

“KEEPING AUSTRALIA’S INTERNATIONAL TRADE MOVING”



Australian Peak Shippers  
Association Inc. (APSA)

Melissa Cilento  
Presiding Commissioner  
Productivity Commission

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**Summary of key trade & operational concerns relating to the introduction of the *Treasury Laws Amendment (GST Low Value Goods) Act 2017* for the purpose of the Productivity Commission Inquiry**

On behalf of Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA), we would like to thank the Productivity Commission for inviting us to provide this submission, following evidence we presented to the Senate Economics Legislation Committee on 21 April 2017, and in recognition of the extent of our representation.

Our submission would like to address the following areas:

1. Extent of FTA’s Representation
2. Meeting of stakeholders on 7 August 2017
3. Comments on proposed border/logistics models
4. Comments on a true vendor model versus collection via Electronic Distribution Platforms
5. The flat fee model as proposed by Wisetech Global
6. Comments on the intent of the legislation as a levelling of the playing field
7. Concerns regarding the treatment of “re-deliverers”
8. Concerns regarding potential trade consequences
9. Commendation of the ATO and DIBP’s work in preparing industry for 1 July 2018

**Summary of Recommendations**

**Recommendation 1:**

That the Productivity Commission explores new modelling on a flat fee collection model as the only potentially viable logistics/border collection model.

**Recommendation 2:**

FTA supports the introduction of a true vendor collection model, where the GST remittance liability remains with the vendors as the party who possesses and sells the goods.

**Recommendation 3:**

FTA proposes that the Productivity Commission explore opportunities in adopting technology solutions that could assist in the collection of GST on low value imported goods from sellers.



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## 1. Extent of FTA’s Representation

FTA is a peak body for international trade, representing 300 international trade entities, including Australia’s largest freight forwarders, importers and logistics service providers. FTA also performs the Secretariat role for the Australian Peak Shippers Association (APSA), the peak body for Australia’s ocean freight exporters, as designated under the *Competition and Consumer Act 2010*.

Several FTA members are considered key stakeholders in this Inquiry, including members of the Conference of Asia Pacific Express Carriers (CAPEC), third party marketplaces including Alibaba and Ebay, software providers such as Wisetech Global and logistics service providers who specialise in online retail trade.

Some members have made their own submissions to the Productivity Commission and the FTA submission does not seek to supplant or compete with the views presented in those submissions.

FTA provided submissions on the *Treasury Laws Amendment (GST Low Value Goods) Bill 2017* and presented before the Senate Economics Legislation Committee.

In summary, FTA had expressed concerns about a lack of industry consultation in the lead up to the release of the Bill and the short timeframe of implementation of complex processes and systems re-engineering affecting overseas vendors and integration with third party logistics providers. The FTA formal position was that the 1 July 2017 implementation be postponed with a minimum 12 month timeframe from the Royal Assent to “go live”.

During this period of advocacy, FTA did not consider or submit any detail on alternate models.

Following the parliamentary process to defer implementation to 1 July 2018 and to consider alternate models via the Productivity Commission, FTA further engaged with members and key industry stakeholders in developing this submission.

## 2. Meeting of stakeholders on 7 August 2017

FTA hosted a meeting of stakeholders on the 4 August 2017 in preparation of the Productivity Commission hearings. This included representatives from Australia Post, the Australian Retailers Association, Alibaba, CAPEC, Ebay and Wisetech Global.

Details of views expressed in that meeting cannot be shared in this submission, due to confidentiality commitments made by each of the participants.

In general terms, participants expressed broad support for a vendor model, notwithstanding concerns regarding:

- Low levels of compliance, even on peak compliance targets; and
- The treatment of third party marketplaces as vendors.



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It was broadly agreed that:

- participants will present separately to the Productivity Commission; and
- the group should reconvene once the Productivity Commission has delivered its final report to government.

FTA has set a tentative date for the follow-up meeting as 22 November 2017 in Sydney.

### **3. Comments on proposed border/logistics models**

FTA holds the view that a true vendor collection model poses the least disruption to Australia’s international supply chain.

Whilst all import reporting data will be available for the Department of Treasury and the Australian Tax Office for auditing and enforcement purposes, the actual customs clearance process will not be impacted so as not to create a backlog of abandoned orders at the border.

Any lowering of the de minimis must take into consideration the increased reporting and regulatory burden placed on both the Department of Immigration and Border Protection (DIBP), Australia Post and the express carriers, and the net benefit gained given the significant cost of collection.

With the high volume of low value imported goods entering the country each day, and with the growth in those volumes projected by CAPEC, it is not viable for those transactions to be managed via Full Import Declarations (FIDs) or any substantial increase in reporting requirements for those goods.

FTA, however, acknowledge the possibility of a “flat fee” model, and/or for new modelling to be applied to the Import Processing Charge (IPC). FTA sees merit in the submission provided by Wisetech Global in respect to such a review.

#### **Recommendation 1:**

That the Productivity Commission explores new modelling on a flat fee collection model as the only potentially viable logistics/border collection model.

### **4. Comments on a true vendor collection model versus collection via Electronic Distribution Platforms**

FTA holds the view that the model as proposed under the *Treasury Laws Amendment (GST Low Value Goods) Act 2017* is not a true vendor collection model, if it seeks to treat third party marketplaces as Electronic Distribution Platforms.

It is overwhelmingly clear from the evidence provided by third party marketplaces that they are not a supplier of goods, they are not a distributor of goods and they are not responsible for goods fulfilment in Australia.

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Third-party marketplaces, often referred to as “3P marketplaces” are not to be confused with 1P marketplaces. 1P marketplaces are sellers/retailers as they physically hold, store, sell and ship the goods, enabling them to collect GST on those goods.

Under the Act, the EDP is treated for GST purposes as:

- Having made the supply;
- Having done so for the consideration for which it was made, and
- Having done so for the furtherance of an enterprise that the operator carries on.

FTA believes that as a non-owner of goods, as a non-distributor of goods, and as a non-agent of goods, that third party marketplaces are not making the supply, simply connecting the buyers and sellers. Payment companies intermediate the payments and are involved in the transaction flow between the consumer and seller.

We believe that it is important to note that these platforms support proposals to supervise the collection of GST on low value imported goods, and are willing to take on that liability. In real terms, this means that if their sellers do not collect or remit the GST they (the 3P marketplaces) could stop the seller from trading on their marketplace and the marketplace would then become responsible for the GST liability. This is analogous to the system in the United Kingdom and we would ask the Productivity Commission to review that regime in the context of this Inquiry.

FTA also notes the rules where the supply is excluded from the EDP rules. Specifically, Paragraph 66 of the Law Compliance Guideline states that:

*66. For the exclusion to apply, all of the following criteria must be met in relation to a supply made through the platform:*

*the EDP operator does not authorise the charge to the recipient of the supply*

*the EDP operator does not authorise the delivery of the supply*

*the EDP operator does not set (whether directly or indirectly) any of the terms and conditions under which the supply is made*

*a document relating to the supply issued to the recipient identifies the supply and the merchant as the supplier of that supply, and*

*the merchant and the EDP operator have agreed in writing that the merchant is the entity liable for paying the GST for the supply. Alternatively, the merchant and the EDP operator have agreed in writing that the merchant is the entity liable for paying GST for a class of supplies that includes the supply concerned.*

In some cases, these criteria will apply to third party marketplaces in full, providing an exemption, despite the seeming intent of the legislation to target these types of platforms.

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It is our strong opinion that the legislation should focus on true vendors, or one-party marketplaces, such as Amazon and others, where the application of the law and the ease of collection is less ambiguous.

#### **Recommendation 2:**

FTA supports the introduction of a true vendor collection model, where the GST remittance liability remains with the vendors as the party who possesses and sells the goods.

#### **Recommendation 3:**

FTA proposes that the Productivity Commission explore opportunities in adopting technology solutions that could assist in the collection of GST on low value imported goods from sellers.

### **5. The “flat fee model” as proposed by Wisetech Global**

The “flat fee” concept has been widely discussed between FTA members as a means of addressing the cross-subsidisation of Import Processing Charges (IPC) of low value goods against high value goods and a practical means of tax collection. Some members have reservations about the operational impact of this model with the general view that this model is outside the scope of the Productivity Commission’s Terms of Reference.

Following our subsequent direct engagement with the Productivity Commission, we note the request for further detail on this model. We also note the independent submission by WiseTech Global, received and posted on the Productivity Commission web site on 21 August 2017, which addresses the practical elements of the flat fee model.

### **6. Comments on the intent of the legislation as a levelling of the playing field**

FTA appreciates the intent of the legislation in levelling the playing field for Australian retailers and we strongly support the position that GST should be collected from low value imported goods.

The annual turnover requirements detailed in the legislation have been identified by our members as an area where the playing field has not been levelled.

Under the legislation, the Electronic Distribution Platform (EDP), not the vendor, is required to register if its current or projected annualised GST turnover equals or exceeds the \$75,000 threshold (or \$150,000 for non-profit bodies).

Therefore, offshore vendors facilitating their trade via an EDP, can start charging GST, even when they are under the \$75,000 threshold.

FTA maintains the view that for a real levelling of the playing field to be achieved, the GST liability needs to sit with the true vendors, where the same GST threshold should apply as it applies to Australian small businesses.



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## **7. Concerns regarding the treatment of “re-deliverers”**

As with the third-party marketplaces, FTA notes the difficulty that “re-deliverers” will face in complying with the new legislation. The changes to legislation provide obvious challenges for these entities as they are often not involved in the original purchase and are being asked to collect a sales tax for items where they have not made a sale.

Once again, FTA recommends a revisitation of the legislation to achieve a true vendor collection model, empowered by technology, where third-party marketplaces and “re-deliverers” can supervise the GST collection to maximise compliance outcomes.

## **8. Concerns regarding potential trade consequences**

The presence of third party marketplaces in Australia is providing new opportunities for Australian exporters in accessing growing export markets. Alibaba, for example, is working with several members of the Australian Peak Shippers Association in facilitating trade with China via the platform.

FTA hopes that the Australian Government has engaged in discussions with our key trading partners, in relation to the introduction of this tax regime, to ensure that we are not exposing our export businesses to retaliatory trade measures.

FTA would like to better understand the discussions that have taken place, particularly at a bi-lateral level with our key trading partners, to ensure that potential trade consequences have been sufficiently addressed before the introduction of the legislation.

## **9. Commendation of the ATO and DIBP’s work in preparing industry for 1 July 2018**

FTA would like to acknowledge the support provided to our members by both the Australian Tax Office and the Department of Immigration and Border Protection (DIBP) in helping our members prepare for 1 July 2018.

The ATO and DIBP have already held an interim workshop with FTA members, and will be engaging in a series of webinars and face-to-face sessions, starting in Melbourne on 6 August 2017, Sydney on 11 October 2017 and Brisbane on the 18 October 2017.

While we maintain concerns regarding the legislation as it stands and would like these concerns to be given due and urgent consideration, we also appreciate the strong engagement provided by the agencies to date.



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