



June 29, 2022

The Honorable Chuck Schumer
Majority Leader
Senate United States
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker of the House United States
House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, DC 20515

RE: Impact of Import Security and Fairness Act in America COMPETES Act

Dear Majority Leader Schumer, Republican Leader McConnell, Speaker Pelosi, and Republican Leader McCarthy:

On behalf of the E-Merchants Trade Council, Inc. (EMTC), I would like to share with you our estimates concerning the impact that the Import Security and Fairness Act (Division K, Title 3), included in the America COMPETES Act of 2022, would have on e-sellers, most of which are small and medium size businesses, and individuals that ship goods under 19 U.S.C. §1321.¹

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.

Based on data from U.S. Customs and Border Protection (CBP), EMTC estimates that the Import Security and Fairness Act would:

- Double the total cost of the item with the addition of customs duties, section 301 duties, Merchandise Processing Fee (MPF) and customs brokerage fee to file a customs entry.

¹ At the outset, we note that not all shipments imported under 19 U.S.C. § 1321 are "e-commerce" (i.e., goods ordered online) and vice versa (i.e., not all e-commerce shipments are imported under § 1321 and may be declared as a formal entry and subject to customs duties). Moreover, shipments cleared under § 1321 include returned goods, which by some industry estimates could be as high as 30%.

- Example: If an e-seller imports an item at \$50 declared value, the e-seller will incur an additional \$61.25 in costs resulting in a total cost of \$111.25 for the item. These additional costs are as follows:
 - \$1.00 in customs duties (based on 2% average *ad valorem* duty rate)
 - \$27.75 in MPF (which is the minimum fee per shipment)
 - \$20.00 in customs brokerage fees to file a formal customs entry
 - The \$50 item may retail for \$75 resulting in a loss for the e-seller.
- Impose an additional cost of **\$499 billion** on e-sellers, calculated based on CBP’s FY2021 total declared value of *de minimis* shipments from China. This represents over 4000% increase in cost of goods sold. Customs revenue constitutes approximately half of this amount to cover processing of entries by CBP personnel.

We believe that our estimates listed above are conservative based on the methodology that EMTC has used to extrapolate CBP data and the use of minimum costs for duties, fees and brokerage.

Among the 15 million e-sellers, EMTC estimates that 4.6 million are MSMEs and have minimal price elasticity so they are extremely price sensitive to increased costs regardless of the source.² Therefore, doubling the cost of sourcing and importing an item will simply make it cost prohibitive for MSME e-sellers to offer their products online, engage in global trade or even stay in business due to their lack of pricing power to charge customers more for their goods.³

In light of the WTO’s 12th Ministerial Conference adoption of the “Geneva Package,” including the extension of the Moratorium on Customs Duties on Electronic Transmissions until MC13 scheduled for December 2023, we believe it is essential for the United States to assert its global leadership to make significant progress on the WTO’s Work Programme on Electronic Commerce. EMTC believes it is imperative for the United States to develop its trade policy (e.g., customs modernization) with simplified international standards as the complexity of import and export processes is the primary trade barrier for MSMEs cross-border shipments. We urge the Administration and Congress to prioritize:

- Implementing Article 6.1 of the WTO’s Trade Facilitation Agreement by not enacting new requirements on the use of customs brokers;
- Implementing simplified processes under the WTO’s Trade Facilitation Agreement and increase *de minimis* for low value shipments in all countries;
- Adopting self-regulation using technology as an alternative to “one size fits all” regulation that does not scale for MSMEs; and

² A group of Etsy e-sellers organized a “strike” against the platform’s increase in marketing fees from 3.5% in 2018 to 6.5% in 2022 citing the risk to their profit and margins. This group representing handicraft products has obtained over 86,000 signatures from e-sellers and buyers to its petition seeking redress from Etsy. See <https://www.coworker.org/petitions/cancel-the-fee-increase-work-with-sellers-not-against-us>.

³ For an example of how e-sellers break down their sales price, costs, fees, and income, see <https://etsystrike.org/we-should-be-angry/how-much-should-we-increase-our-2022-prices/>.

- Facilitating a permanent moratorium on customs duties on electronic transmissions to facilitate the free flow of data and goods, especially in light of the global minimum tax on digital services.

U.S. Customs and Border Protection is conducting a 321 data pilot and we believe that CBP should be afforded the opportunity to present the results of the pilot and advise Congress what data it needs and how to collect data on low value shipments before Congress takes further action on *de minimis*.

While we acknowledge that Congress has plenary authority over trade relations with foreign nations, we caution that inclusion of the Import Security and Fairness Act in the America COMPETES Act could conflict with section 101(a)(2) of the Normal Trade Relations for the People's Republic of China legislation providing nondiscriminatory treatment of Chinese products under the extension of normal trade relations. See P.L. 106-285, 114 Stat. 880, 881 (October 10, 2000).

Finally, e-commerce is an export platform for MSME e-sellers to offer their products to the 95% of the consumers that reside outside the United States. Any changes to 19 U.S.C. § 1321 restricting low value imports could have a detrimental impact on MSMEs importing inputs that are incorporated into a finished product made in the United States and exported for sale to a customer in a foreign country.

Therefore, we respectfully ask that you consider removing the Import Security and Fairness Act from the America COMPETES Act. We ask that you champion the above-cited trade facilitation activities to support e-commerce as an export platform.

Sincerely,



Marianne Rowden
Chief Executive Officer

cc: Senate Finance Committee Chair Ron Wyden
Senate Finance Committee Ranking Member Mike Crapo
Senate Finance Subcommittee on International Trade, Customs, and Global Competitiveness
Chair Tom Carper
Senate Finance Subcommittee on International Trade, Customs, and Global Competitiveness
Ranking Member John Cornyn
Senate Small Business & Entrepreneurship Committee Chair Ben Cardin
Senate Small Business & Entrepreneurship Committee Ranking Member Rand Paul
House Ways and Means Chair Richard Neal
House Ways and Means Ranking Member Kevin Brady
House Ways and Means Trade Subcommittee Chair Earl Blumenauer
House Ways and Means Trade Subcommittee Ranking Member Adrian Smith
House Small Business Committee Chair Nydia Velázquez
House Small Business Committee Ranking Member Blaine Luetkemeyer