



E-Merchants Trade Council, Inc. (EMTC)

2023 Trade Priorities – The Year to Formulate a Digital Trade Policy

February 13, 2023

The E-Merchants Trade Council, Inc. (EMTC) believes that 2023 is the critical year for the 118th Congress to formulate a digital trade policy that accomplishes the following goals: 1) integrate regulation of digital goods into export and import statutory regimes; 2) simplify cross-border processes by reducing complexity of regulatory requirements; and 3) lead global trade on digital and physical goods by modernizing U.S. laws as a model for our trading partners and multi-lateral institutions.

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.

1. What is the goal of regulating digital goods?

The goal of regulating digital goods is to maximize the free flow of digital trade¹ and provide U.S. companies with certainty on how digital goods will be treated upon export from and import to the United States. Currently, U.S. customs laws regulate only the import of physical goods since the WTO's Moratorium on Customs Duties on Electronic Transmissions – which is scheduled to expire on March 31, 2024.² However, U.S. export laws regulate information for national security purposes under the export control laws. EMTC believes that there should be parity in the regulatory regime for physical and digital goods.

EMTC believes that Congress should address declarations (*e.g.*, customs entries, export licenses, and electronic export information filings) for both the cross-border shipment of physical goods ordered online (*e-commerce*) and digital goods (*e.g.*, cross-border digital transmission, data collection, data flows, data

¹ EMTC uses the term “digital trade” to describe “digital goods” or electronic articles such as software, images, music, games etc. that are non-physical and transmitted via the Internet by e-mail, the cloud, etc. Conversely, EMTC refers to “e-commerce” as the sale, purchase and shipment of physical goods. See Work Programme on Electronic Commerce (Adopted by the General Council on 25 September 1998) at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/274.pdf&Open=True> and the WCO Framework of Standards on Cross-Border E-Commerce Definitions at: https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/ecommerce/2_definitions_en.pdf?db=web

² See the WTO documents relating to the Moratorium which was included in the Declaration on Global Electronic Commerce posted on EMTC's website at: <https://www.emtc.org/E-Commerce-News/12820144>.

localization rules, etc.). We urge Congress to ensure that any submissions for regulatory compliance be kept at an absolute minimum.

2. Reduce regulatory complexity

Congress should resist the temptation to enact legislation that adds regulatory burdens to micro, small and medium-sized enterprises (MSMEs) who are only able to participate in global trade due to e-commerce marketplace platforms enabling e-sellers to market their products to a global consumer base. The purpose of such legislation is often consumer protection, transparency, and intellectual property rights. EMTC believes that all these risk management issues can be addressed by deploying sophisticated technologies rather than through legislative mandated processes.

3. Modernize U.S. and global trade regimes

a. Enact Customs Modernization

EMTC participates in discussions with U.S. Customs and Border Protection (CBP) on customs modernization through the Customs Operations Advisory Committee's (COAC) 21st Century Customs Framework (21CCF) Task Force. EMTC has recently released its 21CCF Proposal seeking changes to specific statutory provisions in Title 6 and Title 19 which we believe will enhance U.S. competitiveness by fostering digital trade by MSMEs.³

b. Champion increase in *De Minimis* rates⁴

The U.S. has led the world in reducing duty rates through successive negotiating rounds of the General Agreement on Tariffs and Trade (GATT) and the WTO. Since U.S. trading partners enjoy full access to the U.S. market through a *de minimis* of \$800 permitting duty-free treatment for low-value goods and low duty rates on goods valued at more than the \$800 threshold, EMTC strongly believes that the United States should prioritize getting other countries to increase their *de minimis* threshold for low-value shipments in the ongoing WTO negotiations on the Work Programme on Global Electronic Commerce.⁵ This will go a long way to increase MSME participation in global trade, especially for U.S. e-seller exporters. Most other countries have a *de minimis* level between \$0 and \$200 whereas the United States *de minimis* threshold is \$800. The United States was successful in getting Canada and Mexico to increase those countries' *de minimis* in the USMCA, and we should demand reciprocity of trade our trading partners.

c. Lead international negotiations on e-commerce and digital trade

EMTC believes that there is no substitute for U.S. leadership on global trade rules as the largest and most advanced economy with leading e-commerce and digital companies. Our largest trading partners, particularly the European Union and India, approach the digital economy from the point of view of

³ See EMTC's Proposal for 21st Century Customs Framework and related documents at: <https://www.emtc.org/E-Commerce-News/13005725>.

⁴ We note that e-commerce is not the same as *de minimis* and *vice versa* – that is, not all e-commerce shipments are entered as low-value shipments under 19 U.S.C. § 1321 and not all *de minimis* shipments were ordered online.

⁵ See WTO Work Programme on Electronic Commerce at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/S/C/W68.pdf&Open=True>.

protecting consumers instead of rules to foster innovation, growth and velocity of the digital economy to provide consumers with more choices at lower costs.

The WTO's negotiations for an Agreement on E-Commerce have dragged on far longer than the private sector expected. While some pieces of text have been released by the negotiators on some topics (*e.g.*, data flows, consumer protection, electronic signatures and authentication, etc.), the co-convenors of the negotiations acknowledge the need to speed up the process.⁶ EMTC urges Congress to direct the U.S. Trade Representative and the U.S. Secretary of Commerce to engage with the private sector so that we can actively participate in setting trade priorities for e-commerce and digital trade in the WTO negotiations.

⁶ See WTO Joint Statement Initiative on E-commerce" at: https://www.wto.org/english/news_e/news21_e/ji_ecom_minister_statement_e.pdf and WTO article "E-commerce negotiators vow to intensify work in coming year" at: https://www.wto.org/english/news_e/news22_e/ecom_02dec22_e.htm. In November 2022, some Member States submitted "Ideas to Reinvigorate the Work Programme on Electronic Commerce" at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W855.pdf&Open=True>.