

Taxes as protective trade measures and how WTO rules try to prevent them

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Introduction

- Rules in GATS on non-tariff barriers not as clear cut as in GATT
- Taxes are potential NTB
- Literature pays less attention to taxes as protectionist measures than to other barriers

Literature survey

- Taxes have a stronger effect on the investment decision of smaller companies, since they play a more important role in their cost structure (Coyne, 1994).
- Taxes can have a significant effect on investment decisions, though tax incentives are not the key factor for the investment decision (Morisset and Pirnia, 2001).
- Taxation on a worldwide basis, as opposed to a territorial approach, can lead to efficiency losses due to double taxation (Slemrod, 1995)

Literature survey

- Especially consumption and labour income taxes can have a significantly negative effect on trade competitiveness in the long run (Beck and Chaves, 2011)
- Taxes can potentially both trigger and inhibit trade, depending on their intention and design (Whalley, 2002)
- Border adjustment tax discussed controversially
 - Auerbach and Holtz-Eakin (2016) - trade neutral
 - Goldman Sachs (2016) - distortive

Taxes and WTO law

- GATT and Subsidies and Countervailing Measures Agreement (SCM) deal explicitly with taxes
- Possibly indirectly affected
 - Agreement on Trade Related Investment Measures (TRIMs) - prohibits certain forms of local content provisions
 - General Agreement on Trade in Services (GATS) - principle of non-discrimination - Services must not be treated differently on the basis of their origin
- “Indonesia Auto Case” (WTO, 2018a)- Indonesian car programme of 1993 included import duty reductions and exemptions for car components based on local content requirements.

US Tax Cuts and Jobs Act 2017 and WTO law

- Border adjustment tax only in the drafts of US tax reform but in the end not enacted
- Whole taxation system shifts towards a territorial system
- BEAT: targetting royalties and payments for intangible assets from a US company to an affiliate foreign company but not those between a US parent and its subsidiary could represent an infringement of the non-discrimination principle in the General Agreement on Trade in Services (Art. XVII GATS, National Treatment - possible discrimination).

US Tax Cuts and Jobs Act 2017 and WTO law

- FDII: deduction in dependence of exports possibly against WTO law (could be qualified as subsidy) - similar to "Foreign Sales Corporations (FSC) case"
 - measure qualifies as a subsidy under SCM Art. 1.1 - financial contribution to the company in the form of a tax exemption
 - prohibited export subsidy under Art. 3 SCM - tax credits granted conditionally upon export performance

Conclusion

- Domestic tax policy can have strong repercussions on international trade
- In particular FDI rules could lead to further debate in the international trade community
- To what extent should WTO rules interfere in domestic regulation?
- More research on the topic desirable