



USCIB Recommendations for the WTO E-Commerce Negotiations

USCIB welcomes the joint statement made by 76 World Trade Organization (WTO) members who confirmed their intent to launch negotiations on an electronic commerce agreement. The group of countries accounts for 90% of global trade in electronic commerce, and seeks to achieve a high-standard outcome that builds on existing WTO agreements and frameworks with the participation of as many WTO members as possible.

The WTO is the cornerstone of the global rules-based trading system and has helped spread growth and development for decades. Negotiations on e-commerce represent a critical opportunity for the WTO to update its rules for today's economy. Digital trade and e-commerce are enabling businesses of all sizes, in countries of all development levels, in ways unimaginable in the past. It is time for WTO members to bring the organization into the 21st century by negotiating an ambitious high-standard e-commerce agreement. USCIB encourages negotiators to focus on trade facilitation, services, digital trade, and transparency and trust. The minimum standard for rules discussed in this paper should be the digital chapter of the United States-Mexico-Canada Agreement (USMCA). In addition, USCIB also supports a permanent renewal of the WTO e-commerce moratorium by all WTO members. The following are specific areas that USCIB is looking to see included in any WTO E-Commerce agreement:

Trade Facilitation

The agreement should include commitments on trade facilitation that help enable cross-border e-commerce for businesses of all sizes, especially micro-, small- and medium sized enterprises (MSMEs). These commitments should simplify processing for low-value shipments and streamline requirements at the border including, for example, the electronic submission of documents and pre-arrival processing for shipments.

Non-Discrimination

Principles of non-discrimination in the treatment of digital products and business models, including between incumbents and new entrants in their innovation activities, should be included in any WTO agreement.

Access and Use

The increase in digital trade is a direct result of the increase in Internet usage globally. Accordingly, countries should enable increased access to and use of the Internet.

Cross-Border Data Flows

Cross-border flow of data and information is critical for economic development and growth as it is a central part of global value chains and a necessary element of most manufacturing and services activities. Trade rules should enable the secure movement of data across borders.

A WTO agreement should clearly state that no country shall prohibit or restrict the cross-border flow of data, including personal information, by electronic means if this activity is necessary for the conduct of business by a foreign investor. Governments should promote inter-operability, and criteria for cross-border data transfers, including of personal information, should be transparent, non-discriminatory, and least trade restrictive. Exceptions to the prohibition of cross-border flow of personal information must be limited to a legitimate public policy objective.

Data Localization and Facilities

Forced localization of data in manufacturing and services sectors are a troubling trend of recent years. Many countries have been creating laws requiring companies that carry and/or store data to locate infrastructure in-country. Not only is it very difficult to localize data, such policies do not make data more secure or provide greater privacy protections, and in fact can make data less secure. In addition, location of data does not restrict or contribute to the ability of a company to provide access to that data.

In the modern world, data is a necessary dynamic and limiting the movement of data will increase costs, reduce the business competitiveness across the globe and fragment the Internet. Data localization requirements often do not take into account the consequences of placing geographical barriers on something so intangible. In addition, they generally do not lead to large economic gains for societies. On the other hand, the numbers show that the cross-border business to consumer e-commerce market is expected to grow into the hundreds of billions in the next few years.

A WTO agreement should prohibit in every sector the forced localization of data. The agreement should not permit any country to require foreign investors to use or locate computing facilities in their territory as a condition for conducting business in that territory.

Protection for Algorithms and Source Code

Requiring companies to provide source code or proprietary algorithms as a condition of market access is limiting to open trade and investment. A WTO agreement on digital trade should include protections for such proprietary company information. Source code disclosure protection should not be limited to mass-market software, and software used for critical infrastructure should not be excluded from protection. In addition to providing protections against source code disclosures, there should be a limit to the ability of governments to force disclosure of proprietary algorithms.

Customs Duties on Electronic Transmissions

A WTO agreement should prohibit customs duties and other discriminatory measures from being applied to electronic transmissions. As the Internet and electronic commerce become increasingly important elements of global trade and economic growth, it is essential to provide the certainty and maintain trade flows that are driving economic activity and innovation.

Prohibition of Purchase and Use of Specific Technologies

A WTO e-commerce agreement should ensure that companies may purchase and use technologies that are consistent with their business model and practices. An agreement should prohibit governments from imposing measures requiring companies to purchase or use a

particular technology. In addition, an agreement should prohibit governments from according a preference to a particular technology in its market.

Cybersecurity

Threats to cybersecurity undermine confidence in digital trade. To combat this, countries need to engage in capacity building, and work together, strengthening existing collaboration mechanisms. In order to effectively monitor malicious activity and act on trends, access and sharing of threat data globally is critical. A WTO agreement should include a provision promoting the use of risk-based approaches that rely on consensus-based standards and risk management best practices.

Privacy Protections

Personal information should be protected regardless of where it is located. A WTO agreement should provide that parties in adopting or maintaining a legal framework for data protection should take into account relevant international bodies, such as the *APEC Privacy Framework* and *OECD Recommendation of the Council concerning Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (2013)* (OECD Guidelines). An agreement should also specifically recognize that different approaches can achieve comparable levels of privacy protection and the agreement should not mandate one particular approach.

Open Government Data

Facilitating public access to and use of government information fosters economic and social development, competitiveness, and innovation. A WTO agreement should recognize this by promoting access to government data in a machine-readable and open format.