view, some issues still exist. If the threshold for duties is set separately from that for taxes, this would involve certain

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<sup>75</sup> Low Value Parcel Processing Taskforce. “*The Low Value Parcel Processing Taskforce Final Report*,” 2012.

complicated procedures for revenue collection. Some countries, in particular developing countries that earn a fair amount of revenue from tariffs, may have some concerns regarding revenue loss. Furthermore, this could be a loophole for some trade remedies such as safeguards and anti-dumping measures. Therefore, further analysis will be required before we conclude that the *de minimis* threshold for duties can move upward readily.

## **Conclusion**

The paper has explored the changes of the *de minimis* threshold in some major economies. In particular, this study has tried to compare upward and downward shifts of the threshold and examined the reasons behind the changes. It was the United States that initiated the increase of its threshold, and it stressed that larger economic benefits can be expected from this increase. Previous literature has favored this upward movement, and emphasized that cost savings reaped from a higher threshold would outweigh the revenue loss. Nevertheless, in Part 1, I have tried to articulate some limitations on expected savings and benefits. The impacts of raising the threshold seem to be both positive and negative for a national economy, and it looks as if the economic benefits are not necessarily as promising as predicted. Furthermore, it turns out that raising the threshold itself is likely to be insufficient to produce full economic benefits. As argued in the instance of the USMCA, this also needs to entail increases of other countries' thresholds in order to gain profits from exports.

Part 2 has looked at the downward movement of the *de minimis* threshold focusing on the cases of Australia and the EU. It has found that reduction or elimination of the threshold derives from similar objectives, i.e., creating a level playing field between domestic and overseas companies and increasing the revenue from low-value goods. In particular, concerns over unfair

competition and revenue loss have been mounting because of a significant surge of small and low-value consignments in international transactions in the context of e-commerce. Costs for collecting duties and taxes have been one of the main issues in setting the *de minimis* threshold, and this point has been receiving attention when lowering the level of the threshold. The new tax collection model adopted by Australia and the EU, by which overseas suppliers are required to collect and remit tax, was expected to minimize the collection costs even if governments moved the threshold downwards. Also, overall costs for the business sector from this system are difficult to show in figures, and, therefore, it appears that the downward movement of threshold levels has not encountered major obstacles so far.

The final part of this paper analyzed the direction of the threshold level in the future. In spite of predictions that other trading partners have some resistances to raising the threshold, it is likely that the United States will continue a policy of urging others to have higher thresholds while maintaining its position of being a global leader in e-commerce. An increase in threshold level by trading partners is expected to bring economic benefits to the United States through export promotion. Conversely, the United States may face some difficulties in pursuing this policy. Even though U.S. threshold is \$800, other countries may argue that sales tax could be imposed by state governments on goods whose value is under this threshold. This dilemma could be described as a high *de minimis* threshold at the external border and a low threshold at the “state” border, and this needs to be addressed. In addition, it is a challenge for the United States to convince other trading partners to move their *de minimis* thresholds upwards while maintaining fairness of competition in the domestic market. Reconciling these two policies will be an exacting task. Without clearing these hurdles, the United States may not take a strong leadership role at the global level to pursue a higher *de minimis* threshold.

As the number of small and low-value parcels has grown exponentially with the expansion of cross-border e-commerce, more and more countries will face concerns over unfair competition and revenue loss. In order to tackle these issues, those countries may be willing to follow the tax collection model adopted by, for example, Australia and the EU. Certainly, it is too soon to say that these new initiatives will become mainstream. It remains to be seen whether the collection regime will be implemented smoothly and whether costs for collecting taxes will be as limited as anticipated. Nonetheless, the decision to raise the *de minimis* threshold, which induces the loss of revenue, would be a difficult one. In particular, many governments are striving to cope with financial deficits due to current COVID-19 pandemic. With the weaker position of the United States and the introduction of cost-effective tax collection in some countries, it seems that the upward movement of the *de minimis* threshold level is not foreseeable now or in the near future.

## TABLES AND FIGURES

Table 1: *De minimis* threshold in major countries/region

Country/Region	Threshold			
	Duty	(in USD)	Tax	(in USD)
<b>U.S.</b>	800 USD	-	800 USD	-
<b>Australia</b>	1,000 AUD	770	1,000 AUD	770
<b>European Union</b>	150 EUR	181	10-22 EUR	27
<b>Canada</b>	20 CAD	16	20 CAD	16
[USMCA]	150 CAD	117	40 CAD	31
<b>Mexico</b>	50 USD	-	50 USD	-
[USMCA]	117 USD	-	50 USD	-
<b>Japan</b>	10,000 JPY	96	10,000 JPY	96
<b>Korea</b>	150 USD	-	150 USD	-
[U.S. and Puerto Rico]	200 USD	-	200 USD	-
<b>China*</b>	50 RMB	7.5	50 RMB	7.5
<b>India</b>	100 INR	8.9	1,000 INR	89
<b>Russia</b>	200 EUR	242	200 EUR	242
<b>Brazil**</b>	50 USD	-	50 USD	-

Source: Author's summary, based on Global Express Association (as of Oct.15, 2019) and Fedex

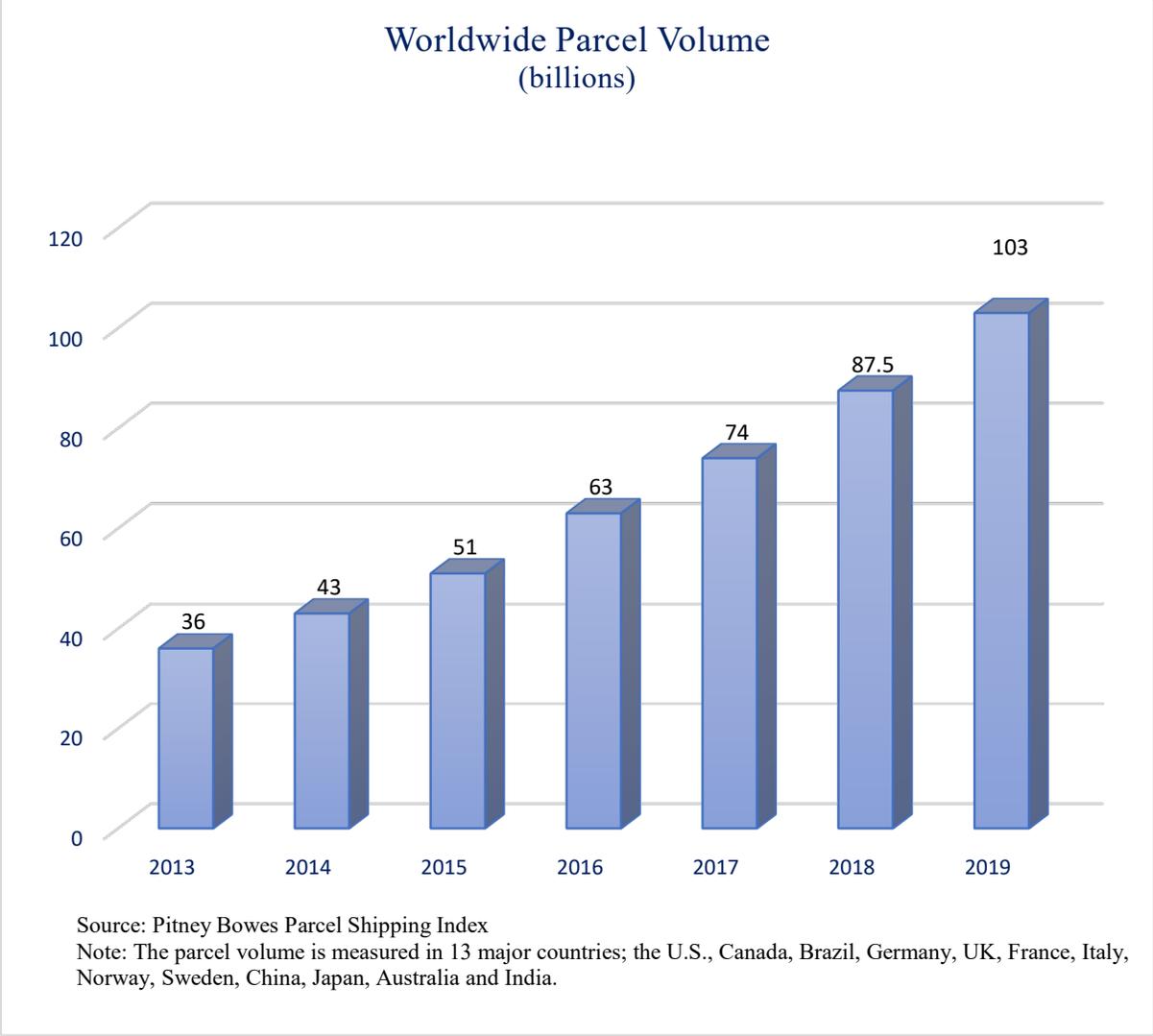
Conversion rate to USD: 18 January 2021

Canada, Mexico and Korea have different thresholds for specific trading partners.

\*Shipments with duty and tax (VAT) liability of less than RMB50

\*\*Postal shipments only

Figure 1: Worldwide Parcel Volume (2013-2019)



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