



Statement of the E-Merchants Trade Council, Inc.

House Ways and Means Trade Subcommittee Hearing on Modernizing Customs Policies to Protect American Workers and Secure Supply Chains

June 8, 2023

On behalf of the E-Merchants Trade Council, Inc. (EMTC), I am Marianne Rowden, CEO of EMTC and respectfully submit this statement for the record. EMTC appreciates the opportunity to comment concerning the topics covered in the hearing on “Modernizing Customs Policies to Protect American Workers and Secure Supply Chains” held on May 25, 2023.

EMTC was formed in July 2021 to represent the interests of the e-commerce industry by creating a global community of micro, small and medium size enterprise (MSMEs) e-sellers, marketplace platforms, and service providers to resolve trade, tax and transportation challenges. EMTC’s advocacy mission is to support national and international policies that simplify cross-border transactions of physical and digital goods. EMTC facilitates dialogue among the E-Merchant worldwide community and global regulators.

As an initial matter, EMTC would like to clarify the record to advise the Subcommittee that the hearing testimony conflated two very distinct issues: e-commerce is not synonymous with *de minimis* and *vice versa* – that is, not all e-commerce shipments are entered under the *de minimis* provision and not all *de minimis* shipments are ordered online. Treating these issues as the same and making the leap that *de minimis* shipments contain goods made with slave labor in violation of the Uyghur Forced Labor Prevention Act (UFLPA) does not provide the clarity necessary for developing good trade policy based on data.

1. Modernizing Customs Policies

EMTC applauds the Trade Subcommittee for holding this hearing on “Modernizing Customs Policies to Protect American Workers and Secure Supply Chains.” We recommend that the Trade Subcommittee hold more hearings, roundtable discussions, and town hall meetings throughout the United States to receive testimony, comments and input from micro, small and medium size enterprises (MSMEs) in order to have a full understanding of how these companies are able to serve customers in the United States and in foreign markets by selling their goods through e-commerce marketplace platforms and direct-to-consumer shipments. Any changes to customs policies must be able to accommodate MSMEs who sell their goods directly to consumers as low value shipments.

As part of U.S. Customs and Border Protection’s (CBP) 21st Century Customs Framework, which EMTC participated in the Task Force, EMTC submitted a Proposal with a detail redline for specific changes to

Title 6 and Title 19 to modernize the customs statute to accommodate, regulate and facilitate trade for MSMEs engaged in cross-border shipments.¹

2. Consumer Behavior Drives Low Value Shipments

EMTC believes that the driver of low value shipments imported under 19 U.S.C. § 1321 (i.e., Administrative Exemptions including *de minimis*) is **not** the increase in the threshold from \$200 to \$600 under the Trade Facilitation and Trade Enforcement Act of 2015, P.L. 114-125, 130 Stat. 122 (February 24, 2016). Based on our industry research, the average value of a shipment imported under *de minimis* is \$50.00.²

Rather, EMTC believes that the shift in consumer behavior to online shopping is the bigger driver leading to some increase in low value shipments simply because omni-channel sales have increased at double digits since 2012 while container trade has been flat since the 2008 financial crisis. This trend was exacerbated by the COVID-19 pandemic. Moreover, EMTC suspects that imposition of the section 301 tariffs on goods from China had some impact on a segment of trade that could be de-containerized and sent in low value shipments.

3. Complexity is a Trade Barrier

Congress needs to be sensitive to the fact that since 9/11, the United States has passed approximately ten (10) statutes that impact imports and exports because Congress wanted more transparency and security in the supply chain.³ These statutes add costs to every company that receives or ships goods cross-border, and they increase the complexity of commercial operations. As a result, MSMEs find that the costs and complexity of complying with all these requirements to be a barrier to engaging in cross-border trade. Small businesses account for approximately 45% of the U.S. GDP and employ nearly 50% of workers according to the Small Business Administration, Office of Advocacy. Therefore, we urge the Trade Subcommittee to proceed with caution on making changes to trade policy that negatively impact MSMEs.

4. Manifest Data Should Be Confidential

Companies submit trade data to CBP, and other federal agencies as required by statute and regulation. These requirements are for admissibility, security, health and safety purposes. As a result, the data that

¹ See EMTC's 21CCF Proposal at:

[https://emtc.org/resources/EMTC%20Proposal%20for%2021st%20Century%20Customs%20Framework%20\(11-28-22\).pdf](https://emtc.org/resources/EMTC%20Proposal%20for%2021st%20Century%20Customs%20Framework%20(11-28-22).pdf).

² See EMTC's Letter to Congressional Leaders on the Impact of Import Security and Fairness Act in America COMPETES Act (June 29, 2022 located at:

[https://emtc.org/resources/Documents/EMTC%20Ltr%20to%20Congressional%20Leaders%20re%20Import%20Security%20and%20Fairness%20Act%20\(06-29-22\).pdf](https://emtc.org/resources/Documents/EMTC%20Ltr%20to%20Congressional%20Leaders%20re%20Import%20Security%20and%20Fairness%20Act%20(06-29-22).pdf)

³ See USA PATRIOT Act of 2001; Homeland Security Act of 2002; Trade Act of 2002, P.L. 107-210, 116 Stat. 933 (August 6, 2002); Enhanced Border Security and Visa Entry Reform Act of 2002; Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Terrorism Risk Insurance Act of 2002; Maritime Transportation Security Act of 2002; USA PATRIOT Improvement and Reauthorization Act of 2005; Katrina Emergency Assistance Act of 2006; Security and Accountability for Every Port Act of 2006; Implementing Recommendations of the 9/11 Commission Act of 2007; Protect America Act of 2007; and the Trade Facilitation and Trade Enforcement Act of 2015, P.L. 114-125, 130 Stat. 122 (February 24, 2016).

companies submit to federal agencies is sensitive trade data that corporations spend a lot of money to generate, protect, and transmit only to authorized parties such as federal agencies.

While EMTC believes that CBP should have access to trade data in the supply chain for security and compliance purposes, we do not support the public release of such data as it can be mis-used for a variety of purposes, such as competitor learning commercial intelligence about suppliers and pricing, theft of cargo by deception which has increased 600% in the U.S. Notwithstanding the goals of UFLPA, public release of trade data is a risk to every company that submits such data to federal agencies.

5. CBP Needs a Risk Management Model for Low Value Shipments

While CBP has had a strategy for dealing with e-commerce overall, EMTC believes that CBP struggled with adopting a risk management model appropriately scaled for the surge in low value shipments that occurred several years ago. CBP's predicament is understandable since it does not have legal or physical jurisdiction over foreign sellers, and thus, does not have a risk profile to segment legitimate from bad actors.

EMTC believes the only way to manage new small traders and incorporate them into the customs regime is to adopt the concept of "systems-based governance." Based on the computing power and economies of scale of the e-commerce industry, EMTC proposes a "systems-based governance" that deploys multiple layers of technology (e.g., Artificial Intelligence, Machine Learning, blockchain) in a holistic system to reduce trade compliance risks. E-commerce companies (marketplace platforms, e-sellers) and their facilitators (trade compliance platforms, logistics companies, brokers, and agents) expend tremendous resources on evolving technology and regulatory costs which need to be integrated into the price of goods and services for small companies and consumers. EMTC has drafted a proposed a statutory change adding 19 U.S.C. § 1484(a)(2)(D):

(D) When an importer of record or an agent authorized to make entry files information pursuant to an electronic data interchange system using a risk-based methodology to assess the admissibility, tariff classification, value and origin of merchandise required under paragraph (a)(1), it shall not be subject to penalty under section 1592. A risk-based methodology shall mean an electronic system interpreting the customs laws and regulations by deploying methods such as natural language processing, knowledge representation, image-based analysis, algorithmic decision-making, and machine learning. The Secretary shall accept a risk-based methodology adopted by an importer of record or an agent provided it received a ruling from U.S. Customs and Border Protection or an opinion letter from a customs expert that the methodology produces consistently correct results.

See EMTC Proposal for 21st Century Customs Framework (November 2022).⁴

6. Congress Sets U.S. Trade Policy

We recognize that Congress has plenary authority to set trade policy and tax rates:

⁴See EMTC's 21CCF Proposal at:

[https://emtc.org/resources/EMTC%20Proposal%20for%2021st%20Century%20Customs%20Framework%20\(11-28-22\).pdf](https://emtc.org/resources/EMTC%20Proposal%20for%2021st%20Century%20Customs%20Framework%20(11-28-22).pdf).

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States

U.S. Const. art. I, § 8, cl. 1. Moreover, Congress the authority to decide whether the U.S. should trade with China. Congress should not use U.S. trade policy to select who in the U.S. can trade with China by focusing on narrow issues (e.g., multi-nationals versus MSMEs). Instead, Congress should focus on whether the U.S. can have a trade relationship with China for legitimate trade, and it needs to understand the significant costs associated with trade policy changes, such as eliminating *de minimis* (\$499 Billion), the costs of UFLPA compliance and audits, and the costs associated with shifting the sourcing of goods from countries other than China.

a. GAO Needs to Advise Congress on the Costs to Process an Entry

Before it decides whether to change the *de minimis* threshold or to bar shipments from certain countries for admissibility under *de minimis*, Congress should request that the Government Accountability Office (GAO) undertake a study on the actual cost for CBP (and other federal regulatory agencies) to process an entry – regardless of the value of the shipment. After all, the reason that Congress has periodically raised the *de minimis* threshold is that the administrative costs of CBP processing entries for such low value shipments outweigh any duties collected. Again, the trade associations opposing CBP’s proposed rule “Excepting Merchandise Subject to Section 301 Duties from the Customs *De minimis* Exemption” cited this policy extensively:

Whereas the statute identifies clearly the purpose of the *de minimis* exemption as “avoid{ing} expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected,” the proposed rule would result in a substantial increase to the expense and inconvenience to the Government relative to the amount of duties collected. In particular, it is estimated that the Government would be responsible for processing entries for, and collecting import duties on, many hundreds of millions of additional packages per year.^[4] This would require significant additional administrative expense that is simply not justified by the potential amount of additional duties collected on a per shipment basis for the entries that would be covered by the proposed rule.

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In the lead up to TFTEA’s passage, Congress noted specifically that increasing the value of the *de minimis* exemption would “simplify the customs entry process and offer significant benefits to CBP and the trade community” by inter alia “significantly reduc{ing} paperwork burdens for low value shipments.”^[5] Congress also found that maintaining the *de minimis* exemption level at \$200 was “not practical, especially considering the government resources that would be freed up to focus on high-risk shipments.”^[6] In light of Congress’s explicit consideration of governmental resources in increasing the *de minimis* threshold level to \$800, it cannot be said that CBP’s proposed exception, which would inarguably increase the Government’s burden, is consistent with the principle of “avoid{ing} expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected.”

See Letter to Secretary of Treasury Steven Mnuchin, OMB Director Russell Vought, and Senior Official Performing the Duties of CBP Commissioner Mark Morgan at 8-9 (footnotes omitted).⁵ Moreover, the Senate Finance Committee reiterated Congress' policy to increase *de minimis* as recently as 2020. See Letter from U.S. Senate Committee on Finance to OMB Director Russell Voight dated December 23, 2020.⁶

It is precisely because Congress has only increased the *de minimis* threshold infrequently every few decades that makes the possibility of a change after only six (6) years from passage of TFTEA in 2016 greatly concerning to the trade community, particularly e-commerce marketplace platforms, e-sellers and companies that provide trade and transportation services to e-commerce companies.

Administrative costs for processing low value shipments not only falls on the government, but also affect the private sector as well. These costs are not insignificant. EMTC has calculated that eliminating *de minimis* treatment for shipments from China would add **\$499 Billion** in costs to the private sector.⁷

Based on FY'22 data from CBP, EMTC estimates the additional costs for eliminating *de minimis* for shipments from China would be **\$302 Billion**.⁸ Eliminating *de minimis* for all other countries would add billions of dollars in more costs for U.S. e-sellers and consumers. Therefore, Congress should carefully consider these cost/benefit tradeoffs.

a. Most *De Minimis* shipments enter through the postal service, which will continue to be a compliance challenge

EMTC would remind the Subcommittee that more shipments are imported under the *de minimis* through the U.S. Postal Service than through commercial carriers. The foreign seller (or shipper) can make the decision to use the local postal service for a variety of reasons, including cheaper costs, fewer documentation requirements, simpler trade rules, and access to global networks through the Universal Postal Union agreements. Lowering the *de minimis* on commercial shipments only further disadvantages the commercial carriers, which offer greater data visibility, security controls, tracking services, and both internal and government partnership initiatives on stopping illicit goods. Therefore, EMTC strongly believes that Congress should not revisit lowering the *de minimis* level, as it would further harm those commercial actors providing the greatest level of support and partnership with the U.S. government in stopping illicit shipments.

7. Conclusion

In summary, EMTC believes that the Trade Subcommittee should carefully consider changes to U.S. trade policy, particularly customs modernization that needs to include new players in the global supply chain.

⁵ See letter at: [IA Multi-association-letter-on-CBP-proposed-de-minimis-rule 12-20 Trade-5a2f4d005fa966b7172a90619c6169c9.pdf](https://www.archiveia.org/5a2f4d005fa966b7172a90619c6169c9.pdf) (archiveia.org).

⁶ See letter at: [https://www.finance.senate.gov/imo/media/doc/2020-12-23%20SFC%20Members%20to%20OMB%20\(301%20tariffs%20and%20de%20minimis%20shipments\).pdf](https://www.finance.senate.gov/imo/media/doc/2020-12-23%20SFC%20Members%20to%20OMB%20(301%20tariffs%20and%20de%20minimis%20shipments).pdf).

⁷ See EMTC's Letter to Congressional Leaders on the Impact of Import Security and Fairness Act in America COMPETES Act (June 29, 2022, located at: [https://emtc.org/resources/Documents/EMTC%20Ltr%20to%20Congressional%20Leaders%20re%20Import%20Security%20and%20Fairness%20Act%20\(06-29-22\).pdf](https://emtc.org/resources/Documents/EMTC%20Ltr%20to%20Congressional%20Leaders%20re%20Import%20Security%20and%20Fairness%20Act%20(06-29-22).pdf)

⁸ Since CBP has not released its final trade statistics (including value and volume) for FY'22, EMTC extrapolated Q1 value and volume data over four quarters assuming that the value and volume of goods released under section 1321 did not fluctuate significantly over the course of FY'22. EMTC's calculations also assume that every package would require a formal entry regardless of mode of transportation if *de minimis* is eliminated.

We believe that a wiser policy would be for Congress to consider how to improve risk management in Customs Modernization legislation to replace the existing transaction-based system with systems-based governance to connect all the entities in the supply chain and clearly define their regulatory responsibilities to CBP.

EMTC appreciates the opportunity to comment on the testimony presented at the hearing on Modernizing Customs Policies to Protect American Workers and Secure Supply Chain, and we are happy to discuss the ideas expressed above in more detail. If there is a significant difference in EMTC's calculations on the potential impact of eliminating *de minimis* based upon CBP's final actual FY'22 trade data, we will advise the Trade Subcommittee.