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International Trade and E-Commerce

Online transactions through e-commerce allow customers to research and purchase goods without leaving their home or office, increasing access and convenience. Using online sales, businesses are able to scale efficiently and reach customers in new markets, both domestically and abroad, especially small and mid-sized enterprises (SMEs). Although some online purchases replace what may have been in-store transactions, other purchases are new sales.

The Coronavirus Disease 2019 (COVID-19) pandemic led to a boom in online sales as lockdowns temporarily closed stores and consumer spending shifted from services to goods. According to the U.S. Department of Commerce (Commerce), in the second quarter of 2020, business-to-consumer (B2C or retail) e-commerce rose to 16% of all U.S. retail sales, up from less than 11% the second quarter of 2019. COVID-19 hastened the growth of online sales, and many analysts expect continued growth in online shopping as pandemic restrictions and concerns ameliorate. In 2021, 79% of the U.S. population engaged in e-commerce, with clothing as the top category of online purchases. Statista projects that the global B2C e-commerce market will grow to $4.1 billion in 2022 (see **Figure 1**). Agileintel Research estimates the larger global business-to-business (B2B) e-commerce market was $15 billion in 2020, and will grow to over $35 trillion by 2025.

Some Members have raised concerns that certain foreign trade policies, friction in international shipping and border processes, poor infrastructure, and the lack of enforceable multilateral trade rules may impede U.S. companies' access to overseas markets and hinder further e-commerce growth.

COVID-19 and E-Commerce

B2B and B2C e-commerce sales surged during the COVID-19 pandemic globally and domestically. Marketing firm Acosta found that 45% of U.S. consumers increased online grocery shopping during the pandemic. In 2020, U.S. online holiday sales grew 32% over 2019, according to eMarketer, far outpacing the 2% growth in non-e-commerce (e.g., in-store) seasonal sales.

E-commerce platforms offer a way for SMEs to grow by providing access to a wider consumer base, domestically and globally. Platforms offer online services to match shoppers to suppliers, facilitate ordering, accept payments, and coordinate the physical logistics and delivery of goods. Data Catalyst found that almost 70% of U.S. SMEs use third-party online marketplaces and/or their own web store, with the majority of those firms opting to use multiple online markets. Many of these platforms and online marketplaces are household names in the United States, such as Amazon, Shopify, Facebook, PayPal, or Etsy; others specialize in niche markets. A study of U.S. SMEs on the e-commerce platform eBay found that 96% export to an average of 17 different foreign countries. Competition from foreign platforms is growing.

China's e-commerce market is currently the world's largest in terms of both transactions and potential consumers, surpassing those of the United States, the United Kingdom, Japan, and Germany combined. China is home to approximately 710 million e-commerce customers, according to Commerce data. In 2020, Alibaba's Taobao sales dwarfed those of Amazon for B2C e-commerce, with the former having sales of $1.1 trillion, compared to Amazon's $269 billion, according to eMarketer.

Potential Barriers to Growth

The U.S. Trade Representative's (USTR's) annual *National Trade Estimate Report on Foreign Trade Barriers* highlights various policy restrictions on e-commerce in other countries. Trade barriers, poor infrastructure, and discriminatory trade practices to international e-commerce may occur at different points in the process, limiting businesses' ability to sell or customers' ability to purchase online or receive goods. Because e-commerce in goods involves the online and offline worlds, trade obstacles span both spheres. The report notes key trade barriers including the following:

Market Access: Restrictions for foreign investment in e-commerce website ownership, or limits on the ability of platforms to operate, impede market access. Similarly, limits or constraints on what goods a firm may sell or technical regulations on how it must label specific products (e.g., medicines) may vary by jurisdiction.

Example: India prohibits foreign investment in business-to-consumer (or "inventory-based") e-commerce.

Localization: Market access barriers include requiring firms to have a physical presence, local internet domain name, or local representative in a country, adding costs to online selling to customers abroad.

Example: Indonesia's regulation requires e-commerce operators to obtain local licenses and promote local products. South Korea requires a local presence to process won-denominated transactions.

Data Localization: Restricting the flow of data beyond a country's borders may limit what websites and platforms are available, how they can operate, and what goods and services, such as online payments or shipment tracking, can be offered online. Consumer privacy rules may restrict how e-commerce firms can process customer data, often limiting companies from sending the data across borders.

Example: China broadly restricts cross-border data transfer. The European Union (EU) imposes extensive data protection requirements for all entities that process or offer goods or services online to individuals in the EU. Draft e-commerce legislation in India would require certain data be stored domestically and other data processed only in India.

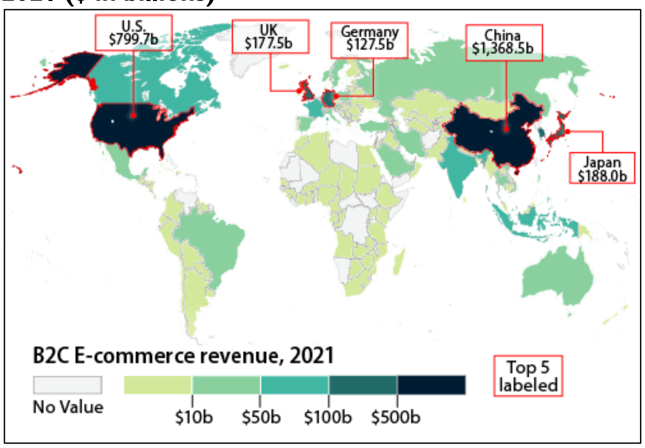
E-payment regulations: Limiting access to electronic payment services, such as credit cards, restricts how buyers are able to purchase and finance goods.

Example: India imposes a domestic storage mandate for electronic payment services. Thailand requires in-country processing for certain electronic payment transactions.

Counterfeits: The growth of e-commerce platforms has helped fuel the growth of counterfeit and pirated goods. USTR's annual *Notorious Markets List* reports on online markets engaged in facilitating trade in these goods. President Biden has ordered the Department of Homeland Security to strengthen customs enforcement to help prevent the import of counterfeit items ordered online.

Example: Mercado Libre is a leading e-commerce operator in Latin America and many U.S. intellectual property owners report high volumes of counterfeit products for sale on the site.

Figure 1. Global B2C E-Commerce Revenue Forecast, 2021 ($ in billions)



Source: CRS, based on data from Statista.com, 2021.

Tariffs, Duties, and Digital Taxes: Tariffs or customs duties on international shipments raise prices for customers, as do taxes on online purchases, though the latter may apply to both domestic and foreign purchases. Some countries establish a *de minimis* level and shipments below that value do not pay duties; Congress set the U.S. *de minimis* at $800.

Example: Some countries, such as Brazil, set a low *de minimis*, effectively broadening the scope of traded products and e-commerce goods subject to duties.

Trade Facilitation: Inefficient customs procedures or delayed clearance of goods, especially for express or perishable deliveries, may deter buyers and sellers. Shipments valued below a *de minimis* level may be eligible for less stringent customs procedures.

Example: According to U.S. express delivery firms, China applies overly burdensome rules, such as inspections, for domestic package delivery. Argentina does not allow the use of electronically produced documents, hindering the customs processing of e-commerce delivery.

Trade Rules

Existing multilateral trade rules cover some issues related to e-commerce, but they are not comprehensive and are generally viewed as outdated. Some recent free trade agreements (FTAs) include more robust e-commerce commitments, but only among certain countries. There is no single set of global rules or disciplines that govern many key e-commerce issues. Rules addressing e-commerce include the following:

WTO. World Trade Organization (WTO) obligations on nondiscrimination and transparency apply to e-commerce transactions. WTO members have agreed to temporarily suspend customs duties on electronic transactions since 1998. The WTO Information Technology Agreement (ITA), with 74 WTO participants including the United States, eliminates tariffs on many information technology products that underlie e-commerce.

TFA. The Trade Facilitation Agreement (TFA) aims to reduce trade costs by streamlining, modernizing, and speeding up customs processes for cross-border trade. With provisions to increase transparency and eliminate or reduce inefficiencies at the border, the TFA may facilitate and lower trade costs for e-commerce.

E-Commerce Plurilateral. A group of over 85 WTO members are negotiating an agreement to set new global digital trade rules. The United States seeks a broad digital trade agreement to make the WTO customs duties moratorium permanent and address barriers and discriminatory practices, such as data localization. To date, the parties have agreed on some e-commerce-enabling provisions, including ensuring electronic signatures and authentication, e-contracts, open government data, and online consumer protection. Though developed and developing countries, including China, have joined, others, such as India, have opted out. The parties aim to have a final draft in 2022, but would need to overcome contentious issues, including on cross-border data flows.

U.S. FTAs: Since the U.S.-Singapore FTA in 2003, U.S. FTAs have included an e-commerce chapter with provisions such as nondiscrimination, prohibition of customs duties, transparency, and consumer protection, and have evolved to prohibit limits on cross-border data flows. The digital trade chapter of the United States-Mexico-Canada Agreement (USMCA) sets new rules and advances U.S. objectives such as eliminating trade barriers and requiring privacy and consumer protection legal frameworks. USMCA chapters on customs administration and trade facilitation and on cross-border trade in services also address e-commerce. The 2019 U.S.-Japan Digital Trade Agreement aligns with the standards set in the USMCA and the U.S. WTO proposal.

Congressional Interest

As Congress considers addressing e-commerce provisions in trade policy, it may oversee and legislate on a number of issues, including the following:

- What should be the U.S. priorities for the WTO e-commerce negotiations? How can the United States ensure a potential agreement sets high standards when countries such as China seek a more limited agreement?
- What are the implications of USMCA rules on digital trade and e-commerce for future U.S. trade policy?
- Are countries complying with the obligations of the WTO TFA? Is the United States fulfilling its commitments to trade assistance and capacity building for developing countries, as required in the agreement?

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