

April 15, 2024

Mr. Jacob Sullivan
Assistant to the President for
National Security Affairs
Director, National Security Council
The White House
Washington, DC 20500

Dr. Lael Brainard
Assistant to the President for
Economic Policy
Director, National Economic Council
The White House
Washington, DC 20500

Dear Directors Sullivan and Brainard:

The undersigned associations call on the administration to reassert its leadership on digital trade and stand up for U.S. businesses and workers who face damaging digital trade barriers in foreign countries.

Recent actions by the Administration have been of great concern. In October 2023, the Office of the U.S. Trade Representative (USTR) withdrew its support for proposed World Trade Organization (WTO) disciplines that protect cross-border data flows, prohibit data localization mandates, preclude discrimination against U.S. companies and the digital goods and services they produce, and safeguard sensitive source code from malicious cyberactivity and theft.

This action follows USTR's abandonment of these core U.S. policy priorities in the Indo-Pacific Economic Framework for Prosperity (IPEF) discussions – a major factor in the collapse of the IPEF trade negotiations. More recently, USTR released the 2024 National Trade Estimate (NTE) Report on Foreign Trade Barriers omits many digital trade barriers contrary to the digital trade priorities outlined by bipartisan congressional majorities and its statutory obligation to describe and quantify barriers to “e-commerce” and “services exports” under Section 181 of the Trade Act of 1974.

USTR's harmful approach to digital trade has faced considerable pushback. Democrats and Republicans in the House and Senate have demanded transparency about the decision-making process that led to this major departure from longstanding policy. This includes a letter signed by more than a third of the Senate¹, expressing deep economic and national security concerns with USTR's approach. Similarly, a bipartisan letter led by the House Digital Trade Caucus urged USTR to reconsider its [policy change] decision, “which was made without sufficient consultation with Congress, runs counter to the interests of American workers and businesses of all sizes, while ceding more leverage to foreign powers, like the People's Republic of

¹<https://www.finance.senate.gov/imo/media/doc/20231130wydencrapolettertopotusonwtodigitaltradenegotiations.pdf>

China (PRC), to write the rules that will govern the global digital economy for years to come.”²

Stakeholder groups have similarly expressed alarm:

- 45 business organizations representing U.S. companies in every sector of the U.S. economy stated that the digital trade positions USTR put on hold “advance U.S. innovation and competitiveness, fuel economic growth, and support the exchange of knowledge and information necessary to address climate, health, and other global challenges”³;
- Small and medium-sized businesses noted that USTR’s decision “weakens the global competitiveness of U.S. startups”⁴; and
- Civil rights, civil liberties, open Internet advocates, and digital trade experts asserted that USTR’s about face on digital trade could “signal an abandonment of those principles of openness, freedom, and non-discrimination.”⁵

In the months since USTR’s WTO announcement, inaccurate statements have been repeated by the U.S. Trade Representative and those supporting USTR’s abandonment of digital trade protections. We believe it is important to set the record straight:

- ***Digital trade is critical to firms of all sizes and sectors.*** USTR has aligned itself with fringe voices advocating that strong digital trade rules only benefit “big tech.” This is a fallacy. These rules advance America’s ability to ensure firms of all sizes and across all sectors, including business services, manufacturing, transportation, arts and entertainment, and agriculture, can compete globally. They protect American digitally enabled exports from discriminatory treatment and prevent U.S. cutting edge technologies from being stolen in foreign markets. Additionally, small- and medium-sized businesses stand to benefit most from strong digital trade rules. Unlike larger companies, smaller businesses with fewer products, service lines, and resources usually cannot carry the increased costs of data localization, forced technology transfers, and arbitrary application of regulations.
- ***Strong digital trade rules do not stand in the way of agencies that regulate the U.S. economy or impede Congress from passing laws.*** USTR has sought to justify its WTO decision by stating that the United States needs “policy

² [LaHood, DelBene Lead Effort to Reverse Biden Administration’s Abandonment of Key Bipartisan Digital Trade Proposals | News | Congressman Darin LaHood \(house.gov\)](#)

³ [U.S. Chamber and Other Associations Letter to NSC/NEC on Digital Trade | U.S. Chamber of Commerce \(uschamber.com\)](#)

⁴ [Small-Business-Ltr-re-USTR-Digital-Trade-3-Nov-2023-w-cosigners-1.pdf \(actonline.org\)](#)

⁵ [Coalition Letter Urging Biden Administration to Protect Free and Open Internet | Freedom House](#)

space” for new laws on privacy and other issues before it can negotiate on digital trade. This is not accurate. The Biden administration, like its predecessors, engages internationally on digital issues separate from domestic legislation. In fact, G7 Trade Ministers released a statement within weeks of USTR’s WTO announcement reaffirming the importance of facilitating data flows, support for open digital markets, and opposition to digital protectionism.⁶

Further, strong digital trade rules do not impede Congress from legislating. In fact, other countries that have agreed to the same or similar data transfer norms – including Australia, Canada, Japan, Singapore, and the UK – have also adopted high standard domestic privacy laws. Moreover, cross-border data rules have been drafted to specifically encourage domestic privacy laws, with many digital trade chapters now requiring countries to adopt frameworks to promote personal data privacy.

- ***U.S. leadership on digital trade has never been a partisan issue.*** For decades, Democratic and Republican administrations alike have supported international trade rules that promote cross-border access to data. These rules were negotiated at Congress’ direction, have been formally certified by multiple U.S. presidents as fully consistent with U.S. law, and have been repeatedly approved in U.S. legislation supported by bipartisan majorities of both the House and Senate. USTR’s digital trade negotiating objectives were established in the Bipartisan Congressional Trade Priorities and Accountability Act and more recently approved by large bipartisan majorities when Congress approved the United States-Mexico-Canada Agreement (on votes of 385–41 in the House and 89–10 in the Senate) in 2019.

* * *

Our concerns regarding USTR’s retreat from digital trade protections underscore the critical need for a return to policies that safeguard cross-border data flows and prevent discrimination against American companies. The bipartisan calls from Congress illustrate the broad consensus that transcends party lines. As we continue to navigate the complexities of the digital economy, we urge the USTR to reassert America’s leadership in advancing a digital trade agenda that serves the interests of our nation’s economy, companies, and workers.

Sincerely,

⁶ MOFA G7 Trade Ministers’ Statement: [100573173.pdf \(mofa.go.jp\)](https://www.mofa.go.jp/press/2020/04/100573173.pdf).

ACT | The App Association
AdvaMed
American Apparel & Footwear Association
American Automotive Policy Council (AAPC)
American Council of Life Insurers
American Property Casualty Insurance Association (APCIA)
Autos Drive America
Biotechnology Innovation Organization (BIO)
BSA | The Software Alliance
Chamber of Progress
Coalition of Services Industries (CSI)
Computer & Communications Industry Association (CCIA)
Consumer Technology Association (CTA)
E-Merchants Trade Council
Enterprise Cloud Coalition
Entertainment Software Association
Express Association of America (EAA)
Farmers for Free Trade
Global Business Alliance
Global Data Alliance
Global Innovation Forum
Independent Film & Television Alliance
Information Technology Industry Council (ITI)
MEMA, The Vehicle Suppliers Association
National Association of Manufacturers (NAM)
National Foreign Trade Council (NFTC)
National Pork Producers Council (NPPC)
National Retail Federation (NRF)
NetChoice
Payments Leadership Council
Pharmaceutical Research and Manufacturers of America (PhRMA)
Reinsurance Association of America
Retail Industry Leaders Association (RILA)
Semiconductor Industry Association (SIA)
Small Business and Entrepreneurship Council
Software & Information Industry Association (SIIA)
TechNet
Technology Trade Regulation Alliance (TTRA)
Telecommunications Industry Association (TIA)
U.S. Chamber of Commerce
U.S. Council for International Business

cc: The Honorable Katherine Tai, United States Trade Representative
The Honorable Gina Raimondo, Secretary of Commerce
The Honorable Antony Blinken, Secretary of State
The Honorable Janet Yellen, Secretary of the Treasury
Members of the Senate Committee on Finance
Members of the House Committee on Ways and Means
The Honorable Chuck Schumer, Majority Leader, United States Senate
The Honorable Mitch McConnell, Republican Leader, United States Senate
The Honorable Mike Johnson, Speaker of the U.S. House of Representatives
The Honorable Hakeem Jeffries, Democratic Leader, U.S. House of
Representatives