

ALERT

Keep an Eye on the WTO E-commerce Agreement

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Work toward a global digital trade agreement is accelerating and merits broad business attention and engagement. The World Trade Organization (WTO) has undertaken projects related to “e-commerce” over the years, and bilateral free trade agreements have included commitments on “e-commerce” for more than 15 years. Building on this foundation, representatives of 76 countries announced on January 25 at the World Economic Forum in Davos their intention to begin negotiations for a global trade agreement on e-commerce under the auspices of the WTO. These countries are expected to meet over the coming months to exchange ideas on the substance of an agreement. Industry associations and individual businesses are therefore developing input, making this a key time to engage in shaping an agreement.

The U.S. Trade Representative has been a long-time participant in these e-commerce initiatives. For example, the U.S. submitted a paper to the WTO on April 12, 2018 outlining provisions to promote digital trade, including free flows of information, fair treatment of digital products, protections of proprietary information, digital security, facilitating internet services, competitive telecom markets, and trade facilitation. Later in 2018, the U.S. supported the decision made at a high level Ministerial meeting in Argentina to move forward, and again in January, first in a joint statement with the EU and Japan, and subsequently with the group of 76. In his March 6 statement commending a meeting on the WTO initiative on e-commerce, U.S. Ambassador Dennis Shea (U.S. Permanent Representative to the WTO) reiterated the expectation of U.S. Trade Representative Robert Lighthizer that a successful outcome requires conclusion of an ambitious, high-standard agreement that is enforceable and has the

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same obligations for all participants.

With all sectors of the U.S. and global economies increasingly being digital and very often tied into global markets, the agreement should be expected to have broad implications for many types of businesses. The ability to transmit data across borders seamlessly is vital for communications and for almost any type of services or manufacturing business. Restrictions on data flows and storage can act as trade barriers for goods and services. Some existing bilateral trade agreements contain commitments to facilitate data flows and avoid requirements to store data or locate facilities locally. But these agreements do not cover all markets, and there is a troubling trend in some countries to impose restrictions on data flows.

What next?

Expect to see press during the week of April 1, when the UN organization on trade and development – UNCTAD – convenes a conference in Geneva on a wide array of e-commerce topics. While this is not a formal part of the WTO negotiations, it will provide important context for the WTO initiative.

Consider the trade provisions that could benefit your business or your customers or general users of digital goods and services in today's global economy. The digital trade section of the U.S.-Mexico-Canada Agreement is a good starting point for an outline on provisions.

Be prepared to engage with ideas and concrete examples of the importance of a strong set of commitments around digital trade. While trade negotiations often are prolonged, providing early input on priorities and sustained support throughout are vital.

Wiley Rein has deep expertise on effective approaches to engagement with the U.S. government, international organizations, and other stakeholders to implement trade policy objectives like those under consideration in the WTO e-commerce initiative.