

# EXHIBIT 60



June 10, 2022

Mr. Peter Harrell  
Executive Office of the President  
1650 Pennsylvania Ave NW  
Washington, DC 20006

*Re: US Support for Renewal of the WTO E-Commerce Moratorium*

The undersigned associations write to you in relation to a matter of direct import to the economic and strategic interests of the United States – namely the imminent potential lapse of a global multilateral agreement not to impose customs duties on content or data moving across transnational ICT networks. We urge the United States to provide strong and unequivocal support for the renewal of the World Trade Organization (“WTO”) Moratorium on Customs Duties on Electronic Transmissions (“E-commerce Moratorium” or “the Moratorium”) at the Twelfth WTO Ministerial Conference (“MC12”).

Non-renewal of the Moratorium would represent a major setback – both for the WTO and the United States – at a time when many are calling for an effective response to inflation, supply chain challenges, and the persistent economic impact of the COVID-19 pandemic. We urge the United States to use all available tools and negotiating options to ensure that MC12 produces a balanced negotiating outcome, including renewal of the Moratorium, that protects the interests of all Americans.

As discussed below, the failure to renew the Moratorium would have adverse implications for:

- (1) American workers;
- (2) US price inflation;
- (3) US semiconductor manufacturing and other critical supply chains;
- (4) the Indo-Pacific Economic Framework; and
- (5) Global tax reform.

We address each of these issues in turn below.

**1. Implications for US jobs in export-dependent sectors – including 6 million workers employed by American small businesses that rely on exports**

Ministries of Trade, Finance, and other government authorities in several large US export markets – including India, Indonesia, and South Africa – are seeking to end the Moratorium with a view to introducing customs duties and restrictions on a wide array of data and digital tools that are transmitted across electronic networks and that are used across all industry sectors.<sup>1</sup>

These new duties and restrictions would be highly disruptive: they would inject additional costs, burdensome customs procedures, and unpredictability that could cut off US industry from barrier-free access to large and growing foreign markets. These restrictions would directly harm American workers in knowledge- and digitally-intensive export sectors, including semiconductors; medical devices; robotics and advanced machine tools; software and digital tools; film, music, entertainment software, and publishing; automotive, aerospace, and other digitally connected devices that depend upon the ability to transmit data

via satellite or IT networks. They would also impact workers across other sectors of the US economy, including agriculture and other manufacturing companies in a range of sectors that rely on the constant flow of research, design, and process data and software to enable their production flows and supply chains for critical products. More broadly, they would impede the ability to use digital tools necessary to the sale, financing, and movement of goods across borders.

The pressure on American jobs and wages could be considerable.<sup>2</sup> Most at risk are American workers employed by small businesses that would be unable to absorb the additional costs imposed by the measures proposed by India, Indonesia, South Africa, and other countries. Accounting for 95% of all US exporting enterprises, 25% of all US exports, and over 6 million jobs, American small businesses and their workers are particularly vulnerable to trade barriers resulting from the expiration of the Moratorium.

## **2. Implications for price inflation**

Allowing the Moratorium to lapse would result in increased inflationary pressures at a time that American citizens are struggling with levels of price inflation unseen in more than a generation. Allowing for the imposition of customs duties, at unknown *ad valorem* percentage rates and on entirely new categories of digital inputs and services, would aggravate this situation.

The risks of increased price inflation are exacerbated for at least two reasons: (1) The nature and scope of the increased duties under consideration, and (2) the countries actively considering this course of action. As regards nature and scope, Indonesia's Regulation No. 17, for example, would impose broad-based customs restrictions on data flows and a wide array of digital tools that are critical to companies across business sectors. Indeed, 75 percent of the value of data flows is in sectors like agriculture, logistics, and manufacturing. This would mean that the application of customs duties to such data flows would be magnified across industries. As regards the countries at issue, several are major trading partners, and India, specifically, currently enjoys a disproportionately large share of global data processing activity, serving many global customers. Inflationary pressures created by increased levels of Indian tariffs on data flows and digital tools would likely radiate throughout the global economy, affecting businesses in many other countries that rely on Indian digital service providers. Other countries and industries would likely face short- or medium-term costs, at least until they were able to diversify away from Indian sources of supply.

Continuation of the Moratorium should be a core part of any WTO package to combat inflation, while supporting recovery from the economic effects of the COVID-19 pandemic.

## **3. Implications for efforts to address the current semiconductor shortage and strengthen the resilience of the US semiconductor supply chains**

The duty-free movement of electronic transmissions within and across borders has been essential in making the US semiconductor industry strong and innovative over the past several decades. Semiconductors are one of the most complex products to develop, design, and manufacture. The most advanced chips have more than 50 billion transistors etched onto a device smaller than the size of a fingernail. The task of chip design at this level of complexity can be massive in scope, requiring large R&D and design teams consisting of hundreds of highly skilled engineers spread across the globe to collaborate for years before a design is ready for production. This complex R&D and design process involves an innumerable number of cross-border data transfers, which are foundational to the more than \$4 trillion global IT spending every year.

If the Moratorium were to expire, the cross-border movement of semiconductor design, software, chemical formulations, manufacturing information and other development data could potentially face tariffs and customs restrictions across the globe, increasing costs for companies and consumers and further straining the current chip shortage and semiconductor supply chain challenges.<sup>3</sup> Semiconductor R&D activities involving designs, computing blocks, circuit layouts and software could also be severely impacted – even if that technical information were to be transferred intra-company. This is especially problematic given that India, one of the main opponents of renewing the Moratorium, is home to a significant share of the world's semiconductor design workforce.

As the Biden administration and Congress seek to boost US manufacturing competitiveness under USICA and the America COMPETES Act, it is important to remember that the US semiconductor design and manufacturing sectors – like other advanced manufacturing sectors – can only be successful and competitive in an environment that permits the protected and seamless movement of R&D, design, engineering and manufacturing data without being impeded by customs restrictions and other intrusions into a secure and resilient semiconductor supply chain.

#### **4. Implications for the Indo-Pacific Economic Framework**

Expiration of the Moratorium could undermine the Indo-Pacific Economic Framework (IPEF) negotiations. For the connected economy negotiations, key priorities include cross-border data transfers, a ban on customs duties on network transmissions, opportunities for SMEs, and implementation of the WTO Trade Facilitation Agreement. Unfortunately, those priorities are broadly irreconcilable with the new customs restrictions on data transfers that India and Indonesia (both IPEF participants) plan to introduce if the Moratorium expires. An IPEF outcome without binding trade commitments on cross-border data, customs duties, and trade facilitation would likely be regarded by many as a failure. For other pillars, the unprecedented imposition by some IPEF participants of customs duties on network transmissions could also have negative impacts on planned negotiations seeking to avoid unnecessary supply chain disruptions or to promote greater alignment in taxation.

#### **5. Implications for the OECD/G20 Inclusive Framework**

After many years of negotiations, in late 2021, 137 governments endorsed the G20/OECD Inclusive Framework's [Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy](#).<sup>4</sup> While the final text is still developing, proponents of the agreement argue that this globally negotiated outcome promises more uniform treatment, and a global minimum rate of revenue collection, for a wide range of cross-border digital business activity. As part of this broad-based agreement, Ministries of Finance and other government authorities in over a dozen countries agreed to remove unilateral digital service taxes and other measures. This agreement is now put at risk by some of the same governmental authorities' efforts to undermine the Moratorium.

Allowing the Moratorium to end could destabilize this hard-won negotiating outcome and inject new uncertainty and instability into the tariff and tax treatment of cross-border digital business activity – effectively replacing unilateral digital service taxes with unilateral digital customs duties that apply to an equally broad (or broader) scope of cross-border digital activity. For example, the Indonesian Ministry of Finance's General Regulation 17 would effectively extract revenue from many of the same – but some additional – cross-border services as were covered in the types of digital services tax to be withdrawn as part of Pillar One's implementation.

India, South Africa, and other economies have indicated an intention to follow Indonesia's lead in adopting frameworks to now use tariffs to extract revenue from data flows, digital services, and other transmissions – all of which would result in destabilization similar to that which the Inclusive Framework is actively working to alleviate.

\* \* \*

For all of the foregoing reasons, we strongly urge the United States to use all available tools and negotiating options to ensure continuation of the WTO Moratorium on Customs Duties on Electronic Transmissions at MC12, and thereafter to work towards a WTO agreement that permanently prohibits countries from subjecting cross-border data and digital tools to customs duties and restrictions.



Sincerely yours,

ACT | The App Association  
BSA | The Software Alliance  
Coalition of Services Industries  
Computing Technology Industry Association  
Consumer Technology Association  
Entertainment Software Association  
Global Data Alliance  
Independent Film & Television Alliance  
Information Technology Industry Council  
Motion Picture Association  
National Association of Manufacturers  
National Foreign Trade Council  
Recording Industry Association of America  
Semiconductor Industry Association  
Small Business and Entrepreneurship Council  
Telecommunications Industry Association  
US Council for International Business  
US Chamber of Commerce

Att.: Global Industry Statement re E-Commerce Moratorium

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<sup>1</sup> For example, Indonesia has introduced Regulation No.17/PMK.010/2018 (Regulation 17) purports to cover a wide array of categories, classified in Indonesia's tariff schedule between subheadings 9901.10.00 to subheading 9901.90.00, including "multimedia (audio, video or audiovisual)"; operating system software; application software; "support or driver data, including design for machinery system"; and a broad catch-all category covering "other software and digital products."

<sup>2</sup> For example, the US motion picture and television industry supports 2.5 million American jobs and \$17.3 billion in exports. The US semiconductor industry supports nearly 2 million American jobs and \$46 billion in exports. Another export-dependent sector is software, which supports 16 million American jobs, 12 million of which are outside of the technology sector.

<sup>3</sup> The application of customs requirements – in the absence of the Moratorium – to electronic transmissions in the semiconductor sector is not hypothetical: Indonesia's Reg. No. 17 would impose customs duties and requirements on various types of "designs" (e.g., for "machinery systems"), "support data," "support data," "driver data," and various types of software and digital tools. See *infra*, note 1.

<sup>4</sup> See Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, OECD/G20 Base Erosion and Profit Shifting Project (Oct. 8, 2021). <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf>

This statement was agreed to 137 countries participating in the OECD/G20 Inclusive Framework, including India and South Africa. For a full list of participating countries, see <https://www.oecd.org/tax/beps/oecd-g20-inclusive-framework-members-joining-statement-on-two-pillar-solution-to-address-tax-challenges-arising-from-digitalisation-october-2021.pdf>

# EXHIBIT 61



November 19, 2021

The Honorable Katherine Tai  
United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

**Re: WTO Moratorium on Customs Duties on Electronic Transmissions**

Dear Ambassador Tai,

The undersigned associations wish to endorse a strong US position in support of the renewal of the World Trade Organization (WTO) Moratorium on Customs Duties on Electronic Transmissions at the upcoming Twelfth WTO Ministerial Conference. Expiration of the Moratorium would have significant US economic and foreign policy implications.

A failure to renew the Moratorium would have implications for:

- (1) Critical US supply chains;
- (2) US efforts to oppose digital authoritarianism and malicious cyber activities;
- (3) US workers in export-dependent sectors;
- (4) US foreign assistance programs and UN Sustainable Development Goals (SDGs);
- (5) G20/OECD Inclusive Framework global tax and revenue reforms; and
- (5) The institutional viability of the WTO.

We address each of these issues in turn below.

**1. Implications for critical US supply chains**

Continuation of the Moratorium is critical to supply chain resilience for both manufacturing and services industries, particularly as the global economy recovers from COVID-19. Manufacturers, both large and small, across a range of industrial sectors rely on the constant flow of research, design, and process data and software to enable their production flows and supply chains for critical products.

Maintaining the Moratorium is essential for US critical supply chains, as it helps mitigate significant near-term uncertainty for global production networks and supply chains that are already under strain, particularly in the semiconductor industry. Supply chain resilience would suffer with the creation and imposition of a completely new class of customs duties and related restrictions on the transmission over global IT networks of knowledge, technical information, data, and digital tools. Those impacts would radiate across an intricate electronics supply chain network that involves data centers, the IoT ecosystem, and telecom infrastructure. This would be particularly disruptive to the resilience of the semiconductor supply chain,

which relies on the seamless and unimpeded flow of semiconductor research, designs, software, chemical formulations, manufacturing information, and other data across multiple borders daily.

## **2. Implications for US efforts to oppose digital authoritarianism and malicious cyber activities**

In discussing the development of new tools to impose customs oversight over electronic transmissions “at the border,” some WTO and World Customs Organization members have expressed an intention to monitor and intercept Internet traffic via telecommunications networks. There is a real risk that increased foreign government surveillance and decryption of private communications online in the name of trade enforcement could be redeployed for digitally authoritarian purposes, undermining data privacy and compromising security and integrity on the Internet. In this way, the end of the WTO Moratorium risks providing new tools to governments that could be used to undermine important civic and economic freedoms as well as cybersecurity priorities.

## **3. Implications for US workers in export-dependent sectors**

Some countries have already proposed customs duties on electronic transmissions and/or have introduced changes to their tariff schedules that would affect US exports of data and digital tools in a wide range of sectors, as well as US exports of connected aircraft, machinery, and other manufactures that depend upon the ability to transmit data via satellite or IT networks.<sup>1</sup> If implemented broadly, such measures could have significant implications for American workers in knowledge- and digitally-intensive export sectors, including semiconductors and medical devices; enterprise software, robotics, and advanced machine tools; film, music, and publishing; and automotive, aerospace, and other connected equipment exports.

The pressure on American jobs and wages could be considerable. For example, US motion picture and television industry supports 2.5 million American jobs and \$17.3 billion in exports. The US semiconductor industry supports nearly 2 million American jobs and \$49 billion in exports. Another export-dependent sector is software, which supports 16 million American jobs and \$80 billion in US-based R&D expenditures. In each of these sectors, and many other sectors that would be affected by the Moratorium’s end, the United States enjoys a sizable trade surplus and American workers are compensated at levels significantly exceeding the average national wage.

If foreign countries impose customs restrictions across these US export sectors, the disruption to trade will be paid for in lost American jobs, innovation, and economic opportunity.

## **4. Implications for US foreign assistance programs and policies and for the UN Sustainable Development Goals**

As the US Agency for International Development has stated, “[d]igital ecosystems ... hold immense potential to help people live freer, healthier, more prosperous lives. These ecosystems can help drive economic empowerment and financial inclusion, ... and make development and humanitarian assistance more efficient and effective.”<sup>2</sup> Similarly, UN SDG No. 5.b sets a goal of “enhance[ing] the use of enabling technology, in particular information and communications technology, to promote the empowerment of women,” while other SDGs also promote cross-border technology transfer and digital transformation. As detailed in reports by the United Nations, the World Bank, and other development banks, the cross-border exchange of knowledge, technical know-how, and scientific and commercial information across global IT networks, as well as access to digital tools and global market opportunities, are particularly effective at promoting inclusive economic opportunity, expanding education, and raising global living standards.

Developing country imposition of customs restrictions that interrupt those countries’ own cross-border access to knowledge and digital tools would increase digital fragmentation, jeopardizing these benefits, undermining global development objectives,<sup>3</sup> and slowing the fulfilment of key SDGs. As UNCTAD has explained, such fragmentation “reduces market opportunities for domestic MSMEs to reach worldwide markets, [and] ... reduces opportunities for digital innovation, including various missed opportunities for inclusive development that can be facilitated by engaging in data-sharing through strong international cooperation. ... [M]ost small, developing economies will lose opportunities for raising their digital competitiveness.”<sup>4</sup>

Furthermore, as the OECD has explained, “the revenue implications of the Moratorium are likely to be relatively small and its discontinuation would cause wider economic losses.”<sup>5</sup> In fact, a recent academic study found that, “estimates of the [customs] revenues forgone by India, Indonesia, South Africa, and Sri Lanka amount to less than 0.2% of each of these nations’ total revenues obtained from ... non-trade-related sources of government tax revenue. This means that for these four nations the domestic tax take is at least 566 times larger than...estimates of forgone customs revenue—calling into question whether the Moratorium has really held back the supply of needed public goods in these jurisdictions.”<sup>6</sup>

Other economic reports predict that, if the Moratorium ends, the global economy will face greater GDP losses due to potential implementation of retaliatory duties.<sup>7</sup> Countries that impose such duties also face longer-term harms due to a less predictable investment climate, reduced foreign direct investment, and reduced access to knowledge, information, and digital tools needed by local students, patients, MSMEs, and other domestic constituents.

## **5. Implications for the G20/OECD Inclusive Framework global tax and revenue reforms**

Ending the Moratorium would also create significant disruption for businesses at a time when the 140 governments participating in the OECD/G20 Inclusive Framework are working to finalize their approach to addressing the tax challenges arising from the digitalization of the global economy.

Failing to renew the Moratorium would be particularly damaging, given that the G20 leaders have just [formally endorsed](#) the G20/OECD Inclusive Framework’s [Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy](#).<sup>8</sup> Whether or not the end of the Moratorium would have the collateral impact of destabilizing the G20/OECD Inclusive Framework process, it would be extremely disruptive for the WTO membership to abandon, at this juncture, a foundational global agreement regarding the customs revenue treatment of digital transmissions.

## **6. Implications for the WTO’s institutional viability**

Expiration of the Moratorium would be a substantial setback for the WTO, representing an unprecedented termination of a foundational WTO agreement that has been in place since 1998. All WTO members have a stake in the organization’s continued institutional credibility and resilience, as the global economy undergoes an unprecedented digital transformation and as the COVID-19 pandemic continues to upend the global economy and disrupt worldwide supply chains. An untimely end to the Moratorium would significantly undermine the credibility of the WTO.

For all of the foregoing reasons, we strongly urge the United States to work to ensure continuation of the WTO Moratorium on Customs Duties on Electronic Transmissions at MC12.

Sincerely yours,

1. Association of American Publishers
2. BSA | The Software Alliance
3. Coalition of Services Industries
4. CompTIA
5. Independent Film & Television Alliance
6. Information Technology Industry Council
7. Motion Picture Association
8. National Association of Manufacturers
9. National Foreign Trade Council
10. Semiconductor Industry Association
11. US Chamber of Commerce
12. US Council for International Business

CC:

Kent Shigetomi, Assistant (acting) USTR for WTO & Multilateral Affairs

Kenneth Schagrin, Assistant (acting) USTR for Services & Investment

David Bisbee, Deputy Chief of Mission, Geneva

Maria Pagan, Deputy General Counsel

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<sup>1</sup> Indonesia Regulation No.17/PMK.010/2018 (Regulation 17) purports to cover a wide array of categories, classified in Indonesia's tariff schedule between subheadings 9901.10.00 to subheading 9901.90.00, including "multimedia (audio, video or audiovisual)"; operating system software; application software; "support or driver data, including design for machinery system"; and a broad catch-all category covering "other software and digital products."

<sup>2</sup> USAID Digital Strategy, p. 3, [https://www.usaid.gov/sites/default/files/documents/USAID\\_Digital\\_Strategy.pdf.pdf](https://www.usaid.gov/sites/default/files/documents/USAID_Digital_Strategy.pdf.pdf)

<sup>3</sup> As USAID has stated, "[m]any governments choose to adopt protectionist digital trade policies (e.g., data-localization, forced transfer of technology, the use of standards that favor domestic industry...). These policies, when combined with inefficient cross-border trade processes ..., impair trade that contributes to economic growth." See USAID Digital Strategy, at p. 19, [https://www.usaid.gov/sites/default/files/documents/USAID\\_Digital\\_Strategy.pdf.pdf](https://www.usaid.gov/sites/default/files/documents/USAID_Digital_Strategy.pdf.pdf)

<sup>4</sup> UNCTAD, *Digital Economy Report* (2021), at: [https://unctad.org/system/files/official-document/der2021\\_en.pdf](https://unctad.org/system/files/official-document/der2021_en.pdf)

<sup>5</sup> OECD, *Electronic Transmissions and International Trade – Shedding New Light on the Moratorium Debate*, TAD/TC/WP(2019)19/FINAL (2019), at: [https://one.oecd.org/document/TAD/TC/WP\(2019\)19/FINAL/en/pdf](https://one.oecd.org/document/TAD/TC/WP(2019)19/FINAL/en/pdf)

<sup>6</sup> University of St. Gallen, *Is the WTO Moratorium on customs duties on e-commerce depriving developing countries of much needed revenue?* (Nov. 2021)

<sup>7</sup> ECIPE, *The Economic Losses from Ending the WTO Moratorium on Electronic Transmissions* (2019), at: <https://ecipe.org/publications/moratorium/>

<sup>8</sup> See Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, OECD/G20 Base Erosion and Profit Shifting Project (Oct. 8, 2021), <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf>

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# EXHIBIT 62



# THE WTO MORATORIUM ON CUSTOMS DUTIES ON ELECTRONIC TRANSMISSIONS: STATISTICAL SUMMARY

## IMPLICATIONS FOR DIGITAL DEVELOPMENT

"The Moratorium's expiration would have wide-ranging implications for MSMEs (Micro-, Small-, and Medium-Sized Enterprises)... There is an urgent need for greater empirical assessment of the potential impact of lifting the Moratorium on MSMEs."

### Commercial Services Export Growth (since 2001)

<b>+300%</b> Growth in Least Developed Economies	<b>+250%</b> Growth in Other Developing Countries
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**67%:** MSME share of total cross-border services exports (2021)

Sources: [The World Bank and the WTO, Trade in Services and Development \(2023\)](#); [New Markets Lab, The MSME Moratorium \(2024\)](#)

## IMPLICATIONS FOR DIGITAL INCLUSION

"Applying tariffs on electronic transmissions is likely to harm efforts to make trade more inclusive, whether it be low-income country exports or the exports of smaller or women-owned firms."

<b>6 in 10</b> employed women now work in the services sector, including digital services.	Most rapid growth in low-income economies: <b>58% increase</b> in female employment in services (since 2001).
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"The E-commerce Moratorium ... has been instrumental in the adoption of digital services by women-led or owned businesses."

Sources: [The World Bank and the WTO, Trade in Services and Development \(2023\)](#); [Trade Expertettes, The E-Commerce Moratorium & Women \(2024\)](#); [OECD, Understanding the potential scope, definition and impact of the WTO e-commerce Moratorium \(2023\)](#)

## ECONOMIC IMPACT ANALYSIS—CONTINUATION OF THE MORATORIUM

Continuation of the Moratorium enhances predictable cross-border access to digital tools and knowledge that are critical to economic opportunity. With every 1% increase in use of digital imports by MSMEs:

	India	Indonesia	South Africa
MSME Employment Rises by:	<b>+0.8%</b>	<b>+0.42%</b>	<b>+0.18%</b>
MSME Economic Output:	<b>+0.2%</b>	<b>+0.96%</b>	<b>+0.47%</b>

Please see links for additional details re methodology and definitions.

Sources: [The Impact of Cross-Border Digital Transmissions on the MSME Sector in India and the Benefits of the WTO E-Commerce Moratorium \(igpp.in\)](#); [Value-of-Crossborder-Digital-Transmissions-to-MSMEs-in-Indonesia.pdf \(infisum.com\)](#); [MSME-WTOMoratorium-SouthAfrica.pdf \(infisum.com\)](#)

## ECONOMIC IMPACT ANALYSIS—END OF THE MORATORIUM

If certain economies levy customs duties on electronic transmissions, and other economies retaliate in kind, the impacts could be severe. According to one analysis, impacts could include:

### GDP Losses

India	Indonesia	South Africa
<b>-\$1.9 billion</b>	<b>-\$164 million</b>	<b>-\$25 million</b>

### Job Losses

India	Indonesia	South Africa
<b>-1.3 million jobs</b>	<b>-66,000 jobs</b>	<b>-10,000 jobs</b>

Source: [The Economic Losses from Ending the WTO Moratorium on Electronic Transmissions | \(ecipe.org\)](#)



## VALUE-ADDED TAXES V. CUSTOMS DUTIES

VAT / GST	CUSTOMS DUTIES ON ELECTRONIC TRANSMISSIONS
<b>Higher revenue potential:</b> Potential revenue from VAT is 150% higher than from customs duties on electronic transmissions.	<b>Low revenue potential:</b> Between 0.01% and 0.33% of overall government revenue for developing economies
<b>Less distortive:</b> Taxes on domestic consumption benefit from a broader base of economic activity, resulting in fewer distortions to production and consumption decisions, lower revenue instability, and greater gains in revenue generation.	<b>More distortive:</b> Customs duties on electronic transmissions would negatively affect those who can benefit the most from digital delivery or from the use of digital tools to trade, namely MSMEs and women-owned traders.
<b>Legal predictability:</b> The adoption of VAT systems has grown significantly in the last 30 years. As of 2022, 174 economies have implemented such taxes, and more than 120 jurisdictions are adapting or considering adapting their VAT administration to address the challenges posed by digitalization.	<b>Legal uncertainty:</b> No country has successfully implemented a framework to collect and enforce customs duties on transient electronic transmissions.
<b>Adapted for the digital environment:</b> VAT administration has been adapted successfully to the challenges of digitalization, across economies in all income groups, as authorities in many economies have sought to secure their domestic tax bases.	<b>Not adapted for the digital environment:</b> Customs duty frameworks are not easily administrable to ephemeral electronic transmissions. This implies significant legal risk for governments and traders alike. High administrative and technical costs will reduce the net revenue collected.
<b>Fewer unintended impacts for domestic producers:</b> The VAT is widely seen as an effective and efficient way to raise revenue, especially if it has a broad base comprising all final consumption and a single standard rate.	<b>More unintended impacts for domestic producers:</b> Tariffs raise the cost of inputs for production and their cost falls largely on domestic firms and consumers. Such effects can create significant distortions, biasing business decisions towards other intermediate inputs.
<b>Fewer legal risks:</b> Moratorium does not affect governments' capacity to generate revenue through non-discriminatory consumption taxes, such as VAT.	<b>More legal risks.</b> Commitments in the GATS, RTAs, and bilateral tax treaties may prohibit or restrict the imposition of customs duties. Tariff bindings and obligations under the GATT and the Valuation and ILP Agreements impose further conditions.

Source: [IMF, OECD, UN, World Bank, World Trade Organization, Digital Trade for Development \(2023\)](#); [IMF, Fiscal Revenue Mobilization and Digitally Traded Products: Taxing at the Border or Behind It? \(2023\)](#)



### FOCUS ON INDIA

**India Benefits Greatly From the Moratorium. India Is Also Uniquely Vulnerable to its Expiration.**

"India has experienced a digital boom at an impressive scale ... that has ushered in corresponding economic benefits for the economy and people..."

<b>+400%</b> Growth in India's share of global digital exports (1995 to 2015)	<b>60%</b> Share of all Indian services exports that are digital (2021)	<b>50%</b> Indian MSME Share of all Indian exports (2021)	<b>50%</b> Approximate share of India's digital exports bound for the United States
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"The question for India is not "if" but "how" and "by how much" its growth engine—the MSME sector—can take advantage of the potential benefits of cross-border digital transmissions."

A collapse of the WTO Moratorium could significantly undermine these potential benefits.

Source: [The Impact of Cross-Border Digital Transmissions on the MSME Sector in India and the Benefits of the WTO E-Commerce Moratorium \(igpp.in\)](#)

# EXHIBIT 63

## **Recommendations for WTO E-Commerce Moratorium**

Cross-border access to knowledge, information, and digital tools supports [global economic development and inclusion](#). This global exchange engenders international communication and economic opportunity, creating jobs, raising living standards, and supporting communities. The WTO Moratorium on Customs Duties on Electronic Transmissions (“Moratorium”) has played a major role in enabling these outcomes.

### **Recommendation**

We urge all WTO Members to vote in favor of an extension of the Moratorium.

### **Background**

Since 1998, WTO Members have agreed not to impose customs duties on electronic transmissions, under an agreement that has been renewed biannually. The end of this agreement could ultimately result in a completely new class of customs duties and restrictions on the transmission over IT networks of knowledge, technical information, data, and digital tools, as well as music, films, written materials, and software.

#### *What Would the End of the Moratorium Mean?*

A decision to impose customs duties on electronic transmissions is a decision to limit one’s own access to knowledge, information, and digital tools, such as:

- Educational resources needed by students and researchers
- Productivity-enhancing technology
- Scientific, research, and other publications
- Manufacturing data, blueprints, and other information
- Cultural products, including film, music, and books

The harms of such self-imposed limits on a country’s competitiveness, innovative capacity, and ability to create economic opportunity are predictable and significant.

#### *What are the Revenue Implications of the Moratorium?*

As explained by the [OECD](#), any foregone customs revenue that could be attributed to the Moratorium is small, on average equal to 0.1% of overall government revenue. In most cases, Value Added Taxes (VAT) or Goods & Services Taxes (GST) applied on digital services imports would completely offset potential fiscal revenue effects of the Moratorium. The [International Monetary Fund](#) (IMF) has found that potential revenue from VAT/GST is 150% higher than from customs duties.

#### *How Would the Imposition of Customs Duties Affect Economies that Adopt Such Duties?*

As outlined in the Statistical Summary accompanying this position paper, such economies may face reductions in GDP, investment, and jobs. According to the [OECD](#), “if countries were to apply existing tariffs on digitisable goods to digital services (which is where electronic transmissions are measured in existing trade statistics), imports and exports of low-income countries would fall by 32% and 2.5% respectively. For middle-income countries losses would be of 6% and 0.4%. In terms of trade effects, low-income countries would suffer most from lifting the Moratorium.”

“Tariffs on electronic transmissions would also reduce domestic competitiveness. Businesses have been adopting digital solutions, such as software or computer services (whether imported digitally or via physical carrier), often sourced from abroad, to enable their digital transformation. Increases in prices of such digital inputs would lead to reductions in competitiveness. This would not be the case for VAT/GST because these apply to final and not intermediate consumption. The impact of greater barriers on electronic transmissions is likely to be asymmetric, affecting SMEs most.”

# EXHIBIT 64

# Customs Duties on Software and Other Digital Exports – A Threat to Growth and Innovation

The United States and many other countries around the world have benefited from an unprecedented period of growth and innovation powered by the software-enabled digital economy and supported by the World Trade Organization (WTO) Moratorium on Customs Duties on Electronic Transmissions (Moratorium) – an agreement among WTO members not to impose customs duties on cross-border electronic transmissions.

Today, that growth and innovation is threatened as countries are considering terminating this agreement and imposing – for the first time ever – customs duties on software, music, film, and other digital products and services transmitted electronically over computer networks. Such duties jeopardize US jobs and exports.

US policymakers should encourage countries to vote in favor of an extension of the Moratorium and should resist efforts to negotiate these issues at the World Customs Organization (WCO), which lacks the mandate to set such duties.

## Why Does the WTO Moratorium Matter?

Customs duties on electronic transmissions would impact a wide range of US digital exports – potentially including subscription or streaming services for music, film, and publications; cloud and other remote software services; app updates and software security patches; data used in manufacturing plants; and a broad catch-all category of “other digital products.”

Some countries have even begun, or are considering, imposing customs duties and requirements on cross-border electronic transmissions. For example, in 2018, Indonesia issued Regulation No.17/PMK.010/2018 (Regulation

17), which amends the Indonesian Harmonized Tariff Schedule to add Chapter 99: “[s]oftware and other digital products transmitted electronically.” The measure has never been fully implemented, but if the Moratorium is terminated this could very well change.

If implemented around the world, measures imposing customs duties on electronic transmissions would have an immediate impact on the global economy – harming not only American digital exporters and workers, but also local industries, workers, and consumers in the implementing countries.

## The United States Stands to Lose Jobs and Exports Across Digital Industries if Countries Impose these Duties

Software contributes \$1 trillion to US Gross Domestic Product (GDP) and employs over 10 million Americans in jobs that pay more than two times the national average wage. Ending the Moratorium and imposing customs duties on electronic transmissions of software would jeopardize this economic prosperity. Additional impacts exist for American film, music, and other digital exports too.

Regulation 17 purports to cover a wide array of categories, classified in Indonesia’s tariff schedule between subheadings 9901.10.00 to subheading 9901.90.00, including “multimedia (audio, video or audiovisual)”; operating system software; application software; “support or driver data, including design for machinery system”; and a broad catch-all category covering “other software and digital products.”

## Countries Imposing Customs Duties Face the Greatest Economic Risks

Countries imposing these duties have the most to lose: Such duties put at risk those countries' global competitiveness, exports, jobs, and consumer welfare. For example, a country that levies such duties would increase its own industries' costs of accessing critical technologies and data, including productivity-enhancing software solutions; scientific, research, and other publications; and manufacturing data, blueprints, and other operational information.

Local industries need cross-border access to best-in-class software and data. Faced with higher software costs, local industries will become less competitive vis-à-vis their foreign competitors – threatening both domestic and export market sales. Furthermore, as customs duties would impose an unnecessary burden on local industries, they would also undermine those countries' attractiveness as a destination for investment and R&D.

Estimated trade impacts are striking. According to a study recently published by the European Centre for International Political Economy (ECIPE), gross domestic product (GDP) losses would exceed the value of customs duties collected by 160 times for Indonesia, 49 times for India, and over 25 times for South Africa, when the risk of retaliatory or corresponding duties imposed by other countries is taken in to account.<sup>1</sup>

## Countries Imposing Customs Duties Also Face Legal Risks

Countries imposing such duties on electronic transmissions would also create unnecessary legal risk for themselves. Some countries have discussed the imposition of duties on digital services provided via the cloud or remote access or the imposition of such duties exclusively on foreign enterprises. These scenarios raise serious questions regarding both differential treatment and the scope of WTO Member authority to impose tariffs on such services.

The nature of electronic transmissions, which often consist of data packets transiting multiple servers in multiple jurisdictions, makes country of origin determinations difficult – if not impossible. Additionally, for those seeking to use the WCO to negotiate these tariffs or to address related legal questions, it is important to recall that the WCO's mandate is limited to enhancing the effectiveness and efficiency of customs administrations – not tariff negotiations or determinations of the WTO consistency of such tariffs.

## Is There Another Way?

Discussions are underway among countries at the Organization for Economic Cooperation and Development (OECD) to reach a multilateral agreement to address the challenges to the international tax system posed by an increasingly digitized global economy. Any such internal taxes would need to be applied on a neutral and non-discriminatory basis, consistent with WTO and other international obligations.

## Conclusion

We respectfully ask the US government to encourage countries to vote in favor of an extension of the Moratorium and to resist efforts to improperly negotiate these issues at the WCO.

<sup>1</sup> Makiyama and Narayanan, The Economic Losses From Ending the WTO Moratorium on Electronic Transmissions (August 2019), available at: [https://ecipe.org/wp-content/uploads/2019/08/ECI\\_19\\_PolicyBrief\\_3\\_2019\\_LY04.pdf](https://ecipe.org/wp-content/uploads/2019/08/ECI_19_PolicyBrief_3_2019_LY04.pdf)

# EXHIBIT 65



# WTO E-Commerce Tariff Moratorium at 25

MALENA DAILEY  
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## INTRODUCTION

**Here's semi-mythical classical sage Lao Tzu, with some poetic advice to authorities who long to fix things. Sometimes they're not broken, and are best left as is:**

*“Those who would gain all under heaven by tampering with it — I have seen that they do not succeed. Those that tamper with it, harm it. Those that grab at it, lose it.”<sup>1</sup>*

**Prosaic modern economists occasionally echo him, with the unexciting but sometimes correct advice: “Don't just do something, stand there.”**

As the World Trade Organization (WTO) prepares for its 13th Ministerial Conference late in February, both the ancient sage and the modern wonks are offering very good (if also very modest) advice on the most modern of all technologies: the internet and the world's digital economy. If the WTO members take heed, they will help growth and development in lower-income countries, and simultaneously help the Biden administration achieve its goal of a more “inclusive” trading system that does more to create opportunities for the small and the less powerful “empowering small businesses to enter the market, grow, and compete.”<sup>2</sup>

## THE MORATORIUM AND THE DIGITAL ECONOMY 1989-2023

The WTO's 164 members have some significant calls to make this month, on an array of agenda topics ranging from fishery subsidies to agricultural stockpiling, intellectual property, and — not least — whether to extend their quarter-century-old pledge for “duty-free cyberspace.”

This policy, more technically if clunkily termed a “moratorium on application of tariffs to cross-border electronic transmissions,” represents a 25-year-old consensus — always temporary but regularly renewed at each WTO Ministerial



meeting – which helped to create and continues to underpin the modern global digital economy. If they renew it, no WTO member would need to change policy. Rather, they would simply continue to refrain from grabbing and tampering, while focusing their energy on issues in need of activist policy, from privacy protection to cybersecurity and action against disinformation. This commitment, simply by avoiding unintentional harm, would allow the digital economy to continue the natural growth that has helped hundreds of thousands of small businesses, and an uncountable but very large number of individuals, enter the global economy and find new ways to realize dreams and earn incomes.

The “moratorium,” however, is under some stress and criticism, mainly from left-populist NGOs and a few large developing-country governments. Their argument, fundamentally, is that the moratorium prevents taxation of data flows and therefore deprives developing-country governments of some tax revenue. But abandoning the moratorium would be a sad mistake, for global growth, for innovation, and for the governments who, in focusing on potential tax revenues (which, see below, are quite modest), are losing sight of their much larger growth and development opportunities. And it would be a sad mistake for the Biden administration’s hope for a more ‘inclusive’ trading system that offers more opportunity for small businesses and marginalized communities. Duty-free cyberspace remains critical to all these things, and the WTO members should enthusiastically endorse it once again.

By way of context, the WTO’s “moratorium” dates to the late 1990s – the era just after the launch of the World Wide Web – and originates in prescient American thinking about the Internet’s

potential future growth. Developed in that world of 150 million mostly American, European, and Japanese internet users, their hypotheses and projections look very good a quarter-century later. Here for example is that era’s U.S. Trade Representative, Charlene Barshefsky, explaining the early U.S. agenda in 1999:

**“Moving on from the foundational commitment we won from the WTO members in 1998 on the principle of “duty-free cyber-space” – that is, ensuring that electronic transmissions over the Internet remain free from tariffs – we are moving on to a longer-term work program. Its goals include ensuring that our trading partners avoid measures that unduly restrict development of electronic commerce; ensuring that WTO rules do not discriminate against new technologies and methods of trade; according to proper application of WTO rules to trade in digital products; and ensuring full protection of intellectual property rights on the Net. At the same time, we are working with individual trading partners on a series of related questions – for example, on privacy issues where we have worked closely with the European Union to create a model that both protects consumer privacy and prevents unnecessary barriers to transatlantic economic commerce.”<sup>3</sup>**

Her list of topics remains strikingly current. Some of the issues she cites still raise complex questions within the United States and are still politically contested both within countries and between large trading economies and technological powers. Technical debates over copyright continue to animate thinkers and lawyers in Silicon Valley and Hollywood, for

example; likewise, the U.S. and the European Union still argue over privacy while working to preserve cross-Atlantic data flows. But two things seem clear.

One, the “foundational” moratorium on tariffing electronic transmissions remains at the heart of digital policy. In pleasing contrast to many trade agreements, it is a short one-sentence commitment in plain English. (Or plain French, or plain Spanish — the other two official WTO languages.) The actual texts of its first 14-word iteration, and the slightly longer renewals in 2019 and 2022, read like this:

**“Members will continue their current practice of not imposing customs duties on electronic transmissions.”** (Original moratorium in 1998)

**“Members agree to maintain the current practice of not imposing customs duties on electronic transmissions until the 12th Ministerial Conference.”** (2019 renewal)

**“We agree to maintain the current practice of not imposing customs duties on electronic transmissions until MC13, which should ordinarily be held by 31 December 2023. Should MC13 be delayed beyond 31 March 2024, the moratorium will expire on that date unless Ministers or the General Council take a decision to extend.”** (2022 renewal)

And two, in practical terms it continues to work. Over this quarter-century of not grabbing and not tampering:

*World Internet Population Up by More Than 5 Billion:* As governments have “stood there,” the world’s Internet user population has grown from 150 million to 5.5 billion, or from about 4% to 60% of humanity.

*Over 1000-Fold Rise in Data Transmission:*

Transmissions of data over the Internet, estimated at 100 quadrillion bytes in 2000 by Cisco Systems in its fondly remembered “Visual Networking Index,” rose to 93 quintillion in 2017 — nearly 1,000-fold — before the Cisco statisticians gave up trying.

*U.S. Domestic E-Commerce Up by \$35 Trillion:*

The level of e-commerce within the United States has grown from the \$700 billion Ambassador. Barshefsky noted in her speech (as estimated by the Commerce Department) to \$36 trillion,<sup>4</sup> a figure now about 30% greater than the U.S.’ \$26 trillion GDP. Internationally no such figures exist, but the WTO’s most recent annual statistical summary, World Trade Statistics 2023, points to a single form of electronic commerce — digitally enabled trade in services — as the most dynamic element of 21st-century trade:

**“Looking back through the entire pandemic period, computer services were the most dynamic sector in services trade, with global exports in 2022 worth 44% more than their value in 2019. Digitally delivered services — that is, services provided via computer networks, from streaming games to remote consulting services — are an emerging source of growth, accounting for 54% of global services exports in 2022, and 12% of total global trade in goods and services.”<sup>5</sup>**

*New Industries Steadily Emerging:* The moratorium has facilitated this by keeping the cost of data transfer low, enabling not only growth, but also the transformation of existing industries, and the creation of entirely new ones: “influencers,” social media, telemedicine, and distance education; or, alternatively, digital services integrated in manufactured goods from cars and medical

technology to rice-planting machines and smartphones.

### SMALL BUSINESS AND THE ‘DEMOCRATIZATION’ OF TRADE

The picture of trading firms has also changed noticeably and to the benefit of the smaller and less advantaged: digital technologies lower the costs of entry to the trading world for everyone, but disproportionately for small firms and individuals.

In-depth reviews of the challenges American SMEs (small and medium-sized enterprises) face in international trade done by the U.S. International Trade Commission in 2010 suggest obvious reasons why these businesses (and by extension individual entrepreneurs) would, relatively speaking, find special value in low-cost Internet access. They report particular challenges, for example, in finding overseas customers, navigating required customs documentation, securing payment, and managing returns.<sup>6</sup> Large firms traditionally

open overseas offices that settle these problems; small ones, except in special cases such as family firms with relatives in two or more countries, can’t. The smaller ones, with new access to low-cost email, data analytics, and social media, should be able to use digital technologies to (at least in part) compensate for this disadvantage.

Is it true, then, that Internet access has brought more small firms into trade? One index is the Census Bureau’s annual count of American small exporting firms. It is a very partial list, since it covers only exporters of physical goods – an obviously substantial undercount, as one of digital technology’s most immediate effects is to ease the ability of entrepreneurial individuals and small service providers to find customers around the world. Nonetheless, even Census’ goods-only tally shows a net gain of 83,000 exporting firms – 50% growth – from 172,000 in the late 1990s to over 255,000 today (though this leveled out in the mid-2010s and has dropped a bit from an Obama-era peak of 281,000).

**TABLE 1: U.S. GOODS EXPORTERS BY SIZE AND SHARE OF TOTAL EXPORTS, 1998-2022**

FIRM TYPE	LARGE (>500 EMPLOYEES)	MEDIUM (100-499 EMPLOYEES)	SMALL (<100 EMPLOYEES)
<b>1998 TOTAL EXPORTERS</b>	7,087	25,716	172,385
<b>SHARE OF EXPORT VALUE</b>	70.4%	9.0%	20.6%
<b>2014 TOTAL EXPORTERS</b>	6,999	16,867	270,968
<b>SHARE OF EXPORT VALUE</b>	67.2%	11.4%	21.4%
<b>2022 TOTAL EXPORTERS</b>	3	73,416	255,951
<b>SHARE OF EXPORT VALUE</b>	14	53,954	22.4%

Source: U.S. Department of Commerce<sup>7</sup>

Regrettably, no such count of service exporters exists. But the Commerce Department’s Bureau of Economic Analysis has been estimating the

total value of “ICT and potentially ICT-enabled” services since 1999. Table 2 shows their growth.

**TABLE 2: ICT AND ICT-ENABLED SERVICES EXPORTS AND SHARE OF TOTAL U.S. EXPORTS**

FIRM TYPE	1999	2014	2022
<b>TOTAL U.S. GOODS/ SERVICES EXPORTS</b>	\$976.5bn	\$2,392.6bn	\$3,009.7bn
<b>ICT AND ICT-ENABLED</b>	\$142.1bn	\$499.2bn	\$719.3bn
<b>ICT/ICT/ENABLED SHARE</b>	14.6%	20.9%	23.9%

Source: U.S. Bureau of Economic Analysis, U.S. Trade in Services, Table 3.1

In sum, the BEA’s first calculation of this sort of export came in 1999 – six years after the launch of the World Wide Web, and one year after the WTO adopted its “moratorium” – and totaled \$142 billion. This was about a seventh (14.6%) of the U.S.’ roughly \$1 trillion in total exports that year. By 2022, ICT and ICT-enabled services exports had grown to \$719 billion, and 24% of a \$3.01 trillion total. So this group of Internet-reliant industries’ exports have grown about five-fold (in nominal terms), about 2.5 times faster than those of goods exporters and non-ICT-enabled services exporters.

Current data suggest that this is a continuing process rather than something near completion. Looking worldwide rather than strictly at the United States, exports of digitally deliverable services increased 16% in 2021 amid the COVID-19 pandemic<sup>8</sup> and continued to rise in 2022, reaching \$3.82 trillion globally. Additionally, these exports had an average growth rate of 8.1% annually between 2005 and 2022, easily

outpacing both goods (5.6%) and other service exports (4.2%).<sup>9</sup>

The U.S. remains the center of Internet science and industry, and easily the largest exporter of digitally enabled services. So the American delegation to the WTO’s Ministerial Conference has particular reason to take interest in the moratorium. What about the rest of the world?

America’s success has by no means come at the expense of other countries. India, for example, ranks second only to the E.U. as an exporter of “telecommunications, computer, and information services” at \$99 billion in 2022, and fifth in the world as an exporter of “other business services” (e.g. including India’s back-office services businesses in lines of work like accounting and call center operation) at \$120 billion,<sup>10</sup> and the U.S. Department of Commerce estimates the Indian e-commerce market at \$63 billion and rising by 14.5% in 2024.

More generally, though the United States and Europe still contribute the largest share of digitally delivered services exports, lower-income economies show enormous potential for growth. Between 2005 and 2017, “developed” economies’ share of digitally delivered services exports dropped from 85% to 77%, indicating a significantly faster rate of growth from developing economies.<sup>11</sup> Still, between 2015 and 2022, the WTO reported exports of digitally delivered services grew by an average of 6% in Latin America, 8% in Africa, and 10% in Asia.<sup>12</sup> These figures are expected to rise with the expansion of internet infrastructure in each region.

### **CASE STUDIES: INFLUENCERS, ARTISTS, AND PROFESSIONALS**

In sum, the marketplace for digital goods and services has been largely able to develop without being segmented by international regulations. The result is an interconnected e-commerce ecosystem, in which the costs of entry are much lower than they were in the pre-Internet world, and sellers can connect with customers without the restraint of geographic borders, opening new markets for individuals and small businesses.

As such, the advantages digital exports provide to small businesses in the United States can apply worldwide. By offering the chance to compete in a single global market, with low-priced access to consumers in all countries with Internet access, SMEs find the global customer base and the platform for entrepreneurship once available only to large firms able to make physical investments abroad. Nor are the beneficiaries only firms: social media, online distribution content channels, and freelance platforms all enable individuals to find online audiences and customers. Here are some examples:

#### **Example 1: Rise of the Digital Freelancers**

Examples of individual entrepreneurs, and platforms serving them, further illustrate the importance of globally connected e-commerce to the modern service economy. Online freelance platforms, for example, connect businesses and skilled freelancers with those looking for contracted employment. Gaining popularity with the rise of remote work, freelance sites most prominently advertise digitally delivered services such as programming, web design, social media marketing, and editing. The market for global freelance platforms was valued at \$4.39 billion in 2022,<sup>13</sup> and platforms such as Upwork, Fiverr, Toptal, and People Per Hour are among many aiming to support an international gig economy for digital services.

While many of these platforms host profiles for businesses of various sizes, other listings are individuals and enterprises with fewer than 10 employees. On Upwork, for example, individuals market their skills in an array of creative and professional services to customers around the world. Providing digitally delivered services to 180 countries, the San Francisco-based company has reported that its “talent community” earned a combined \$3.8 billion in 2022, up over 50% from \$2.3 billion in 2020.<sup>14</sup> The platform enables entrepreneurs in both the United States and globally to market their skills and earn a living through international clients. After the pandemic shift to remote work, an Upwork-commissioned study found that 59 million Americans performed freelance work between 2020 and 2021, contributing an estimated \$1.3 trillion to the U.S. economy.<sup>15</sup> Upwork claims to focus on writing, graphic design, web development, marketing, but lists a wide variety of small businesses for contracted work through their platform.

Though a quick glance through the site shows that there are countless examples of individuals connecting with clients through the platform, there are a handful that have capitalized on the large international audience to grow their small business. Indulge Media Graphic Design, for example, is a small graphic design firm based in California founded by Allison Horwath in 2005. A graduate of the University of California Santa Barbara, Allison offers design, branding, and marketing strategies. The business's profile claims over 9,000 hours worked between nearly 800 "gigs" completed through Upwork and, like many of their peers on the platform, reviews of their work come from an international client base.

Fiverr is another major player in the freelance market. Based in Israel, Fiverr hosts sellers from 160 countries, allowing SMEs in the United States and globally to export innovative digitally deliverable products. And, despite the market for digital exports being skewed to United States sellers up to this point, the many small businesses on the platform represent entrepreneurs based in a variety of countries.

The following examples are small businesses that are "top rated" on Fiverr's platform. Each also promotes their businesses via other social channels, including their own websites, LinkedIn pages, etc., and have managed to export their services internationally using the platform.

- **PARID Marketing** is an advertising agency based in Tirana, Albania founded and operated by Eduela Ferko, who has managed to garner international clientele for her social media management business. Eduela offers multiple tiers of service to her customers, with the lowest tier offering 200 USD for 1 post a day on 1 social platform for a month.

With nearly 500 5-star reviews including those from individuals in India, Pakistan, Germany, and the United States, Eduela has managed to export her services globally through the platform.

- **Michael Tjanaka** is a musician and composer based in Indonesia. An active seller on Fiverr since 2017, the original piano compositions he offers start at \$15 and have received over 1,500 reviews from customers everywhere from the United States to Singapore.
- **Squareko** is a web development firm based in Bangladesh founded by Walid Hasan. With nearly 800 5-star reviews from countries including the United States, United Kingdom, China, and Costa Rica, the online profile offers web design services starting at \$100.

### **Example 2: The Role of Independent Content in the Entertainment Sector**

As platforms deliver digital services directly to customers, social media has simultaneously enabled a wave of digital entrepreneurship, often dubbed the "creator economy." The creator economy, while still rapidly developing, represents an ecosystem of individuals who monetize their passions via online platforms. From influencers to filmmakers and podcasters, digital platforms have lowered the barrier to entry to the entertainment sector to the point where innovative individuals may only need a smartphone and an Internet connection to make a living online.

From beauty product reviews on TikTok to sports newsletters on platforms like Substack, internet users consume digital media from a variety of sources with little regard to the nationality of the content's origin. Because of this, the potential



for growth in creative exports, and the large proportion of young workers, the United Nations Conference on Trade and Development – the same UNCTAD that, from a different branch, is pitching taxation of digital content – describes the creative economy as being “a critical sector for sustainable development” and for the promotion of social inclusion and cultural diversity.<sup>16</sup>

While most individuals posting online have no intention of turning their commentary into a full-time job, quite a lot do exactly that. Estimates show that the creator economy may be anywhere from 50 million to 200 million individuals worldwide<sup>17</sup> – a count similar to America’s 157 million workers as 2024 begins. Analysis by Goldman Sachs values the sector at roughly \$250 billion in 2023, with an expectation that it could reach \$480 billion by 2027, in line with the share of advertising dollars being spent on digital influencer marketing. This would make the creator economy the fastest-growing sub-industry within digital media.<sup>18</sup>

In 2024, the creator economy is largely kept afloat via brand deals in which companies pay influencers directly to promote their products, empowering individuals to harness their talents to build their own brands. This has become a massive sector in the U.S., with brands allocating an estimated \$4.92 billion for influencer marketing in 2023, making up 1.8% of their total digital ad spending for the year.<sup>19</sup> Aside from brand deals, other potential sources of revenue include ad revenue from a creator’s platform of choice, direct donations, and monetization of a creator’s own brand or products advertised via social channels.

It should be acknowledged that factors including a lack of digital infrastructure have contributed

to less involvement in the creator economy from entrepreneurs in developing countries. But, even still, they are not absent from the picture. Stripe, a financial services company that manages payout for several large global creator platforms, has reported that while the growth rate for creators in the U.S. declined 25% year over year as of 2023, it still accelerated elsewhere. Their data shows that the fastest-growing creator countries include Thailand, Brazil, and Romania.<sup>20</sup> UNESCO has also reported that influencer marketing is a growing industry on the African continent, particularly in English-speaking African countries, with the acknowledgment that the industry is likely to offer opportunities to influencers and small businesses across the African continent with the expansion of online access.<sup>21</sup>

### TAXATION OF DATA: TECHNICAL QUESTIONS AND IMPLICATIONS

So altogether the first quarter-century of digital trade policy looks like a winner, whether measured by the growth of trade value or by the entries of small firms and individuals. To be sure, these are far from the only things governments or WTO members should care about. The White House’s 2022 *Declaration for the Future of the Internet* provides a useful review of next-generation challenges: completing universal access, developing effective regulatory policies to address disinformation and use of digital technologies by hate groups, effective law enforcement to combat cyber-crime, ensuring competition among providers, promoting rising levels of cross-border data flows “with trust,” and so on.<sup>22</sup>

The WTO’s role in these next-generation policies is limited, but important – and its members should use their energy in finding ways to

address them, rather than attempting to fix things that are working perfectly well. And here it is useful to think about the arguments against the ‘duty-free cyberspace’ principle and the likely results of a decision to abandon it.

The main argument against continuing the moratorium, made by India and South Africa in the months before the “MC-12” Ministerial Conference in 2022, is a pretty simple one: it unfairly deprives developing countries of tax revenue. Their submission rests on a paper written by a UNCTAD staffer in 2019, which claims that refraining from taxation of digitizable products — CDs, music, books, entertainment, and media, which are now widely available in digital form as well as embedded in physical plastic and paper — costs the world’s governments somewhere between \$5 billion and \$10.6 billion each year in revenue.

More specifically, UNCTAD’s writers estimate \$10.6 billion if WTO members applied “bound” tariff rates to these products — that is, the maximum possible tariff rate a country can apply under WTO rules — and \$5.0 billion under the “applied” tariff rates countries actually now use. About \$10.3 billion of the \$10.6 billion under “bound” rates would have gone to developing countries — mainly India at \$467 million, China at \$453 million, and Thailand at \$301 million<sup>23</sup> — and a modest \$212 million to wealthy-country governments.<sup>24</sup>

The India/South Africa paper does not, however, limit its ambition to digital products with physical counterparts. It instead goes on to observe that “there is no agreed definition nor any common understanding amongst the membership of what is covered under ‘electronic transmissions.’”<sup>25</sup> The implication here is that breaching the duty-free cyberspace principle could mean an opening

to tax not only digital products analogous to physical products, but all digital products and services — e.g., imposing particular tax rates on specific services, such as music downloads, telemedicine diagnoses, or on-line classes, as the Harmonized Tariff Schedule assigns tariff rates to automobiles, hairbrushes, computers, and salt — or simply to tax all electronic transmissions of any sort based on volume of data or some other principle.

Taxes of this sort would likely be costly and technically difficult, but may not be impossible. Succeeding, however, would come with a high cost: directly, in reducing the flow of digital trade; secondarily, in placing heavier relative tax burdens on small firms and creative innovators than on large firms and established businesses; and beyond this, in reducing the Internet’s capacity to create entirely new industries, new employment categories, and new forms of business.

Global data transmission requires a network of servers, data centers, and transmission infrastructure — all of which host and carry data around the world. The technology needed to do this is no small feat, requiring thousands of miles of ultra-pure glass fiber, massive computing power, energy, specialized ships, satellites, and more. Companies that provide digital services, especially small ones, must rely on content delivery networks — often operated by third parties — to bring their services to a user’s device. These are utilized in tandem with cloud service providers, which provide infrastructure for websites and applications through the maintenance of international data centers. Though some companies own and operate their own international data centers, it is more common to outsource this to a third party with established, sizable networks.



With this in mind, a tariff on digital services may be especially difficult to implement. Particularly if based on the amount of data transmitted, a tax on digital products will need to be extremely specific in defining which piece of the process is being taxed.

Consider the example of music downloads. In the modern day, the process required to listen to a song on your device relies on an incredibly interconnected global web of content delivery infrastructure, making it difficult to define both what is being exported and by whom. Spotify, for example, is currently the most popular music streaming platform in the world with a reported 31% global market share,<sup>26</sup> 574 million users and 226 million paid subscribers.<sup>27</sup> The Swedish company, headquartered in Stockholm, claims to operate in 180 markets and hosts content from artists of all sizes around the world. They utilize the paid subscription model in which users can listen to and download unlimited music. Though Spotify has operated its own data centers in Sweden, the United Kingdom, and in Virginia, they have since moved to rely on Google Cloud for the transmission of their services, which operates data centers globally.

In the case of Spotify, a tariff on digital commerce would need to answer some foundational questions. For example, should the tariff be applied based on volume of data transmitted? Does it matter that the data is being transmitted by a company of Swedish origin or by an American cloud service provider? Does this change based on the physical location of the data center hosting the content, requiring companies to establish local facilities in each market they operate in? Additionally, with consumers paying a flat rate for subscription services regardless of the amount of content consumed, how are tariffs applied in a way that

reflects the data being transmitted?

This example is analogous to any industry currently using a subscription model – a universe encompassing everything from entertainment streaming providers like Netflix to paid digital services such as Chegg which provide online tutoring and homework help for students. In these cases, without a high degree of data localization, it is difficult to imagine how a tariff could be implemented in a way that does not produce a significant adverse effect on the ability for domestic contribution to international streaming or subscription services or jeopardize the globalized system as we know it. And, even in cases where digital products are sold as one-time purchases – say, an individual iTunes download – the same questions apply in terms of content delivery networks.

### REVENUE IMPLICATIONS OF MORATORIUM ARE NOT SIGNIFICANT

Returning now to UNCTAD's pitch for tax revenue – would the \$5 billion or \$10 billion be worth it? Clearly not. For technical reasons, this form of taxation might prove expensive to collect; and more important, when matched against the potential economic harm to growth, the revenue involved looks trivial.

If UNCTAD's figures are correct, the potential revenue from taxation of electronic transmissions is between \$5 billion and \$10.6 billion. Per the World Bank, India's tax revenue in 2018 (that is, at the time UNCTAD did its calculations) was about 12% of a \$2.7 trillion GDP in 2018, which would be \$324 billion.<sup>28</sup> A data tax, with the \$0.2 billion to \$0.5 billion estimated for India specifically, might bring this total to \$324.2 billion or possibly \$324.5 billion. In this case, (again assuming the paper's figures are correct) India has foregone about 0.1% (applied rate) or

0.2% (bound rate) of potential revenue because of the moratorium even before attempting to calculate the cost of levying these taxes to the Indian government.

Meanwhile, the export value India receives from developing its own digitally enabled services exports, and the earning it receives from low-cost financial transfers alone, are both an order of magnitude larger. Other countries' decision to refrain from taxing imports of India's digitally delivered services has helped India develop a \$254 billion services export economy<sup>29</sup> which must deliver far more than \$0.47 billion in revenue through income tax and VAT receipts. On the other side of the ledger, Indians and Indian Americans living overseas sent remittance payments to India totaling \$111 billion last year, about ten times the \$10 billion in pre-moratorium 1998. Digital financial services are not the only way to deliver this money, but they are the cheapest – World Bank figures show seven of the ten least costly remittance paths from the U.S. to India are Internet-based – and create competition that has lowered the cost of remittances by about 20% in the last 15 years.

What about a more general revenue argument for “developing countries”? It isn't any more persuasive than an “India-alone” argument. The same World Bank tables report that in 2018, low- and middle-income countries had a combined GDP of \$31.4 trillion, with revenue share of 10.9%. This means they collected about \$3.4 trillion in revenue. The \$5 billion here is again about 0.1% of revenue, and trivial next to either remittance receipts or services exports.<sup>30</sup>

Meanwhile, as the cost of accessing the internet and downloading services, entertainment, and digital products rises, the relative burden on

small businesses and individuals would grow. One of the Internet's great successes of the past 25 years – the ability of individuals with ideas to find audiences and customers, and the ability of smaller firms to find global customer bases and suppliers through digital contacts – would be diminished in its next 25 years.

Digital trade and connectivity are, relatively, most valuable to small businesses and individual entrepreneurs who lack the capital budgets to invest internationally but can use search, data analytics, and digital advertising to reach potential customers. Taxation of digital connectivity in the same way is likely especially damaging to these types of businesses, and to individuals trying to access telemedicine, entertainment, distance education, and so on. Developing countries seeking additional tariff revenue would be therefore reducing their own access to health services, education, and other high-value inputs; imposing new taxes on well-meaning overseas nationals sending money home to family; encouraging foreigners to tax their own fastest-growing exports; and reducing their own businesses' ability to find overseas customers.

## RENEW THE MORATORIUM

So: As WTO members think about digital trade, they do have many areas in which activist policy would be useful.

The 2024 world of 6 billion Internet users, and an electronic commerce value likely approaching that of global GDP, is vastly different from the 150-million-user, experiments-with-email world of 1998. In this changed world the WTO governments have much to do; were an economist to say only “stand there,” that economist would be wrong. Users need privacy protection, governments need to regulate in

the public interest, creators need intellectual property rights protection, and service providers need liability protection and stable and predictable rules.

On the other hand, in some cases standing there is still good advice. In 2024, just as in 1998, everyone needs low-cost and easy access to the Internet. It is still a good thing for smaller

firms to see entry costs fall, and still a positive thing for individual entrepreneurs with ideas to get a chance to try them out. Continuing to give them these opportunities, simply by refraining from unneeded grabbing and tampering, should be easy. In this regard, the moratorium remains “foundational” and practical, and the WTO members ought to renew it.

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# References

- 1 Er Li and Arthur Waley, "Chapter 29," *Tao-Te-Ching: Han-Ying-Tui-Chao = Tao Te Ching* (Ware: Wordsworth Ed., 1997).
- 2 See for example Ambassador Katherine Tai in remarks to the Council on Foreign Relations, "Remarks by Ambassador Katherine Tai at the Council on Foreign Relations," United States Trade Representative, December 2022, <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2022/december/remarks-ambassador-katherine-tai-council-foreign-relations>.
- 3 "Text: USTR Barshefsky on Networked Economy Initiative," Department of State, October 23, 2000, <https://usinfo.org/usia/usinfo.state.gov/topical/global/ecom/00102301.htm>.
- 4 James Bledsoe, "2024 ECommerce Size & Sales Forecast," International Trade Administration, 2023, <https://www.trade.gov/e-commerce-sales-size-forecast>.
- 5 "World Trade Statistical Review 2023," World Trade Organization, 2023, Page 7, [https://www.wto.org/english/res\\_e/publications\\_e/wtsr\\_2023\\_e.htm](https://www.wto.org/english/res_e/publications_e/wtsr_2023_e.htm).
- 6 See, for example, United States International Trade Commission, "Small and Medium-sized Enterprises: U.S. And EU Export Activities, and Barriers and Opportunities Experienced by U.S. Firms," July 2010, pp. 3-19, 3-20, <https://www.usitc.gov/publications/332/pub4169.pdf>
- 7 US Department of Commerce, "A Profile of U.S. Exporting Companies, 1997-1998," January 24, 1998, <https://www.census.gov/foreign-trade/Press-Release/edb/edbrel1998.pdf>
- 8 "Digitally Deliverable Services Boom Risks Leaving Least Developed Countries Behind," UNCTAD, September 28, 2023, <https://unctad.org/news/digitally-deliverable-services-boom-risks-leaving-least-developed-countries-behind> "
- 9 "Digital Trade for Development," World Trade Organization, 2023, [https://www.wto.org/english/res\\_e/booksp\\_e/dtd2023\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/dtd2023_e.pdf).
- 10 World Trade Organization, *World Statistical Review 2023*, Tables A47 and A49 on pp. 98 and 101.
- 11 "Digital Service Delivery Shows Potential for Developing World," UNCTAD, March 29, 2019, <https://unctad.org/news/digital-service-delivery-shows-potential-developing-world>.
- 12 "Digital Trade for Development."
- 13 "Freelance Platforms Market Size and Share Report, 2030," Grand View Research, 2022, <https://www.grandviewresearch.com/industry-analysis/freelance-platforms-market-report>.
- 14 "Upwork to Report Fourth Quarter and Full Year 2023 Financial Results on February 14, 2024," Upwork Inc., January 17, 2024, <https://investors.upwork.com/news-releases/news-release-details/upwork-report-fourth-quarter-and-full-year-2023-financial>.
- 15 "Upwork Study Finds 59 Million Americans Freelancing amid Turbulent Labor Market," Upwork Inc., December 8, 2021, <https://investors.upwork.com/news-releases/news-release-details/upwork-study-finds-59-million-americans-freelancing-amid>.
- 16 "Creative Economy Outlook 2022," UNCTAD, 2022, [https://unctad.org/system/files/official-document/ditctsce2022d1\\_overview\\_en.pdf](https://unctad.org/system/files/official-document/ditctsce2022d1_overview_en.pdf).
- 17 Ali Aksu, "The Future Belongs to Impact-Driven Creators: The Shift in the Creator Economy," Rolling Stone, December 14, 2023, <https://www.rollingstone.com/culture-council/articles/future-belongs-to-impact-driven-creators-the-shift-creator-economy-1234928851/>.

# References

- 18 "The Creator Economy Could Approach Half-a-Trillion Dollars by 2027," Goldman Sachs, April 19, 2023, <https://www.goldmansachs.com/intelligence/pages/the-creator-economy-could-approach-half-a-trillion-dollars-by-2027.html>.
- 19 Ying Lin, "US Influencer Marketing Spend (2017–2027)," Oberlo, October 2023, <https://www.oberlo.com/statistics/influencer-marketing-spend>.
- 20 Edwin Wee, "The Creator Economy Goes Global," September 6, 2023, <https://stripe.com/blog/creator-economy-2023>.
- 21 "Africa's Youth: Influencers Make a Big Impact," The UNESCO Courier, June 28, 2023, <https://courier.unesco.org/en/articles/africas-youth-influencers-make-big-impact>.
- 22 "Declaration for the Future of the Internet," U.S. Department of State, 2022, <https://www.state.gov/declaration-for-the-future-of-the-internet>.
- 23 "The E-Commerce Moratorium and Implications for Developing Countries," World Trade Organization, June 3, 2019, <https://rb.gy/lty1x5>
- 24 Rashmi Banga, "Growing Trade in Electronic Transmissions: Implications for the South," UNCTAD, 2019, [https://unctad.org/system/files/official-document/ser-rp-2019d1\\_en.pdf](https://unctad.org/system/files/official-document/ser-rp-2019d1_en.pdf).
- 25 "The E-Commerce Moratorium and Implications."
- 26 Jon Porter, "Streaming Music Report Sheds Light on Battle between Spotify, Amazon, Apple, and Google," *The Verge*, January 20, 2022, <https://www.theverge.com/2022/1/20/22892939/music-streaming-services-market-share-q2-2021-spotify-apple-amazon-tencent-youtube>.
- 27 "About Spotify," Spotify, October 24, 2023, <https://newsroom.spotify.com/company-info/>.
- 28 "Tax Revenue (% of GDP) - India," World Bank, 2024, <https://data.worldbank.org/indicator/GC.TAX.TOTL.GD.ZS?locations=IN>.
- 29 "How India Is Emerging as the World's Technology and Services Hub," EY India, January 27, 2023, [https://www.ey.com/en\\_in/india-at-100/how-india-is-emerging-as-the-world-s-technology-and-services-hub](https://www.ey.com/en_in/india-at-100/how-india-is-emerging-as-the-world-s-technology-and-services-hub).
- 30 "World Tariff Profiles - India," World Trade Organization, 2023, [https://www.wto.org/english/res\\_e/statis\\_e/daily\\_update\\_e/tariff\\_profiles/in\\_e.pdf](https://www.wto.org/english/res_e/statis_e/daily_update_e/tariff_profiles/in_e.pdf).

## Understanding the potential scope, definition and impact of the WTO e-commerce Moratorium

Andrea Andrenelli and Javier Lopez-Gonzalez

New empirical evidence and analysis of provisions in regional trade agreements help bring clarity to debates on the potential scope, definition and impact of the WTO e-commerce Moratorium. OECD analysis demonstrates that the potential fiscal revenue implications of the Moratorium are small, amounting to, on average, 0.68% of total customs revenue or 0.1% of total government revenue. Well-designed value added or goods and services taxes (VAT/GST) can help offset potential foregone revenue in most countries. Failure to renew the Moratorium would result in greater policy uncertainty and less trade, and tariffs on electronic transmissions would reduce domestic competitiveness. Adverse effects would be most pronounced for low-income countries and smaller firms. Overall, evidence demonstrates that there is a strong case for the Moratorium to be renewed.

**Keywords:** Digital trade, trade policy, customs duties, electronic transmissions, digitisable goods, e-commerce, digital economy, Moratorium, customs revenue.

**JEL codes:** F13; O33

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## Summary

At MC12, WTO Members agreed to intensify discussions on the *scope, definition and impact* of the e-commerce Moratorium. This paper aims to contribute some clarity and new empirical evidence to these discussions in the run-up to MC13.

Much can be learnt about the potential scope of the moratorium and definition of electronic transmissions from existing provisions on the non-imposition of customs duties on electronic transmissions (NICDET provisions) in Regional Trade Agreements (RTAs).

- **Nearly all existing digital trade chapters in RTAs, 95%, contain a NICDET provision – signed by a total of 102 countries.** Eighty-five percent of these commitments, involving 33 developing countries, would remain in place should the Moratorium lapse.
- There is widespread understanding in these agreements that **the Moratorium does not apply to internal, non-discriminatory, taxation and that it implies narrow commitments on customs duties with no incidence on the wider regulation of the electronic delivery of services** (GATS or RTA commitments and flexibilities remain).
- Countries have found ways **to accommodate different understandings of electronic transmissions** in their RTAs.

Estimates of the potential fiscal implications of the Moratorium suggest that potential customs revenue losses, including from replacement of trade in ‘digitisable goods’ with their digital equivalent, would be small and could be offset through VAT/GST revenue.

- For many countries, particularly at lower levels of development, **imports of ‘digitisable goods’ have grown and continue to generate tariff revenue.**
- **The share of trade that would be ‘dutiabale’ should the Moratorium lapse is, on average, 67% of digitisable goods imports** (with differences across income levels). Existing commitments, including in RTAs, NICDET provisions and customs valuation practices affect the ability of countries to levy tariffs on digitisable goods and electronic transmissions even in the absence of the Moratorium.
- **The overall revenue implications of the Moratorium are small.** The potential foregone customs revenue that could be attributed to the Moratorium is USD 1,3 billion. This represents an average of 0.68% of potential total customs revenue or around 0.1% of overall government revenue.
- For 77 out of 106 countries for which data is available, **potential foregone revenue would be completely offset by rising revenue from VAT/GST on digital services imports which are ‘born digital’.**

A full picture of the impact of the Moratorium requires looking beyond the fiscal implications and identifying the potential benefits of the Moratorium or the costs associated with its lapse:

- **A predictable and duty-free environment is associated with more trade.** Increases in trade policy uncertainty, measured as a one percentage point change in the water in the tariff, lead to reductions in trade in digitisable goods of around 0.17-0.2%. Impacts are higher for low-income and middle-income countries. Not renewing the Moratorium could mean that this policy uncertainty would impact electronic transmissions.
- **Tariffs on electronic transmissions would hit low-income country trade the most.** Applying existing tariffs on digitisable goods to digital services (where electronic transmissions are measured in existing trade statistics) would lead to reductions in imports and exports of low-income countries of 32% and 2.5% respectively. For middle-income countries losses would be

6% and 0.4% respectively and for high-income countries 0.04% and 0.5%. In terms of trade effects, developing countries would suffer most from lifting the Moratorium.

- **Tariffs on electronic transmissions would reduce domestic competitiveness.** Imports of digital services and digitisable goods are associated with increases in domestic value added in output across countries at all levels of development. Tariffs on these would increase input costs limiting the capacity for domestic value addition, reducing domestic and international competitiveness for countries at all levels of development.
- **Smaller and women-owned firms could be most impacted from tariffs on electronic transmissions.** Smaller firms and women-owned SMEs particularly rely on digital tools, including digital transmissions, to reach distant customers via exports. Moreover, analysis shows that smaller firms that use digital tools, including webpages, are more productive and employ more people than those that do not. The Moratorium thus matters for inclusive trade.

## 1. Introduction

For more than two decades, the WTO Moratorium on applying customs duties on electronic transmissions (henceforth the Moratorium) has supported a stable and predictable environment for digital trade to thrive. However, in recent years, the opportunity costs of the Moratorium have been questioned by several WTO Members.<sup>1</sup> Their concerns range from: the lack of clarity on the scope of the Moratorium and the definition of electronic transmissions; to the potential foregone customs revenue; and the desire to maintain ‘policy space’ in light of rapid technological change.

These discussions are not new. Issues around the scope and impact of the Moratorium have been debated for nearly 25 years. However, during its latest renewal, at the 12<sup>th</sup> Ministerial Conference held in Geneva in June 2022 (MC12), WTO Members agreed to *intensify discussions* on the Moratorium, including on its *scope, definition, and impact*, underscoring the need for renewed evidence to inform this debate.

Against this backdrop, and building on past OECD contributions (Andrenelli and López González, 2019<sup>[1]</sup>; 2021<sup>[2]</sup>; OECD, 2022<sup>[3]</sup>), showing that the benefits of the Moratorium outweigh the costs, this paper aims to support discussions in the run up to MC13 by bringing greater clarity to some of the issues at stake, focusing on what can be learnt from existing evidence about the potential scope, definition and impact of the Moratorium and presenting new empirical evidence on the customs revenue implications of its lapse.

To this end, the paper is organised as follows. The next section provides an overview of what is known about the e-commerce Moratorium and the existing grey areas. Section 3 looks at commitments made by WTO Members in their regional trade agreements (RTAs) with a view to providing greater clarity on the potential contours of the scope of the Moratorium and existing definitions of electronic transmissions. Section 4 maps emerging trends across different categories of trade that are relevant for discussions on electronic transmissions. Section 5 analyses the fiscal implications of the Moratorium, providing new estimates of the potential customs revenue implications and the potential offsetting effects arising from growing revenue from other non-discriminatory taxes. Section 6 provides an analysis of the potential benefits of the Moratorium and the potential costs associated with its lapse and Section 7 discusses some policy observations.

This work does not seek to pre-judge WTO Members’ views on what the Moratorium does or does not cover nor to interpret the commitments countries have or have not made. Rather, it seeks to increase the evidence base with a view to supporting discussions on the *scope, definition and impact* of the Moratorium in the run up to WTO MC13.

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<sup>1</sup> See [WT/GC/W/747](#) and [WT/GC/W/798](#).

## 2. What do we know about the e-commerce Moratorium?

The e-commerce Moratorium has been the subject of longstanding debate at the WTO.<sup>2</sup> More recently, in discussions on the renewal of the Moratorium, India, Indonesia and South Africa have voiced concerns about the opportunity costs associated with its extension (WTO, 2021<sup>[4]</sup>; WTO, 2022<sup>[5]</sup>). This has re-ignited debates about the scope of the Moratorium and its potential economic implications, underscoring the need for greater understanding of what the Moratorium is, and where ambiguities remain.

### 2.1. What is the e-commerce Moratorium?

Since 1998, WTO Members have regularly extended a Moratorium on applying customs duties on electronic transmissions. The original Ministerial Declaration, which also saw the creation of the Work Programme on Electronic Commerce, contained a simple commitment which has come to be known as the e-commerce Moratorium:<sup>3</sup>

*Members will continue their current practice of not imposing customs duties on electronic transmissions.*

This language has been replicated in subsequent WTO Ministerial Declarations, most recently at MC12 in Geneva in June 2022. However, given concerns expressed by some Members, WTO Members agreed to preface the renewal of the Moratorium with a commitment to intensify discussions on its *scope, definition and impact*.<sup>4</sup> The relevant section of the Declaration at MC 12 reads as follows:

*We shall intensify discussions on the moratorium and instruct the General Council to hold periodic reviews based on the reports that may be submitted by relevant WTO bodies, including on **scope, definition, and impact** of the moratorium on customs duties on electronic transmissions.*

***We agree to maintain the current practice of not imposing customs duties on electronic transmissions** until MC13, which should ordinarily be held by 31 December 2023. Should MC13 be delayed beyond 31 March 2024, the moratorium will expire on that date unless Ministers or the General Council take a decision to extend.*

In understanding the *scope, definition and impact* of the Moratorium, it is useful to decompose this section of the e-commerce Declaration into its constituent elements, separating the unambiguous parts from those where ambiguities may remain. The e-commerce Moratorium begins with an agreement *to maintain [a] current practice*. It does not impose positive obligations or commitments to change course of action, only to continue existing conditions. Those conditions are of *not imposing customs duties*, that is, tariffs which are collected on goods trade (and not other taxes). However, this commitment applies to *electronic transmissions*, a category of trade which has not been defined.

Flexibility around the definition of electronic transmissions is likely to have played a role in enabling the adoption of the Moratorium in the first place. This flexibility has also avoided a number of difficult questions, including whether electronic transmissions should be treated as goods or as services, an issue that remains contentious to this day. This has preserved a stable and duty-free environment that has enabled digital trade to thrive (WTO, 2023<sup>[6]</sup>).<sup>5</sup> However, this has also left room for different interpretations about what items countries may have agreed not to charge tariffs on. Opening the debate on the scope of the Moratorium and the definition of electronic transmissions also means opening the debate on a range of difficult issues.

<sup>2</sup> See the summary of WTO dedicated discussions on E-commerce in Annex A.

<sup>3</sup> With an additional commitment to reinvigorate the WTO E-commerce Work Programme, including its development dimensions (WTO, 2022<sup>[54]</sup>) see [T/MIN\(98\)/DEC/2](#).

<sup>4</sup> As well as providing more clarity on the validity of the Moratorium in case a future WTO Ministerial is postponed.

<sup>5</sup> See (López-Gonzalez, Sorescu and Kaynak, 2023<sup>[32]</sup>) which highlights the growth of digital trade since 1995.

## 2.2. What are the grey areas of the e-commerce Moratorium?

Soon after the adoption of the Moratorium, a lively debate among WTO Members on its scope began (Annex A provides a more detailed summary of this debate). Discussions highlighted a range of common views but also divergences on the scope of the Moratorium and the definition of electronic transmissions. They consist of:

- **Whether electronic transmissions should be treated as goods or as services.** In particular, there is ambiguity about products such as films, videogames, music or software which can be digitally delivered or delivered through a physical carrier medium such as DVDs, CDs or SD cards. These ambiguities have a long history which transcends the Moratorium debate and have often been referred to as the ‘classification issue’.
- **Whether the Moratorium applies to content or to the ‘carrier medium’.** That is, whether, absent the Moratorium, customs duties would be charged on the transmission itself, i.e., the bits and bytes that carry the content, or the content that is being carried by the transmission.<sup>6-7</sup>

Other concerns have been expressed regarding the scope of the Moratorium (Banga and Kozul-Wright, 2020<sup>[7]</sup>). These include whether the Moratorium affects the ability to tax or regulate digital transactions. Here the evidence is clearer. The Moratorium applies to customs duties, a form of discriminatory taxation on goods, it does not affect the ability to engage in taxation through, for instance, non-discriminatory Goods and Services Taxes (GST) or Value Added Taxes (VAT). The Moratorium also does not affect the ability of countries to regulate the digital economy, including on issues of competition, data protection or cybersecurity (provided these are in compliance with other existing WTO commitments). Indeed, the regular extensions of the Moratorium have not stopped countries from regulating many different aspects of the digital economy.<sup>8</sup>

## 3. What can be learnt about the potential scope of the e-commerce Moratorium from Regional Trade Agreements?

Identifying how countries have approached customs duties on electronic transmissions in their trade agreements can provide useful information about the possible contours of WTO Members’ understanding of the Moratorium.<sup>9</sup> This can help provide greater clarity and transparency to the ongoing discussions about the scope of the Moratorium and the definition of electronic transmissions.

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<sup>6</sup> This issue was recently raised by Indonesia ahead of the Buenos Aires Ministerial Conference. Indonesia argued in favour of the inclusion in the Moratorium of the notion that: “the extension of the moratorium applies only to the electronic transmissions and not to products or contents which are submitted electronically” (WTO, 2017<sup>[52]</sup>). WTO Members, however, did not favour this approach, and the Buenos Aires Ministerial Declaration on Electronic Commerce maintains the ambiguity on the content vs. carrier debate (WTO, 2017<sup>[53]</sup>).

<sup>7</sup> To date, customs duties have not been applied to electronic transmissions (either to the content or to the carrier-medium).

<sup>8</sup> See for instance the OECD Digital Trade Inventory which identifies existing rules, standards and principles relevant for digital trade across different fora (Nemoto and López-González, 2021<sup>[56]</sup>).

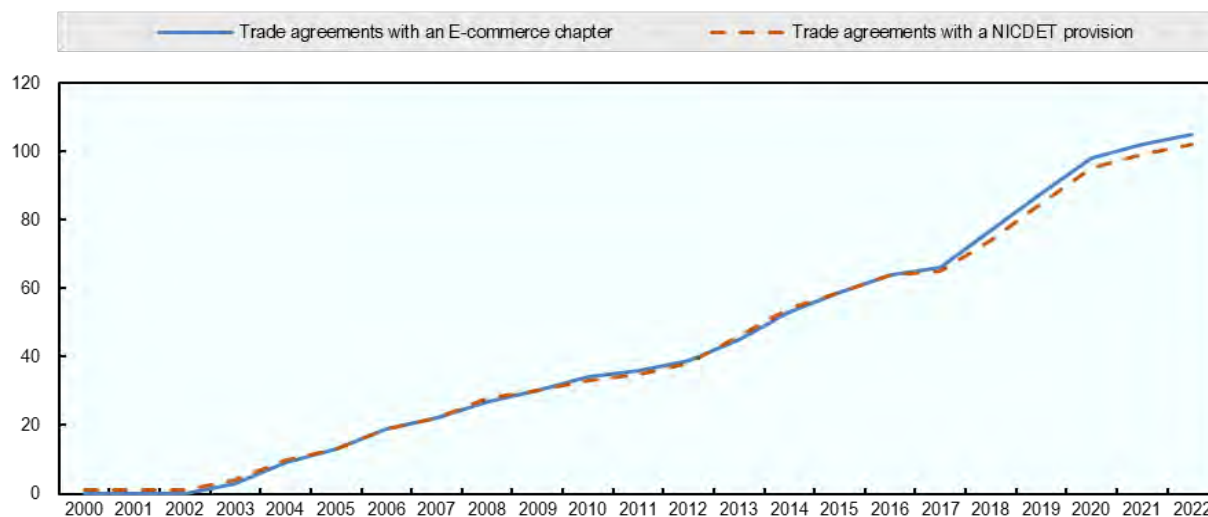
<sup>9</sup> The term ‘scope of the moratorium’ is used in this report to refer to issues around both the *scope* of the moratorium and the *definition* of electronic transmissions, without prejudice to whether the issues fall in one or another of these categories.

### 3.1. NICTED provisions are widespread and growing

Provisions on the non-imposition of customs duties on electronic transmissions (NICDET provisions) are some of the most common elements in e-commerce chapters. There are nearly as many NICDET provisions as there are e-commerce chapters (out of the current 105 signed agreements with an e-commerce chapter, 100 agreements include a NICDET provision), Figure 1.<sup>10-11</sup>

**Figure 1. NICDET provisions are present in nearly all existing e-commerce chapters in RTAs**

Count of total e-commerce chapters and of NICDET provisions (2000-2022)



Note: The figure reports all signed e-commerce chapters and NICDET provisions from the TAPED database.

Source: Own calculations based on TAPED database (Burri and Polanco, 2020<sup>[8]</sup>; Burri, Vásquez Callo-Müller and Kugler, 2022<sup>[9]</sup>). The analysis presented herein is based on TAPED version 06/22, available at the time of writing.

NICTED provisions, while always confirming the non-imposition of customs duties on electronic transmissions, take many different forms (see Box 1 for some illustrative examples). Some refer explicitly to 'digital products', others to services. Some transpose WTO commitments, while others provide greater clarity on what might be included or excluded from the provision (such as on internal taxation).

<sup>10</sup> There are some instances where NICDET provisions are found outside e-commerce chapters, typically in an Annex to the agreement (e.g. Jordan-US Free Trade Agreement (FTA), Central America-EFTA FTA, Colombia-Israel FTA).

<sup>11</sup> For greater clarity, this report does not cover the analysis of interactions and hierarchical relationships between different chapters or provisions in Regional Trade Agreements, which may affect the binding level of NICDET provisions in the broader legal structure of the RTA.

### Box 1. NICDET provisions in RTAs take diverse forms

#### **Comprehensive Economic Cooperation Agreement between the Republic of India and the Republic of Singapore, Chapter 10 (Electronic Commerce), 2005**

##### *Article 10.4: Digital products*

1. A Party shall not apply customs duties or other duties, fees or charges on or in connection with the importation or exportation of digital products by electronic transmission<sup>10-3</sup>. [...]

<sup>10-3</sup> The obligation in paragraph 1 does not preclude a Party from imposing internal taxes or other internal charges provided that these are imposed in a manner consistent with Article III of GATT 1994 and its interpretative note as incorporated into this Agreement by Article 2.2.

#### **Economic Partnership Agreement between the CARIFORUM States and the European Community, Chapter 6 (Electronic Commerce), 2008**

##### *Article 119.3: Objective and principles*

The Parties agree that deliveries by electronic means shall be considered as the provision of services, within the meaning of Chapter 3 of this Title, which cannot be subject to customs duties.

#### **Regional Comprehensive Economic Partnership Agreement, Chapter 12 (Electronic Commerce), 2020**

##### *Article 12.11: Customs Duties*

1. Each Party shall maintain its current practice of not imposing customs duties on electronic transmissions between the Parties.

2. The practice referred to in paragraph 1 is in accordance with the WTO Ministerial Decision of 13 December 2017 in relation to the Work Programme on Electronic Commerce (WT/MIN(17)/65).

3. Each Party may adjust its practice referred to in paragraph 1 with respect to any further outcomes in the WTO Ministerial Decisions on customs duties on electronic transmissions within the framework of the Work Programme on Electronic Commerce.

4. The Parties shall review this Article in light of any further WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.

5. For greater certainty, paragraph 1 shall not preclude a Party from imposing taxes, fees, or other charges on electronic transmissions, provided that such taxes, fees, or charges are imposed in a manner consistent with this Agreement.

### 3.2. NICDET provisions can shed light on Members' approaches to electronic transmissions

Analysis of the different characteristics, additions and clarifications included in NICDET provisions over time illustrates how countries are approaching electronic transmissions in their trade agreements, in turn helping shed light on the potential contours of the scope of the Moratorium.<sup>12</sup> Six key observations emerge:

- **The majority of agreements (88 out of 100) do not tie NICDET provisions to the outcome of the WTO E-commerce Work Programme** (top-left quadrant, Figure 2). This means that most agreements do not specify that the lapse of the multilateral practice would lead to the review of their NICDET provision. The opposite is true for only 12 agreements which explicitly tie commitments to the WTO e-commerce Work Programme.

<sup>12</sup> Most of the characteristics, additions and clarifications are within the NICDET commitments. However, some, including with respect to customs valuation, or the relation with electronic delivery of services, can be in other provisions of the e-commerce chapter.



- **Internal taxation is deemed to be outside the scope of NICDET provisions** (bottom-left quadrant of Figure 2). The first and most widespread clarification is the *exclusion of internal taxation* from the scope of the NICDET provision, provided that these are imposed in a manner consistent with the trade agreement or the GATT.<sup>13</sup>
- Many agreements also clarify that measures related to the **electronic delivery of services fall within the scope of obligations and exceptions contained in other chapters** of the agreement, typically the services or investment chapters (bottom-left quadrant of Figure 2). That is, it is clarified that services commitments and flexibilities apply to the electronic delivery of services.
- **Clarifications on carrier medium versus content have evolved** (bottom-left quadrant of Figure 2). Early agreements tended to include a requirement that parties determine the customs value of imported *carrier media* according to the cost or value of the carrier medium alone when imported physically, without regard to the value of the ‘content’ in the transaction.<sup>14</sup> More recently, starting from around 2015, digital trade chapters increasingly included the clarification that the NICDET provision covers the ‘content’ of electronic transmission,<sup>15</sup> possibly in response to the evolution of discussion on the carrier vs. content elements of electronic transmissions at the WTO (WTO, 2017<sub>[10]</sub>). There are no trade agreements clarifying that the NICDET provision only applies to the ‘carrier’ element of electronic transmissions.
- **There are different interpretations on whether electronic transmissions are ‘digital products’ or services** (bottom-right quadrant, Figure 2). Some agreements refer to ‘the importation or exportation of digital products by electronic means’,<sup>16</sup> and often to the non-discriminatory treatment of those digital products, with accompanying definitions of what digital products are (i.e. computer programs, text, video, images, sound recordings and other products that are digitally encoded).<sup>17</sup> Other agreements stipulate that ‘deliveries by electronic means shall be considered as the provision of services [...] which cannot be subject to customs duties’.<sup>18</sup> NICDET provisions that do not further qualify the meaning of electronic transmissions became the most common type of provision in 2019, outpacing the growth of the other two types in recent years.
- **A growing number of provisions clarify the preferential nature of NICDET commitments** (top-right quadrant). This means that an increasing number of agreements specify that the NICDET provision only applies with respect to the Parties, i.e. ‘between a person of one Party and a person of the other Party’, or ‘between the parties’ (41 out of 100 agreements).<sup>19</sup>

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<sup>13</sup> This clarification is often included in parallel to the additional prohibition on the imposition of ‘fees and other charges’. Hence, there is generally a distinction between internal taxation and ‘customs duties, fees and other charges’.

<sup>14</sup> E.g. Chile- Colombia Free Trade Agreement (2006).

<sup>15</sup> E.g. Singapore-Türkiye Free Trade Agreement (2016).

<sup>16</sup> E.g. Korea-Singapore Free Trade Agreement (2005).

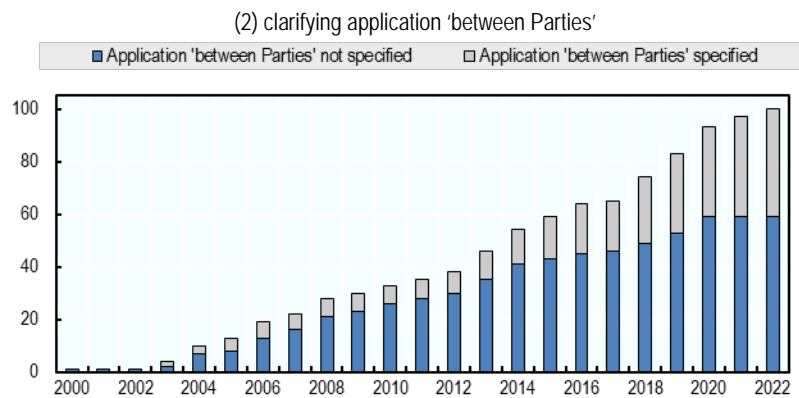
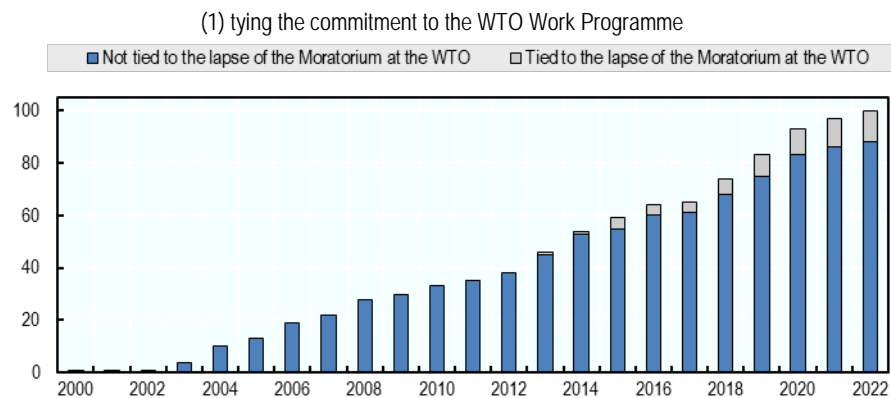
<sup>17</sup> E.g. Central America-Mexico Free Trade Agreement (2011).

<sup>18</sup> E.g. Colombia-Israel Free Trade Agreement (2013).

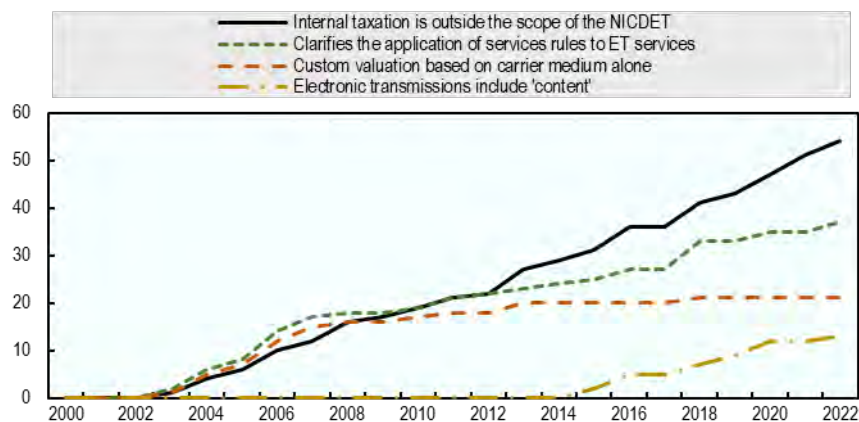
<sup>19</sup> E.g. USMCA (2018) and New Zealand-Taiwan FTA (2013).

**Figure 2. The evolution of NICDET provisions in Regional Trade Agreements**

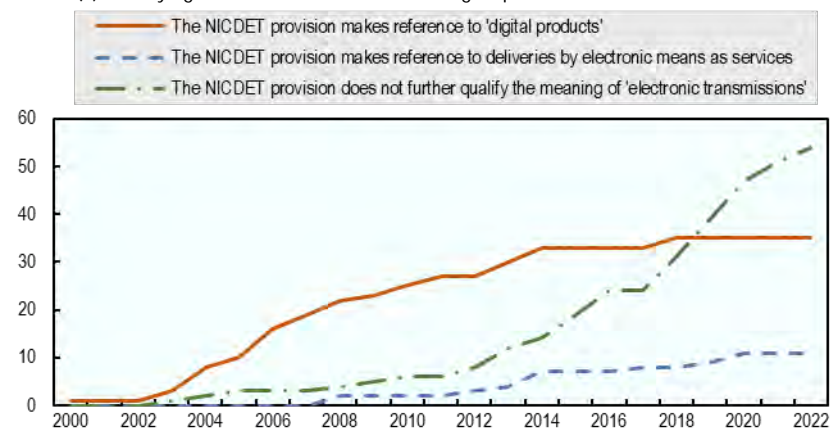
The figure shows the number of NICDET provisions:



(3) adding clarifications in terms of links with internal taxation, services, customs valuation, content and carrier elements of ETs



(4) identifying electronic transmissions as 'digital products', services or neither



Source: see Annex A, based on TAPED (2022<sup>[9]</sup>).

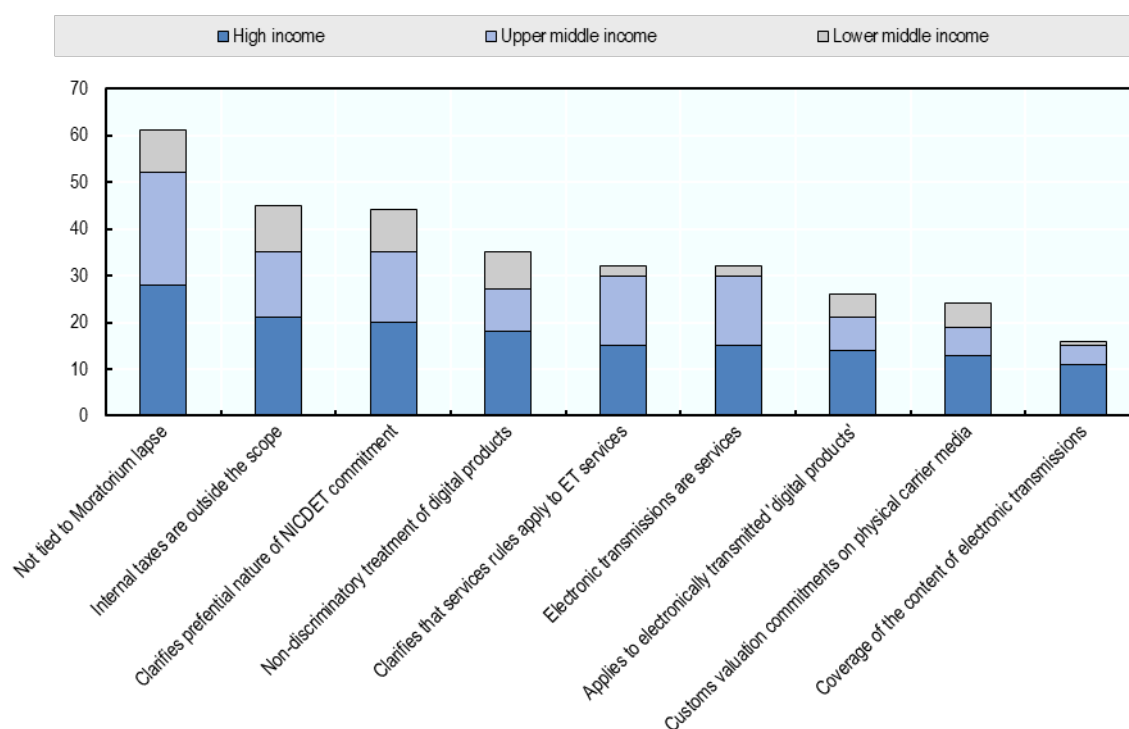
### 3.3. NICDET provisions have been agreed by countries at different levels of development

In total 102 countries – more than half of the WTO Membership – have signed at least one NICDET provision in their trade agreements: 56 High-income countries (30 if the EU is counted as one), 31 Upper-middle-income countries, and 15 Lower-middle-income countries.<sup>20</sup> Low-income countries have never signed NICDET provisions, but nor are they party to any agreement with an e-commerce chapter.

There is a relatively even distribution of NICDET commitments and clarifications across income groups (Figure 3). For instance, 33 developing countries and 54 high income economies signed a NICDET provision that is not tied to the outcome of the WTO E-commerce Work Programme. Similarly, the exclusion of internal taxation from the scope of NICDET provisions is common across the development spectrum, as are clarifications on the nature of commitments (e.g. whether the preferential nature of the commitment is clarified). See Annex Table A.1. for a description of the different elements in NICDET provisions.

**Figure 3. NICDET commitments across signatories at different levels of development**

Number of signatories adopting additional NICDET commitments or clarifications, by income group



Note: The Figure reports the number of countries (EU counted as one) having signed an addition or clarification to the general NICDET commitment in at least one trade agreements. Income groups based on the 2022-2023 World Bank classification.

Source: Own calculations based on TAPED.

<sup>20</sup> Using the TAPED database (Burri, Vásquez Callo-Müller and Kugler, 2022<sup>[9]</sup>) and the 2022-2023 World Bank Income group classification.

### 3.4. Countries have found ways to accommodate different understandings of electronic transmissions

In addition, a number of different approaches as to what electronic transmissions refers to coexist across these agreements. These can be grouped into four broad categories (see Figure 4 for a country breakdown), based on whether countries have further clarified the concept of electronic transmissions in at least one of their trade agreements:

- **No additional clarification of what electronic transmissions are.** These are countries that have not clarified in greater detail the scope of the NICDET commitment in their RTA. This includes the use of provisions that directly reference WTO Ministerial outcomes<sup>21</sup> as well as those that simply use the term ‘electronic transmissions’ without reference to the WTO discussions.<sup>22</sup>
- **Electronic transmissions as ‘digital products’.** These are approaches where countries explicitly define their NICDET commitments as applying to the importation or exportation of ‘digital products’ by electronic transmissions,<sup>23</sup> often giving examples of what these might be.
- **Electronic transmissions, or delivery by electronic means, as services.** These are approaches where countries couch their NICDET commitments under an understanding that deliveries by electronic means shall be considered as the provision of services, which cannot be subject to customs duties.<sup>24</sup>
- **Overlapping approaches on the classification of electronic transmissions.** This category of approaches relates to: i) countries which recognise – in the same agreement – that delivery by electronic means is to be considered as the supply of services, and that no customs duties shall be applied on the importation or exportation of digital products by electronic transmission;<sup>25</sup> and ii) countries which have signed different agreements, explicitly recognising ‘electronic transmissions’ (or ‘delivery by electronic means’) as ‘digital products’ or services with different partners.<sup>26</sup>

Of particular interest are interactions between countries in different groups. For example, some countries that are associated with one approach have signed NICDET provisions with countries associated with another approach, using language that does not explicitly recognise either approach. That is, they recreate the flexible language of the Moratorium in their RTA. For example, the EU-Korea Agreement stipulates that customs duties shall not be imposed on ‘deliveries by electronic means’ and the Canada-EU FTA (CETA) refers to ‘a delivery transmitted by electronic means’ – with no specific mention of ‘digital products’ or delivery by electronic means as services.

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<sup>21</sup> Such as the People’s Republic of China (see for instance China - Mauritius Free Trade Agreement (2019), Cambodia – China FTA (2020).

<sup>22</sup> Such as New Zealand (e.g. New Zealand Thailand FTA, CPTPP).

<sup>23</sup> E.g. the United States and Singapore in the Singapore-US FTA (2003).

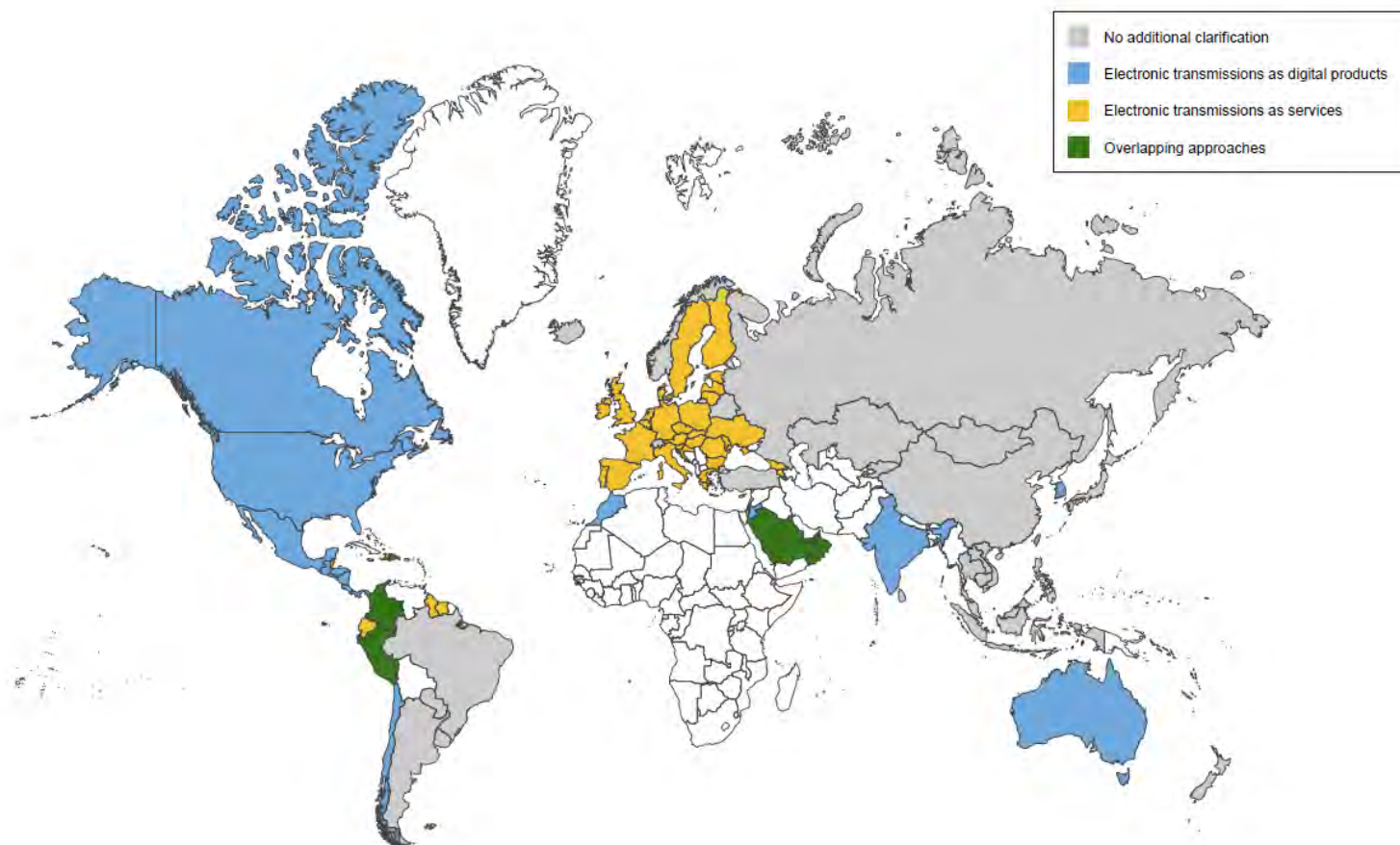
<sup>24</sup> See for instance CARIFORUM countries and the European Union in their Economic Partnership Agreement (2008).

<sup>25</sup> The only case is the Gulf Cooperation Council-Singapore FTA (2008).

<sup>26</sup> For instance, this is the case of Colombia (e.g., comparing the Colombia – Costa Rica FTA (2013) and the Colombia Peru Ecuador – EU FTA (2012)).

Figure 4. Approaches to the definition of electronic transmissions in NICDET provisions

Countries in white never signed a NICDET provision



Source: Own calculations.

Overall, a number of lessons about the potential contours of the scope of the Moratorium can be learnt from looking at what countries have agreed in their RTAs:

- There appears to be widespread understanding that the Moratorium does not apply to internal, non-discriminatory, taxation.
- There is strong consensus that the Moratorium applies to commitments on customs duties with no incidence on the wider regulation of electronic delivery of services. That is, commitments and flexibilities, as per GATT or GATS, or in services or investment chapters in RTAs, remain.
- There is no NICDET provision that clarifies that the non-imposition of customs duties applies to the ‘carrier’ element of electronic transmissions, while an increasing number of agreements clarify that the commitment applies to content.
- While there are differing approaches as to whether commitments apply to ‘digital products’ or services, countries have found ways to bridge different approaches through the use of flexible language.

Another important element to consider is the certainty and stability that the Moratorium provides. The guarantee that digital transactions do not attract tariffs regardless of how different countries may classify them constitutes a key benefit for trade in the form of a lid on a metaphorical Pandora box of conflictual trade policy issues. In a somewhat paradoxical way, the lack of precision of the e-commerce Moratorium is both a challenge and an opportunity. On the one hand, it raises issues about its precise scope, but, on the other hand, it enables a variety of views to coexist.

#### 4. What insights can be gleaned from international trade data?

Trade data can provide valuable insights into evolving trends across the different categories of trade that may be relevant for discussions on electronic transmissions. Although there are difficulties in classifying transactions that involve content delivered electronically, trade statistics measure the value of physical trade in digitisable goods in trade in goods statistics – and the value of digitally delivered ‘content’ in services statistics (see Box 2). This implies that analysis of electronic transmissions needs to be approached looking at both goods and services trade, without prejudice to how electronic transmissions are defined.<sup>27</sup>

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<sup>27</sup> For the purpose of clarity, trade statistics manuals also do not prescribe how these transactions should be treated in other frameworks – such as in legal agreements that may refer to goods or services. These manuals however highlight that digital delivery of formerly physical trade is likely to be included in the trade in services account – even though this cannot be distinguished from other computer, audio-visual, and information services transactions.

## Box 2. For measurement purposes, statistical manuals record transactions involving ‘content’ in the trade in services account

Trade statistics manuals generally recognise that transactions involving ‘content’ challenge the distinction between goods and services. However, these manuals also converge on the classification of these transactions in the trade in services account for measurement purposes:

- **The UN International Merchandise Trade Manual** recommends that “the electronic delivery [...] from one country to another of any content [...] is explicitly excluded from the scope of international merchandise trade statistics” (UN Statistics Division, 2011, p. 22<sub>[11]</sub>). This includes online books, newspapers, musical audio downloads, system software downloads, online games, and more (UN Statistics Division, 2011, p. 22<sub>[11]</sub>).
- **The Balance of Payment statistics Manual (BPM6)** recommends that ‘content’ be recorded as a computer service or an audio-visual service transaction – including when these transactions take place on physical carrier media (International Monetary Fund, 2009, p. 176<sub>[12]</sub>).<sup>28-29</sup> In addition, “downloaded content that is not software (included in computer services) or audio and video (included in audiovisual and related services) is included in information services” (International Monetary Fund, 2009, p. 177<sub>[12]</sub>).
- **The Central Product Classification Manual (2.1)** recognises that some products, for instance software or industrial design concepts, do not meet all the conditions to be recorded as either goods or services (UN Department of Economic and Social Affairs, 2015, p. 11<sub>[13]</sub>). These ‘other products’ are classified in sections of the CPC that are reserved for services (CPC 5 to 9).
- **The OECD-WTO-IMF Handbook on Measuring Digital Trade**, whose measurement framework is in line with BPM6 and IMTS 2010, takes the view that only services can be digitally delivered (OECD/WTO/IMF, 2019<sub>[14]</sub>; IMF-OECD-UNCTAD-WTO, 2023<sub>[15]</sub>).

### 4.1. Imports of digitisable goods are slowing, but this is largely a high-income country phenomenon

The debate on the impact of the Moratorium is often couched in the context of ‘digitisable goods’, which are physical goods that have the potential to be digitised and subsequently sent across borders digitally (WTO, 2016<sub>[16]</sub>). They include cassettes, videotapes, CDs, DVDs, books, calendars, photographic film and other media storage devices.

Digitisable goods witnessed a sustained increase in trade from 1998 to 2008, after which they plateaued (except for a recent slight uptick in 2021) – Figure 5.<sup>30</sup> Since 2009, growth in digitisable goods imports began to slow relative to total merchandise trade (see dotted line in Figure 5). This observation is often used as evidence of the dematerialisation of trade in digitisable goods, most recently by Indonesia (WTO,

<sup>28</sup> The only exception is non-customised ‘content’ provided on physical media with a license for perpetual use – which should be classified as a goods transaction.

<sup>29</sup> The UN International Merchandise Trade Manual recognises that, to comply with Balance of Payment guidance, such transactions should in principle be excluded from merchandise trade statistics. It is recognised, however, “that the exclusion of such media may not be possible in view of (a) the prevailing customs practice of classifying both non-recorded and recorded media in one classification heading without any further differentiation and (b) the absence of other reliable and cost-effective data sources for systematic identification.” (UN Statistics Division, 2011, p. 16<sub>[11]</sub>). The general guideline remains that “media, whether or not recorded is included in international merchandise trade statistics at its full transaction value” (p. 15<sub>[11]</sub>).

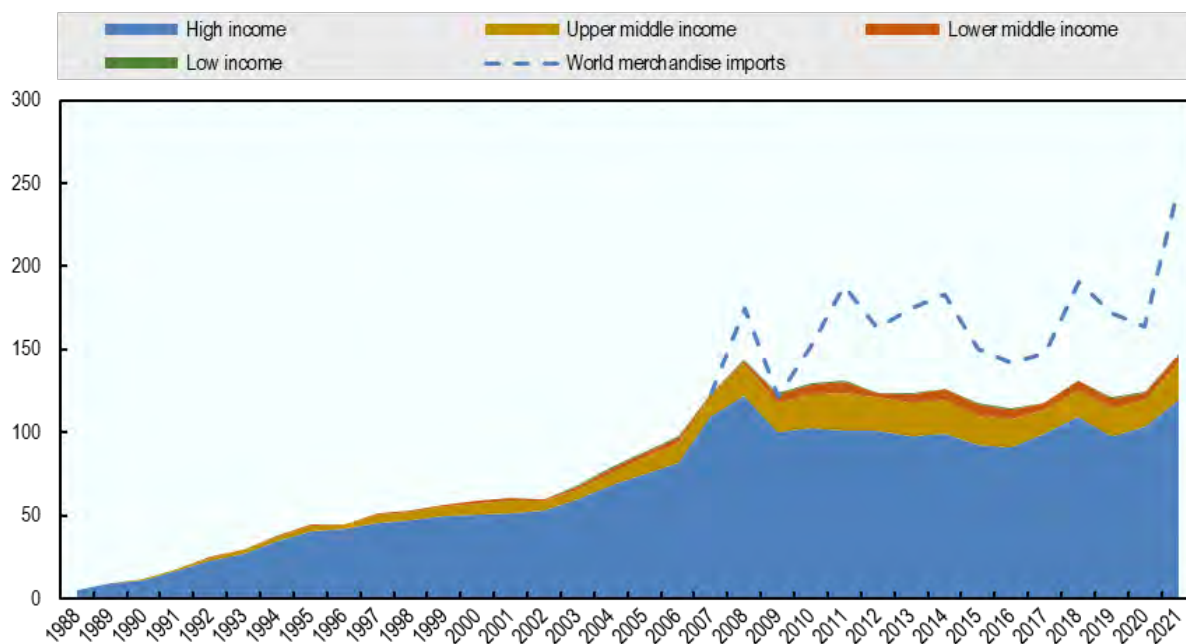
<sup>30</sup> Digitisable goods are defined in WTO (2016<sub>[16]</sub>) as “physical goods which have the potential to be digitised and subsequently sent across borders digitally”. They are identified in this report using a list compiled from the WTO (2016<sub>[16]</sub>) and Banga (2019<sub>[22]</sub>). The full list of digitisable goods in all HS nomenclatures is provided in Annex B.



2022<sup>[5]</sup>). However, this aggregate picture hides significant heterogeneity. High-income countries account for more than 80% of the value of imports of digitisable goods globally, which is why the figure is largely reflective of the situation in those economies.

**Figure 5. High-income countries account for the lion's share of world imports of digitisable goods**

Value of imports of digitisable goods by income group, USD billion, 1988-2021



Note: Based on 196 countries. 'World merchandise imports' reflects a counterfactual value of imports had digitisable goods imports followed the same trade pattern as global trade starting from 2007.

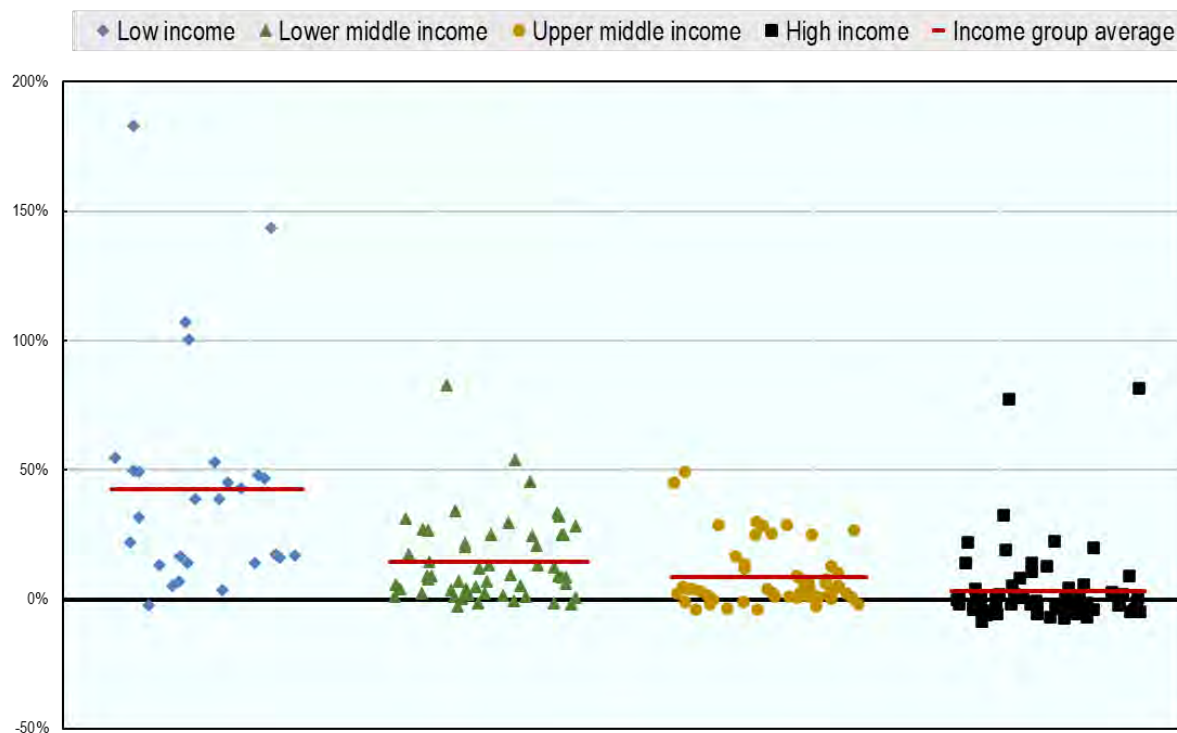
Source: Own calculations from UN COMTRADE.

Data on individual country imports reveals that, for the majority of non-high-income countries, imports of digitisable goods kept growing after 2009 – Figure 6. For instance, low-income countries saw their imports increase, on average in the order of 43% per annum.<sup>31</sup> More generally, the average rate of growth of imports of digitisable goods appears to be inversely correlated with income status – suggesting that the plateauing or contraction in digitisable goods imports has largely taken place in high income economies. Importantly, and even in high-income countries, the data suggest that not all digitisable goods are being digitised. Trade in digitisable goods is still ongoing and, where applicable, tariff revenue on these products is still being collected.

<sup>31</sup> Only one low-income country witnessed average negative changes over the period (Democratic People's Republic of Korea).

**Figure 6. Imports of digitisable goods have been growing in developing countries over the last decade**

Average yearly change in physical imports of digitisable goods in 2008-2019, by income group



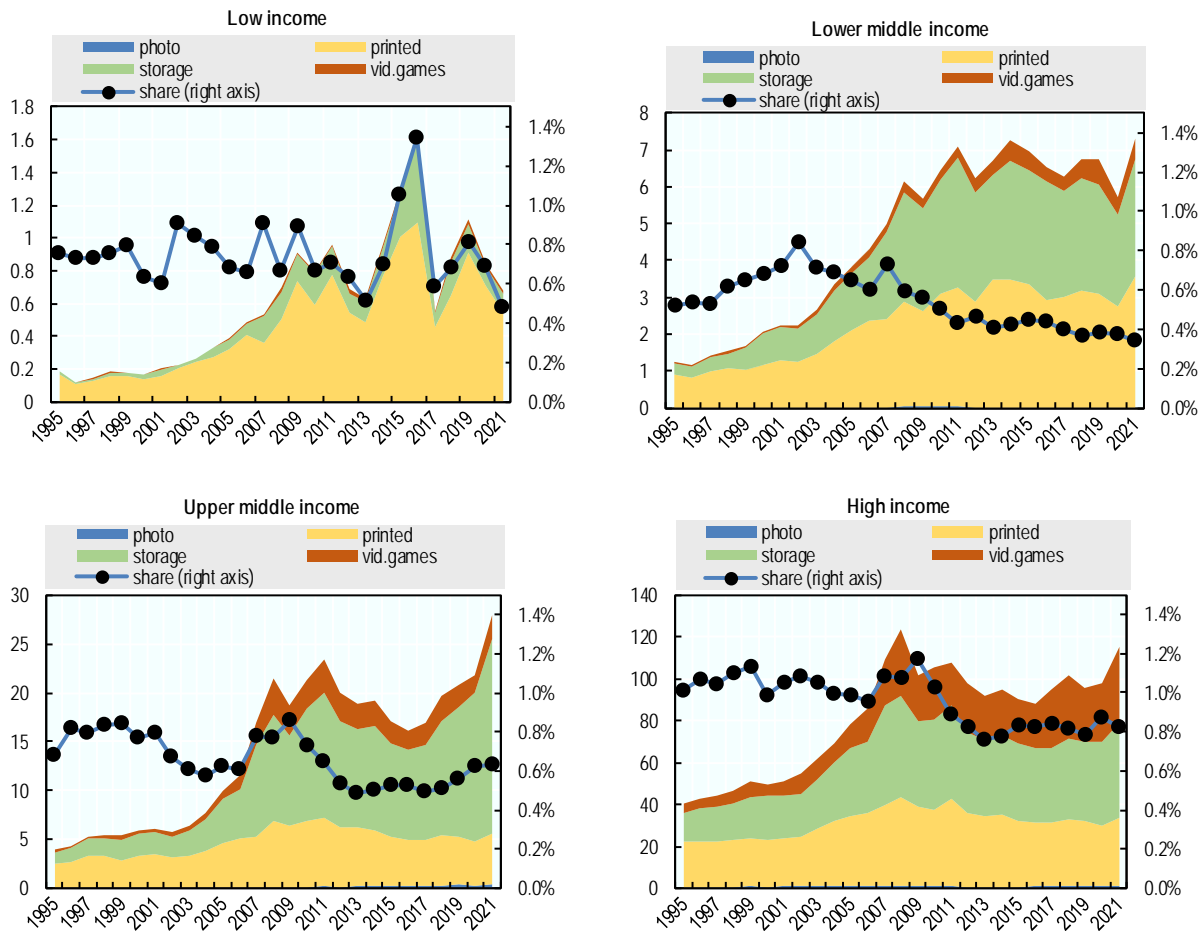
Note: Individual markers represent individual countries. Based on 206 countries & territories. Red lines show the income group average. The horizontal axis line indicates 0% average growth.

Source: Own calculations using BACI.

The composition of imports of digitisable goods also differs significantly across countries at different levels of development (Figure 7). In low-income countries, printed matter, including books, represents most imports (around 70%). In lower-middle-income countries, printed matter represents around 35% of imports, a similar share to digital storage devices (e.g. CDs, USBs, magnetic tapes). In upper-middle and high-income countries, digital storage devices represent the highest share of digitisable good imports (50-60%). Photographic material represents the smallest share of digitisable goods imports across all income groups. In addition, digitisable goods in general represent a very small, although generally declining, share of total goods trade across all income categories (between 0.3% and 0.8% of total imports).

Figure 7. The composition of digitisable goods imports varies across income groups

Share and value of digitisable goods imports



Note: Photo refers to 'photographic film', 'printed'=printed matter; storage=storage devices (e.g. USB drives, CDs); vid.games=video games. The share variable represents the share of digitisable goods imports in total imports.

Source: BACI.

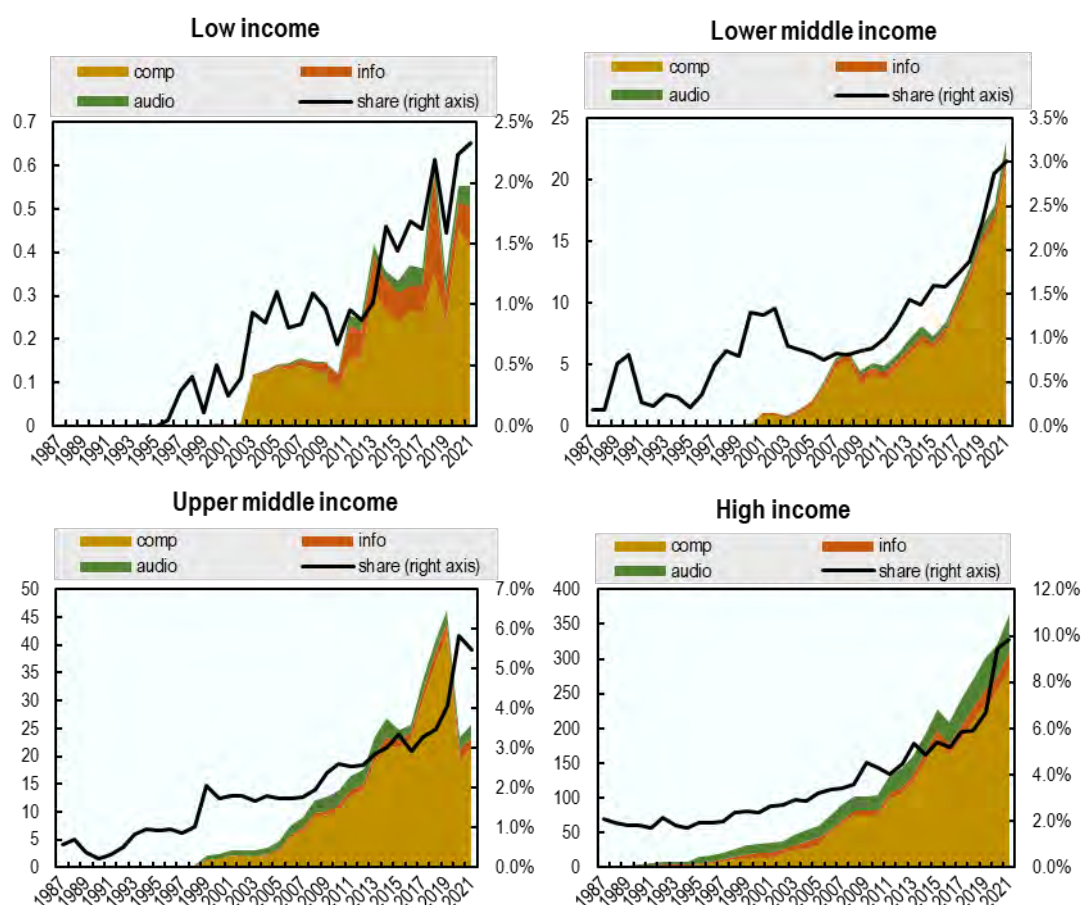
## 4.2. Digital services imports grew significantly across all income groups

Trade in services statistics, and in particular trade in computer, audio-visual and information services, can provide important insights for discussions on electronic transmissions (see Box 2). These statistics capture two aspects of trade. The first is the value of items that were previously being traded in physical format and that are now traded digitally. This would be the trade that tends to be associated most closely with electronic transmissions. It would include, for example, movies previously recorded in DVDs that are now being downloaded. However, these digital services statistics also capture trade that was never traded through physical carrier media. This includes services such as computer programming or cloud computing, services that are 'born digital'. However, trade statistics do not separately identify these two flows.

Contrary to digitisable goods imports, imports of computer, audio-visual and information services (referred to as 'digital services') have been on a stable growth path across all income groups over the past decade (Figure 8). This increase has largely taken place in one category of services trade: computer services.

Figure 8. Digital services imports have been growing across most sectors (1987-2021)

Left axis= billion USD, right axis= share in total services imports



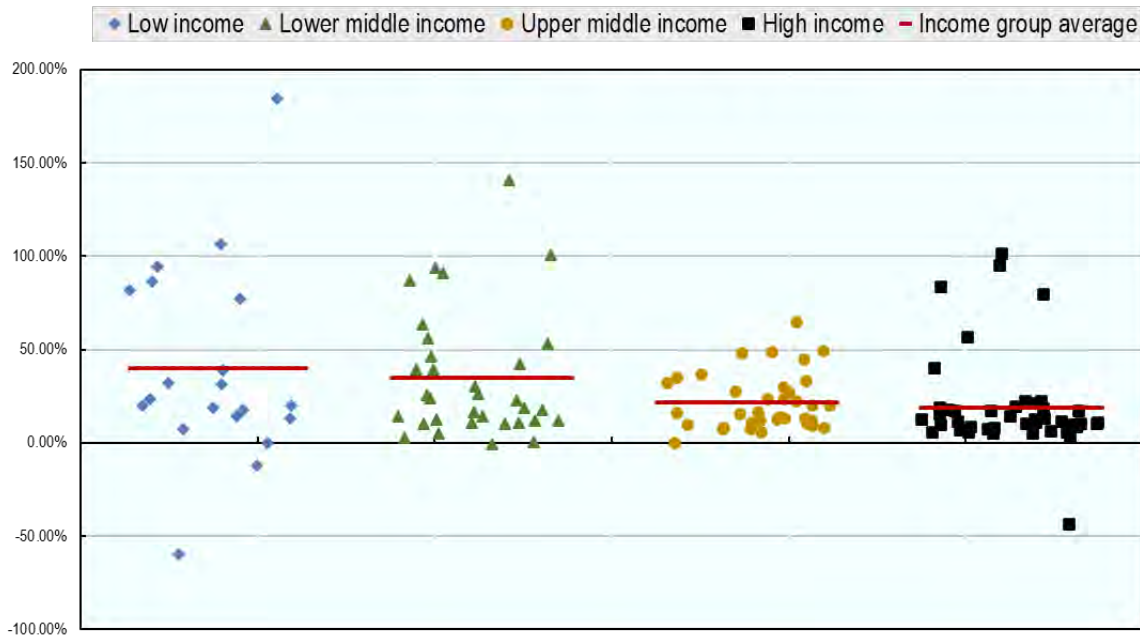
Note: The sudden drop in Upper middle income services imports in 2020-2021 is due to missing data for the People's Republic of China. Based on 175 countries. comp= computer services; info=information services; audio=audio-visual services.

Source: UNCTAD-WTO trade in services statistics.

As was the case for digitisable goods imports, there is a high degree of heterogeneity in how digital services imports have grown for different countries within the same income group. However, digital services imports in the last decade grew faster – on average – than imports of digitisable goods (Figure 9).

**Figure 9. Digital services imports have grown across all income groups in the past decade**

Average yearly change in digital services imports in 2008-2019, by income group



Note: The chart only includes countries with less than five years of missing data. It also excludes countries for which the average measured increase in digital services imports is greater than 200%, for the purpose of representation. These countries are CPV, CYP, KWT, LBN, LSO, NIC, SEN, SWZ, TLS, TUR.

*Note by Türkiye:* The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the “Cyprus issue”.  
*Note by all the European Union Member States of the OECD and the European Union:* The Republic of Cyprus is recognised by all members of the United Nations with the exception of Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Source: UNCTAD-WTO trade in services statistics, based on 135 countries.

Heterogeneities across both digitisable goods and digital services are important from the perspective of the potential customs revenue implications of the e-commerce Moratorium. They suggest that each country experiences different circumstances when it comes to the changes in the value and type of digitisable goods and digital services imports. Analysis on the potential customs revenue implications needs to take these heterogeneities into account.

## 5. Assessing the potential fiscal implications of the e-commerce Moratorium

Questions around the potential fiscal implications of the e-commerce Moratorium have been around since the Moratorium was first signed in 1998. Chief amongst concerns has been that the digitalisation of goods such as cassettes, videotapes, CDs, DVDs, books, calendars, and other digitisable goods may deprive WTO Members, particularly developing countries, of an important base on which customs duties are collected.<sup>32</sup>

These concerns have motivated a large literature aiming to quantify the potential customs revenue that is ‘foregone’ because of the e-commerce Moratorium. However, this literature has, to date, not taken into account that imports of digitisable goods and electronic transmissions are also subject to other commitments and practices beyond the e-commerce Moratorium. Similarly, the question of what an

<sup>32</sup> See dedicated discussions on e-electronic commerce (WTO, 2001<sup>[41]</sup>; WTO, 2002<sup>[42]</sup>; WTO, 2002<sup>[43]</sup>; WTO, 2003<sup>[44]</sup>; WTO, 2003<sup>[45]</sup>; WTO, 2005<sup>[46]</sup>; WTO, 2009<sup>[47]</sup>; WTO, 2011<sup>[48]</sup>).

appropriate counterfactual for *electronic transmissions* may be has not been thoroughly examined – notably at a country-by-country level.

In addition, foregone customs revenue from customs duties is only one part of the potential fiscal implications of the Moratorium, with the other being the offsetting effects arising from growing revenue from other non-discriminatory taxes applied on electronic transmissions, including Goods and Services Taxes (GST) or Value Added Taxes (VAT).<sup>33</sup> Indeed, if the dematerialisation of digitisable goods leads to growing consumption of electronic transmissions, there will be a wider economic base on which to collect VAT or GST revenues.

## 5.1. Calculating the customs revenue implications of the Moratorium

Analysing the potential foregone revenue implications of the Moratorium can be difficult. Uncertainties around the scope of the Moratorium and the definition of electronic transmissions imply that assumptions need to be made about issues such as what tariffs might apply on which trade absent the Moratorium – or about how much trade has already been, or will be, digitised.

This is, in part, why existing estimates of the potential revenue implications of the Moratorium vary widely. They range from USD 280 million to USD 14.3 billion, depending on the trade flows covered and tariffs applied (i.e. whether effectively applied, MFN or bound rates), as well as other underlying assumptions – see Box 3.<sup>34</sup> However, as shown in Andrenelli and Lopez-Gonzalez (2019<sub>[1]</sub>) and Evenett (2021<sub>[17]</sub>), these estimates represent a small share, at most 0.01-0.33%, of overall government revenue (see Table 2). This finding is also confirmed by case study evidence on Egypt and Vietnam (Köhler-Suzuki, 2020<sub>[18]</sub>).

Moreover, as noted above, existing empirical studies have not addressed two important issues that bias current estimates. The first is that existing commitments and practices, such as NICDET provisions or other preferences granted in RTAs, affect the ability of countries to raise tariffs on digitisable goods and electronic transmissions, even in the absence of the e-commerce Moratorium. The second relates to estimating the value of *electronic transmissions* (i.e. the taxable base), with current estimates assuming that: i) all imports of digitisable goods will be electronically transmitted; and/or ii) the rate of growth of digitisable goods imports would have been the same for all countries absent the Moratorium (in contrast to the findings from Section 4 highlighting a significant degree of heterogeneity). Not taking these two issues into account in calculations is likely to lead to an overestimation of the customs revenue implications of the e-commerce Moratorium.

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<sup>33</sup> The terms VAT and GST are used interchangeably in this paper.

<sup>34</sup> This includes the value of trade that might or might not be affected, the counterfactual scenario, or whether or not it is assumed to be possible to impose duties on trade in services.



Table 1. Estimates of revenue implications of the Moratorium in perspective

Study	Duty Type	% of total government revenues	
		Developed countries	Developing countries
Schunknecht and Pérez-Esteve (1999)	Applied	0.01	0.13
Teltscher (2000)	Applied	0.02	0.07
WTO (2016)	Applied	0.01	0.06
Banga (2017)	Bound	0.00	0.01
Banga (2019)	Applied	0.00	0.08
	MFN	0.00	0.10
	Bound	0.00	0.23
Banga (2022)	Applied		0.13*
	MFN		
	Bound		0.33*

Note: Government revenue obtained from the World Bank's World Development Indicators (WDI). \*Variable used is general government final consumption expenditure.

Source: Updated from Andrenelli and López González (2019<sup>[1]</sup>).

### Box 3. Empirical evidence on the customs revenue implications of the Moratorium

The first attempt to estimate the foregone customs revenue of the Moratorium was undertaken by Schuknecht and Pérez-Esteve (1999<sup>[19]</sup>). They used a list of goods that included cinematographic film, newspapers and videogames to provide upper bound estimates of possible tariff revenue losses, based on the assumption that all trade that could be digitised would be digitised. They suggested that the potential foregone revenue effects would be modest, amounting to less than 1% of total tariff revenue across most countries. The paper also highlighted the strong potential for electronic transmissions to enhance services trade, underscoring that modest tariff revenue losses would need to be weighed against gains arising from growing trade in services (see also Mattoo and Schuknecht (2000<sup>[20]</sup>) and Mattoo, Pérez-Esteve and Schuknecht (2001<sup>[21]</sup>)).

More recently, and at the request of WTO Members, the WTO Secretariat (2016<sup>[16]</sup>) re-examined and updated analysis of tariff revenue losses arising from the Moratorium. Using a list of 30 HS 6-digit goods and their applied tariff rates, WTO (2016<sup>[16]</sup>) estimated that the revenue collected from “digitisable goods” had fallen from USD 1.2 billion in 2000 to USD 823 million in 2014 – a global loss nearing USD 400 million.<sup>35</sup> Overall, the duties collected on digitisable goods imports amounted to 0.26% of total estimated customs revenue in 2014, with only four developing countries collecting more than 1.5% of total customs revenues from such tariffs.

Banga (2019<sup>[22]</sup>) used an updated list of 49 goods, also using the HS classification, to estimate the revenue impact of the Moratorium, focusing not only on the potential revenue loss arising from these trade flows being fully digitised, but also on the revenue not collected on trade flows that might have already been digitised such as e-books. To identify these, Banga (2019<sup>[22]</sup>) created a counterfactual projection of the value of trade that might have already been digitised by taking the growth rates of trade in these goods between 1998-2010 and extrapolating these for the period 2011-2017.<sup>36</sup> Using average *bound* tariffs, Banga (2019<sup>[22]</sup>) argues that potential aggregate tariff revenue losses could amount to USD 8 billion for developing countries and USD 212 million for developed economies in 2017. As expected, when using *effectively applied* duties, the foregone revenue is much reduced –

<sup>35</sup> WTO (2016<sup>[16]</sup>) defines “digitisable goods” as “physical goods which have the potential to be digitised and subsequently sent across borders digitally”.

<sup>36</sup> Foregone revenue on customs duties not currently imposed on electronic transmissions is calculated using the annual average rate of growth of trade in digitisable goods during the period 1998-2010 to proxy for trade in electronic transmissions for the period 2011-2017.



USD 2.7 billion for developing countries and USD 123 million for developed countries. Banga (2022<sup>[23]</sup>), using the same methodology, updated these estimates, highlighting that potential foregone revenue for developing and least developed countries in 2020 could amount to USD 14.3 billion when calculated using bound tariffs and USD 5.5 billion when using applied duties.

### 5.1.1. Other commitments and practices affect the ability to impose tariffs on digitisable goods

Existing calculations of the customs revenue implications of the Moratorium assume that the e-commerce Moratorium is the only commitment through which Members *forego* the ability to levy tariffs on digitisable goods and electronic transmissions. However, this is not the case. Beyond the e-commerce Moratorium, there are other commitments and practices which also affect the ability of countries to levy tariffs on electronic transmissions and digitisable goods. They include:

- **Preferential rates in RTAs.** Countries make commitments in their RTAs affording duty free or preferential access to digitisable goods.<sup>37</sup>
- **NICDET provisions not tied to the WTO E-commerce Moratorium.** Eighty-seven countries (in a total of eighty-eight agreements) signed NICDET provisions that are not tied to the WTO Moratorium (see Section 3). This means that, should the Moratorium lapse, electronic transmissions would still not attract tariffs among signatories of these agreements.
- **WTO customs valuation decision 4.1.** Countries notifying this approach to the WTO have chosen to charge tariffs on the *carrier medium* and not the *content* of imports of magnetic media (tapes) and optical media (CDs) carrying software. This means that customs revenue is already not collected on a large share of the value of imports in these items (see Box 4).
- **Customs valuation commitments in regional trade agreements.** Countries have also made customs valuation commitments in their RTAs, applying regardless of the type of carrier media (magnetic, optical or semiconductor) and of content (software or other content) involved in physical transactions (see Box 4).
- **The Information Technology Agreement (ITA) and its expansion agreement.** The first ITA granted duty-free access for some digital storage devices with so-called product 'ex-outs'<sup>38</sup> (e.g. magnetic tapes, CDs), while the ITA expansion agreement broadened commitments in these product categories and added some video game items to the list of covered products.<sup>39</sup>
- **The GATS and services commitments in Regional Trade Agreements.** In line with the understanding adopted in several E-commerce chapters (see Section 3), electronic transmissions are subject to services commitments and exceptions. However, methodological difficulties prevent the inclusion of these commitments in this exercise.<sup>40</sup> Information on relevant GATS commitments is however provided in Annex C.

<sup>37</sup> This also includes unilateral preferences under the enabling clause.

<sup>38</sup> Ex-outs refer to products which are partially covered at a HS 6-digit level, i.e. where only some national tariff lines within HS 6-digit codes qualify for duty-free treatment. Products covered in the first ITA are likely to be covered with 'ex-outs' in today's HS nomenclature, even though they may have been committed at the HS 6 digit level in 1996.

<sup>39</sup> Only commitments under the ITA expansion and with no 'ex-outs' are included in the analysis – in a conservative interpretation of the scope of these commitments.

<sup>40</sup> This is because a degree of judgement is required to determine which commitments would be relevant for electronic transmissions, and especially on how to deal with 'asymmetric' commitments, which arise for instance when computer services are committed but audio-visual services are not (the majority of cases). In addition, the lack of granularity in services trade statistics does not allow to differentiate the value of trade that would be covered by different commitments in services sub-sectors. These challenges also apply for services commitments undertaken in RTAs, where data availability issues also impose further barriers to use.

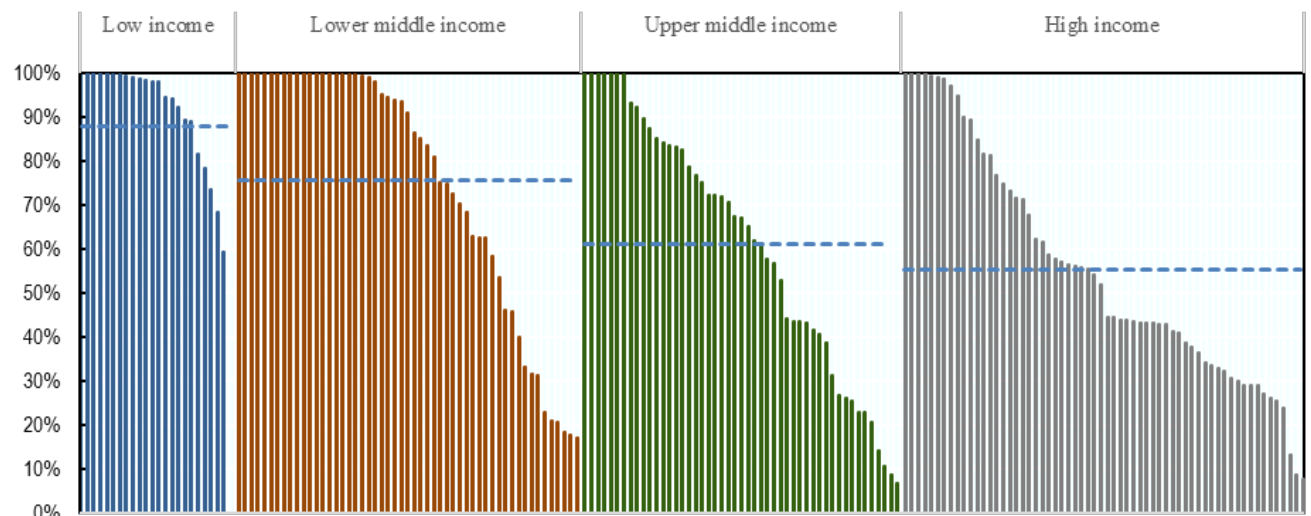
Ultimately, the potential foregone customs revenue due to the e-commerce Moratorium should be calculated as **the revenue that could potentially be collected on imports of digitisable goods and electronic transmissions that is not subject to any other commitment or practice** and, therefore, that would become 'dutable' with the lapse of the Moratorium.

The incidence of each commitment or practice will vary by country and type of commitment: preferential commitments, for instance, will be important if a high share of digitisable goods imports comes from suppliers that are party to an RTA with the importing country, for the goods where commitments have been made. Similarly, NICDET provisions will be more relevant for some developing countries and high-income countries, but not for low-income countries, as they have not signed trade agreements with e-commerce chapters. The relevance of the ITA expansion agreement will also depend on membership of this agreement and on how much Members import in the product categories to which duty-free treatment commitments apply.

Taking these factors into account, overall, the value of digitisable goods that would be 'dutable' with the lapse of the Moratorium is, on average, 67% of the value of import flows in digitisable goods. There is, however, a strong degree of variation both within and between income groups (Figure 10). The share of trade that is 'dutable' is, on average, lowest for high-income and upper-middle-income countries, at 55% and 61% of digitisable goods imports respectively. It is highest, on average, for low-income countries (88%) by virtue of their more limited participation in RTAs, and hence fewer preferential commitments and NICDET provisions.

**Figure 10. Other commitments and practices cover a significant share of imports of digitisable goods**

Share of imports of digitisable goods that is not covered by existing commitments and practices, 2021 or latest available year



Note: Bars represent individual countries. The dotted line represents the income group average. 2021 or latest available year. Based on 188 countries for which data is available.

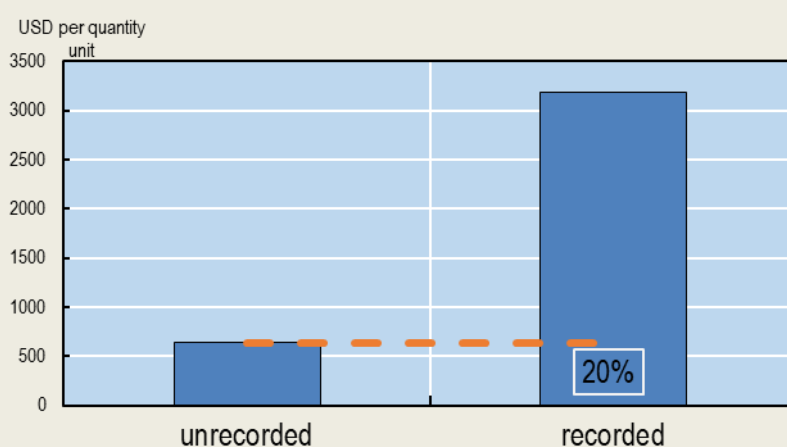
Source: Own calculations based on TRAINS.

## Box 4. Methodology to quantifying the incidence of customs valuation practices and ITA commitments for imports of digitisable goods

### Customs valuation decision 4.1 and customs valuation commitments in RTAs

A unit value approach is used to distinguish the value of carrier and content elements of physically traded storage devices. For instance, to estimate the potential value of content and carrier elements of optical media, the unit value of traded unrecorded media (852342) is compared to the unit value of traded recorded media (852349). When CDs carry information, they are generally traded at a much higher average unit value than unrecorded CDs. For the category of recorded CDs, the carrier component can generally be expected to represent around 20% of the value of trade in this product category (see Figure 11).

Figure 11. On average, 80% of the value of trade in recorded optical media reflects ‘content’



Note: Based on the full sample of bilateral trade flows available in BACI for 2021 at the HS 6 digit level.  
Source: BACI database.

However, the harmonised system classification does not provide sufficient detail to identify the share of content consisting of software within the recorded element of CDs or magnetic tapes, nor does it allow to distinguish – for other digital storage devices like USBs or magnetic tapes – the value of recorded vs. unrecorded media trade. This report relies on the more granular customs classifications of Canada, the European Union, and the United States to overcome these difficulties. See Annex B for greater details.

### The Information Technology Agreement and its expansion agreement

Differences in the Harmonised System nomenclature revisions at the time of the signing of the ITA (1996) and today pose challenges for quantifying the incidence of commitments under the first ITA.<sup>41</sup> Many of the products that would be covered are ‘ex-outs’ (only partially covered) and therefore excluded from the current exercise, although estimates on the potential value of digitisable goods imports they affect is provided in the statistical companion. The ITA expansion agreement, however, liberalises trade in chapter 85.23 with no ‘ex-outs’ and in the HS2012 nomenclature, which is why it is included within the scope of this section.

<sup>41</sup> For an analysis of the scope of the first ITA agreement and its ex-outs in more recent HS nomenclatures, see the Digital Trade Review of Brazil (OECD, 2022<sub>[50]</sub>).

### 5.1.2. Countries are experiencing different rates of digitalisation

Identifying the tax base on which to calculate the revenue implications of the Moratorium is not straightforward. One especially difficult challenge is identifying the *counterfactual value of electronic transmissions*. This is trade that has moved from the goods accounts to the services accounts, or, in other words, items that were previously physically traded and which are now digitally traded.

Some of the existing empirical studies (i.e. Banga (2019<sub>[22]</sub>; 2022<sub>[23]</sub>)) have used uniform average rates of growth of 8% (based on average annual growth rates of physical imports of digitizable products prior to 2010) to calculate the counterfactual value of electronic transmissions and then taking this as the tax base for calculations of the potential revenue implications of the Moratorium (also making the assumption that all that could be digitised would be digitised).

However, this does not take into account that: i) there is a high degree of heterogeneity in import growth of digitisable goods across different countries (see Section 4); ii) not everything that can be digitised is being digitised (see also Section 4); and iii) contemporaneous proxy measures for electronic transmissions can better reflect changes in demand, for instance capturing shocks such as the financial crisis in 2008 or the COVID-19 pandemic.

In order to address these shortcomings, a counterfactual, tied to country-specific changes in imports of ‘smart and hardware goods’, is used to identify the *counterfactual value of electronic transmissions*.<sup>42</sup> This counterfactual includes mobile phones, projectors, headphones, speakers, smart TVs and computers, all of which can be associated with growing consumption of electronic transmissions (see Andrenelli and López-González (2019<sub>[1]</sub>) for a list of these products). This implies that growth of imports of these products should be linked with growth in consumption of electronic transmissions.

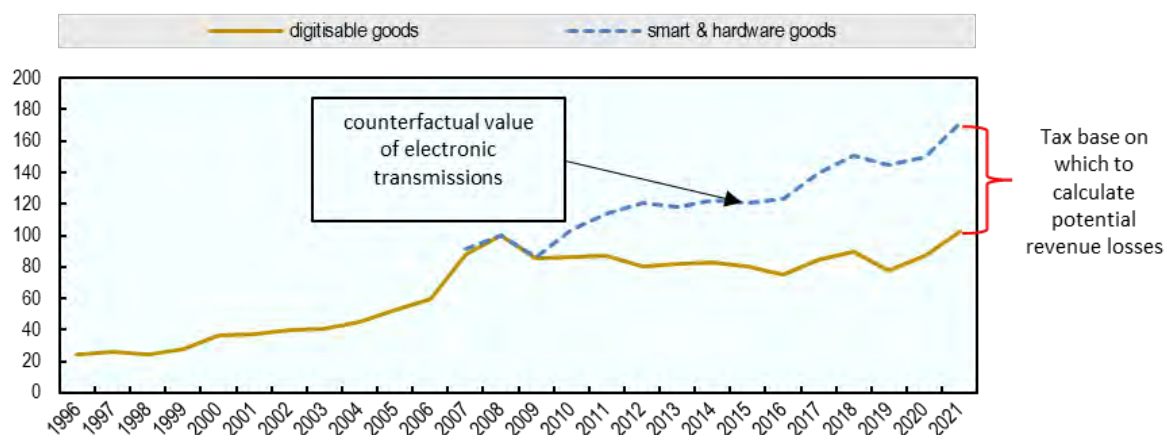
The analysis also takes into account the fact that not everything that can be digitised will be digitised. Indeed, imports of digitisable goods actually grew for many countries, meaning that tariffs are still being collected on these items. The tax base on which to calculate the potential foregone revenue implications of the Moratorium is therefore identified as **the difference between the counterfactual value of electronic transmissions minus the actual value of digitisable goods imports** (digitisable goods that have not been digitised) – Figure 12a. The size of this tax base is, on average, highest for high-income countries and lowest for low-income countries, on a sliding scale across the different levels of development (Figure 12b), reflecting a more important slowdown of digitisable goods imports in high-income countries (see Section 4).

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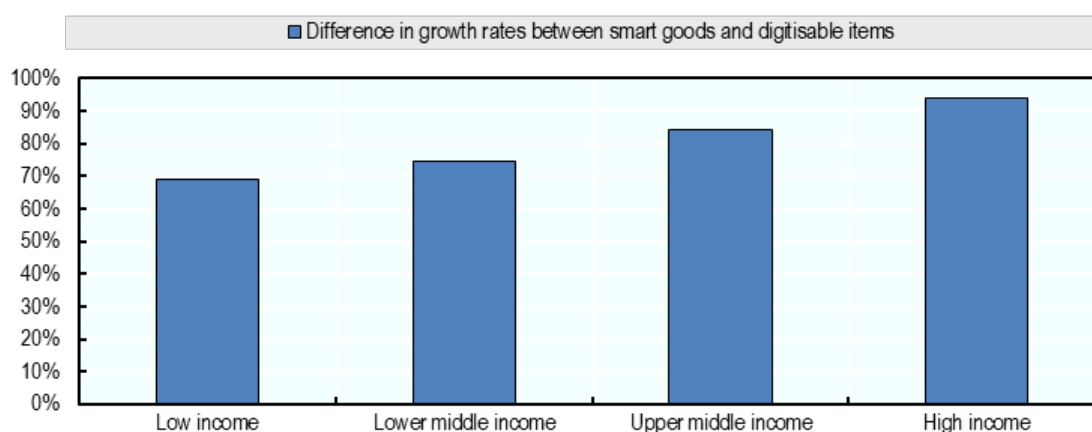
<sup>42</sup> This is because smart and hardware goods imports can be expected to be closely related to the consumption of electronic transmissions. If those have been growing faster in some economies than in others, this measure will capture the heterogeneity in higher rates of growth for the associated goods. Similarly, if COVID-19 led to a sustained increase – or decrease – in the consumption of electronic transmissions, related imports of smart and hardware goods should be able to reflect this change.

Figure 12. Hypothetical tax base for customs duties on electronic transmissions

a. Growth of imports by category (100=2008)



b. Difference in growth patterns for imports of digitisable goods and smart and hardware goods, by income category



Note: a): The solid lines shows the change in imports of digitisable goods from the baseline year 2008. The dotted line shows changes in imports of digitisable goods had these followed the same growth pattern as smart & hardware products.

b): bars show difference between the average rate of growth of imports digitisable goods and the average rate of imports of smart and hardware goods across income categories. Figure 12b excludes Congo in light of exceptionally high growth estimates for imports of digitisable items.

Source: Own calculations using BACI and TRAINS.

### 5.1.3. The potential foregone customs revenue implications of the Moratorium are small

Calculating the potential foregone revenue arising from the Moratorium requires combining the different elements discussed above. The **potential foregone customs revenue** is the sum of the product of:

- **The import tax base (ITB).** This is the difference between the counterfactual value of imports of electronic transmissions and the observed value of imports of digitisable goods (on which tariffs are still being collected).
- **The share of imports that is effectively dutiable without breaching existing commitments or practices (DUT).** This is the share of trade that would not be covered by existing commitments or practices (see Figure 10), and which would become 'dutiable' with the lapse of the Moratorium.
- **The tariff that could be applied (T).** Which in this case would be the MFN tariff (since preferences are already being accounted for).

For any given country ( $i$ ), the sum of the product of these variables across trade partners ( $j$ ) and products at time ( $t$ ), gives a measure of the potential foregone customs revenue (PFCR<sub>it</sub>).

$$PFCR_{it} = \sum (ITB_{ijt} * DUT_{ijt} * T_{ijt})$$

Data limitations and methodological choices in the calculation introduce positive biases which imply that the resulting estimates are likely to be upward biased.<sup>43</sup>

The analysis is undertaken for 171 countries using the latest available year – Table 2. In line with most of the existing literature, three key results emerge from this exercise.

- **The overall revenue implications of the Moratorium are small.** The potential foregone customs revenue of the Moratorium is USD 1.3 billion. This represents, on average, around 0.68% of potential total customs revenue.<sup>44</sup>
- **Revenue implications differ across income groups.** The potential revenue effects, although small, are on average more important, as a share of potential customs revenue, for countries in lower income groups.
- **There are important heterogeneities across countries.** Estimated potential foregone revenue for countries such as Malawi or Mongolia is higher, suggesting that specific economies might be particularly affected. For such cases, specific attention to possible fiscal adaptation strategies and capacity building is warranted.

Overall, and as a share of government revenue (albeit for a reduced sample of 131 countries), the average potential foregone customs revenue implications of the Moratorium range between 0.02% and 0.33% of overall government revenue.

Moreover, the growing adoption of 3D printing technologies is unlikely to drastically change these results. Recent evidence in Freund, Mulubdic and Ruta (2022<sup>[24]</sup>; 2019<sup>[25]</sup>) and Andrenelli and Lopez-Gonzalez (2021<sup>[2]</sup>) suggests that 3D printing is complementary to goods trade rather than substitutive.

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<sup>43</sup> Calculating foregone revenue as the product of the value of an import flow times the tariff does not take into consideration that countries use tariff exemption, including for imports from governmental bodies, international agencies etc (see Brenton et al. (2009, p. 3<sup>[55]</sup>)). There is an aggregation bias owing to the fact that tariff data is reported and comparable only at the 6-digit level while many countries apply tariffs at the 8 or even 12 digit level.

<sup>44</sup> Foregone customs revenue estimated in Banga (2022) is 6 times higher than these estimates in million USD, despite the analysis presented herein covering roughly twice as many countries. The estimates using bound rates in Banga (2022) are 16 times higher.

**Table 2. Potential foregone customs revenue**

a. By income group and as a share of as potential overall customs revenue (171 countries), 2021 or latest available year

	Average MFN tariff	Average share of imports that is dutiable	Sum of potential foregone revenue (million USD)	Average share of foregone revenue in potential customs revenue*	Highest estimates of foregone revenue*	Number of countries where the estimate equals 0%
Low income	10.3%	87%	60	1.64%	Malawi (22%), Niger (3%); Mali (3%)	8 out of 22
Lower middle income	9.0%	72%	738	1.09%	Mongolia (22%); Sri Lanka (6%); Nepal (3%)	9 out of 43
Upper middle income	5.7%	60%	256	0.40%	Paraguay (3%); Fiji (3%); Azerbaijan (2%)	7 out of 47
High income	1.9%	53%	205	0.22%	UAE (2%); Bermuda (1%); Panama (1%)	10 out of 58
<b>All countries</b>	<b>5.9%</b>	<b>64%</b>	<b>1,265</b>	<b>0.68%</b>		

b. As a share of as overall government revenue (131 countries), 2021 or latest available year

F	Average MFN tariff	Average share of imports that is dutiable	Sum of potential foregone revenue (million USD)	Average share of foregone revenue in total government revenue	Highest estimates of foregone revenue*	Number of countries where the estimate equals 0%
Low income	11.7%	88%	54	0.33%	Malawi (2%); Central African Republic (0.7%); Togo (0.04%)	3 out of 12
Lower middle income	8.6%	73%	689	0.20%	Mongolia (3.6%); Congo, Rep. (0.9%); Nepal (0.4%)	6 out of 35
Upper middle income	5.7%	54%	253	0.06%	Paraguay (0.7%); Azerbaijan (0.3%); Fiji (0.2%)	6 out of 37
High income	1.7%	50%	42	0.01%	Bahamas (0%); Panama (0%); Trinidad and Tobago (0%)	9 out of 47
<b>All countries</b>	<b>5.6%</b>	<b>61%</b>	<b>1,038</b>	<b>0.10%</b>		

Note: Analysis for 171 and 131 countries, based data availability (including Venezuela when data allows, not classified under the 2022-2023 World Bank Income group classification); 2021 or latest available year. The variable 'potential customs revenue' is calculated by importing country as MFN tariff \* import flow for all country-partner-product flows at the HS 6 digit level, for the same year as the foregone customs revenue estimate for digitisable goods. The government revenue variable comes from the World Development Indicators, computed as government revenue is local currency unit, scaled by the average exchange rate with the US dollar for the purpose of comparability. Where data is missing OECD revenue statistics for total government revenue are used instead. This estimate for government revenue is computed as a simple average across 2017-2020. Data from the UAE (High income) is omitted from Table 2b because of an exceptionally high estimate.

Source: Own calculations based on BACI, TAPED and TRAINS.

## 5.2. Potential revenue losses can be offset from rising VAT and GST takings

The debate on the Moratorium has mainly focused on the potential impact of digitalisation on the dematerialisation of physical trade and the associated potential customs revenue implications. However, relatively little attention has been given to the impact of digitalisation on new economic activities and trade



flows and how non-discriminatory consumption taxes would help offset potential revenue losses from customs duties.<sup>45</sup> One notable exception is Lee-Makiyama and Narayanan (2019<sup>[26]</sup>).

### 5.2.1. Trade that is 'born digital' is growing

The last decade has seen a significant increase in digital services imports across all income groups – in large part driven by computer services (see Section 4). Some of these digital services reflect economic activities that involve trade that is 'born digital' and that would not have been delivered through physical carrier media. Good examples of this are cloud computing services, interactive online gaming services, or services provided through smartphone applications.

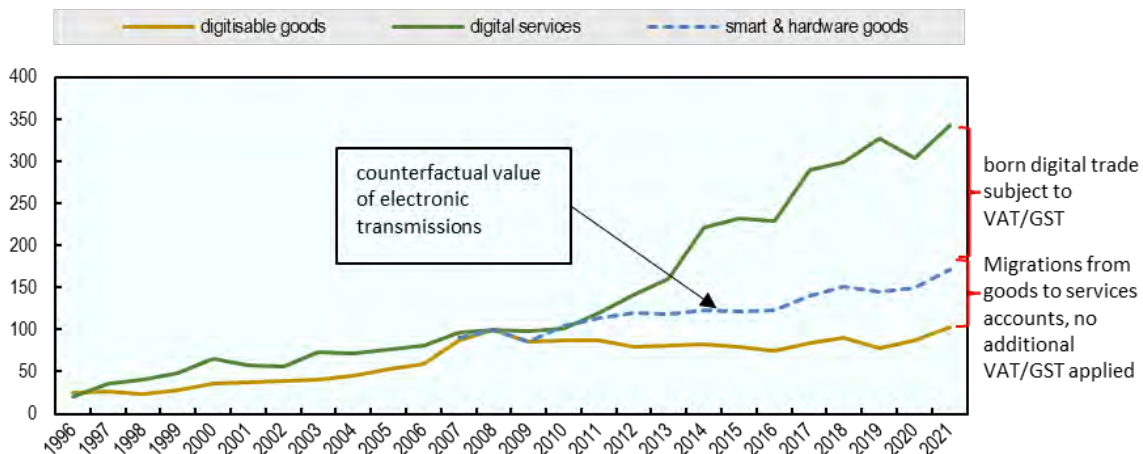
These trade flows provide a new tax base for consumption taxes, and as such can contribute to offsetting the fiscal implications arising from the dematerialisation of trade in digitisable goods. The extent to which this is the case will depend on the extent to which growth in these digital services imports has outpaced growth of hypothetical electronic transmissions (Figure 13a).

The intuition is as follows. The value of digital services imports captures both trade that has migrated from physical delivery to digital delivery (counterfactual electronic transmissions) as well as trade that was 'born digital'. Since trade that may have shifted from physical to digital delivery would already have attracted VAT/GST taxes, the move from physical to digital delivery is neutral for VAT/GST collection.<sup>46</sup>

However, growing imports of trade that is 'born digital' would generate new VAT/GST revenue, with the potential to offset foregone customs revenue. Overall, since, on average, the rate of growth of digital services imports is generally higher than that of counterfactual electronic transmissions, there is a potential tax base for these offsetting effects to take place (Figure 13b).

**Figure 13. Estimating the benefits of consumption taxes on trade that is 'born digital'**

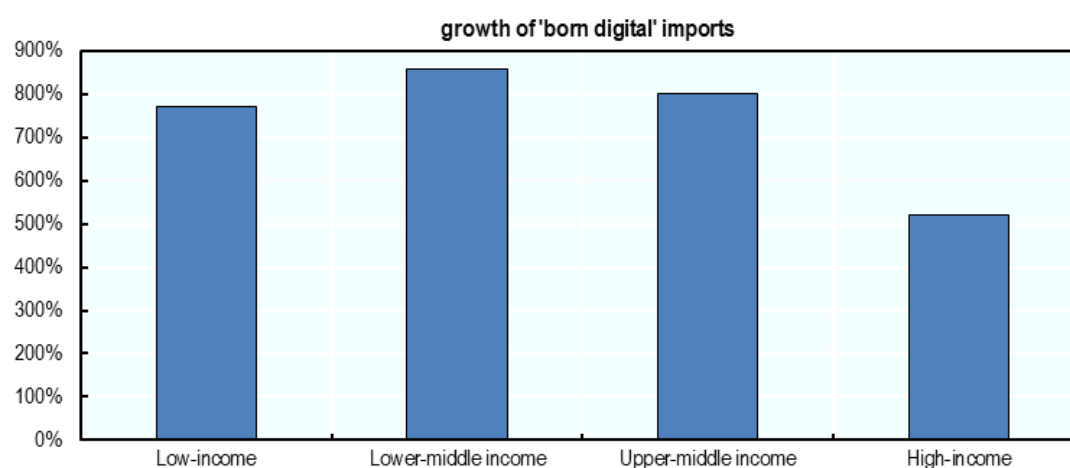
a. Imports of digital services outpaced the growth of 'electronic transmissions', 2008=100



<sup>45</sup> These new economic activities may also help offset the fiscal implications of the dematerialisation of trade through other taxes (e.g. personal or corporate income taxes). Similarly, many other activities beyond those used in this section (i.e. imports of computer, audio-visual and information services) would grow with digitalisation (e.g. financial services, business services). Yet, quantifying the contribution of these other mechanisms is more challenging in the current framework, which is why this section largely focuses on consumption taxes applied on computer, audio-visual and information services imports.

<sup>46</sup> Although it has negative implications for revenue from customs duties.

- b. Difference between growth of counterfactual electronic transmissions and digital services, by income group (117 countries)



Note: Panel a shows normalised changes in imports of digitisable goods, electronic transmissions and digital services imports, with 2008 set equal to 100. Panel b shows how much more digital services imports have grown relative to the counterfactual for electronic transmissions. Source: Own calculations based on TRAINS, BACI and UNCTAD-WTO trade in services statistics.

### 5.2.2. VAT/GST taxes are widespread across the globe

The potential offsetting effect of VAT/GST taxes depends on the existence of a VAT/GST regime in the importing country, the applicable rates and the taxable base. The vast majority of countries included in this analysis apply VAT/GST taxes, highlighting the widespread use of these mechanisms for fiscal revenue collection.<sup>47</sup> Where standard VAT/GST rates are concerned, the median rate is between 15 and 20%, depending on the income group.<sup>48</sup> VAT/GST rates range between 15% and 20% in low-income countries and 5% and 27% in high-income countries (Figure 14a).

VAT/GST taxes generally apply to domestic transactions as well as imports – they will be due upon importation only when digital services are used for final consumption. This means that only some digital services imports will directly generate consumption tax revenue when crossing a border. This will be the case for Business-to-Business (B2B) transactions where the importing entity (e.g. a firm) is the final consumer of the supplied service – or else for Business-to-Consumer (B2C) transactions.

The calculated tax base of 'born digital' imports needs to be scaled by the share of imports in these sectors that can be attributed to final demand. This is calculated using the TIVA database with information from years 2019 and 2020 on a country-by-country basis.<sup>49</sup> The data show that, on average, and notwithstanding strong variation across and within income groups, around 44% of imports of digital services are destined for final demand (Figure 14b).

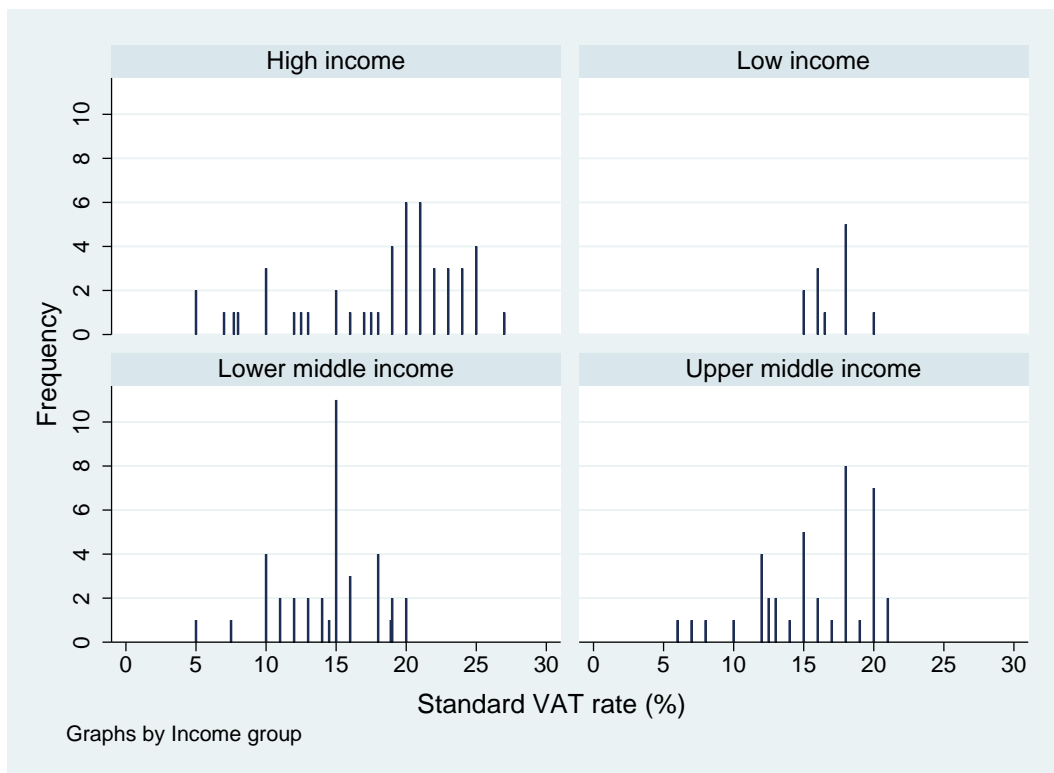
<sup>47</sup> VAT rates are available for 137 of the 171 countries in the dataset and are collected using a range of data sources including PwC, Avalara and KPMG. Missing data are also a reflection of the absence of a VAT system in the economy.

<sup>48</sup> A comparison of VAT rates specific to digital services imports (obtained from Avalara) and standard VAT rates (obtained from PwC) reveals that standard VAT rates normally apply to the importation of digital services.

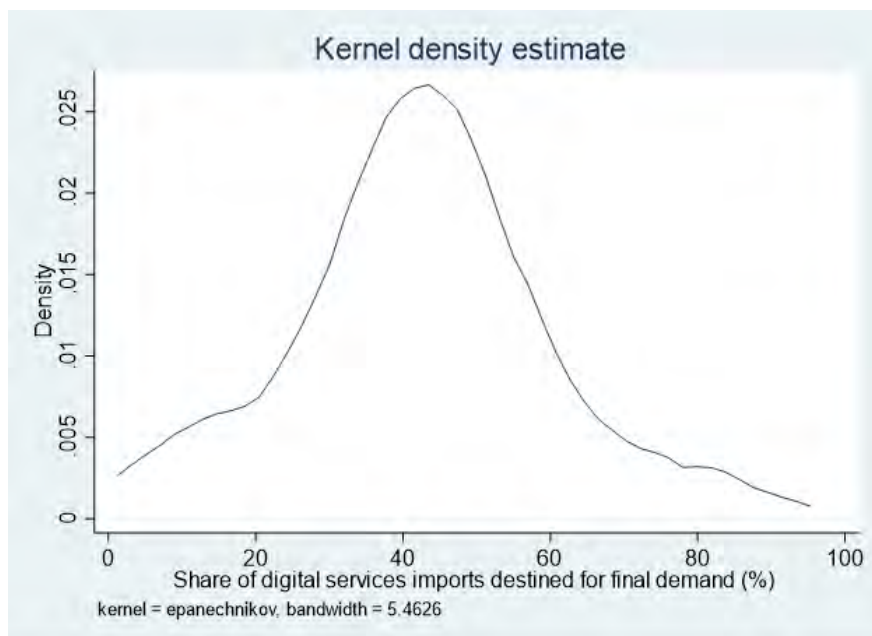
<sup>49</sup> The relevant sectors for digital services imports mirror the Balance of Payment classification for digital services imports as audio-visual, information and computer services. These are Publishing, audio-visual and broadcasting activities (D58T60) and IT and other information services (D62T63).

Figure 14. Distribution of standard VAT rates and final demand shares

a. Distribution of standard VAT rates, by income group



b. Distribution of final demand share in digital services imports



Note: a. Based on 136 countries. b. based on 76 countries.  
 Source: Own calculations based on PwC, Avalara, KPMG, IMF and TIVA.

### 5.2.3. The offsetting effects are important for a large number of countries

Revenue from VAT on 'born digital' trade is computed as the sum of the product of the import tax base for digital services ( $ITBDS$ ), the share of these imports destined for final demand ( $FCS$ ) and the applied VAT/GST rate ( $VATGST$ ).<sup>50</sup>

$$RFVAT_{it} = \sum (ITBS_{it} * FCS_{it} * VATGST_{it})$$

The exercise shows that – for 77 out of the 106 countries for which data is available – standard VAT/GST rates applied to growing imports of 'born digital' services are likely to generate more revenue than the foregone customs revenue attributable to the e-commerce Moratorium (Figure 15). Where these taxes might not fully offset the potential impact of the Moratorium, they would, in most cases, attenuate the fiscal implications of the dematerialisation of trade – although this is not the case for all countries. Indeed, for 29, mostly developing countries, the net fiscal impact remains negative – although small relative to overall government revenue. Importantly, offsetting effects of consumption taxes arise across all income categories (Figure 15). Moreover, these estimates are only based on imports of audio-visual, information and computer services, and as such they only capture a fraction of VAT/GST revenue that may be generated by the wider growth of services imports. Indeed, VAT/GST would also be collected on other goods and services which are beyond the scope of this exercise.

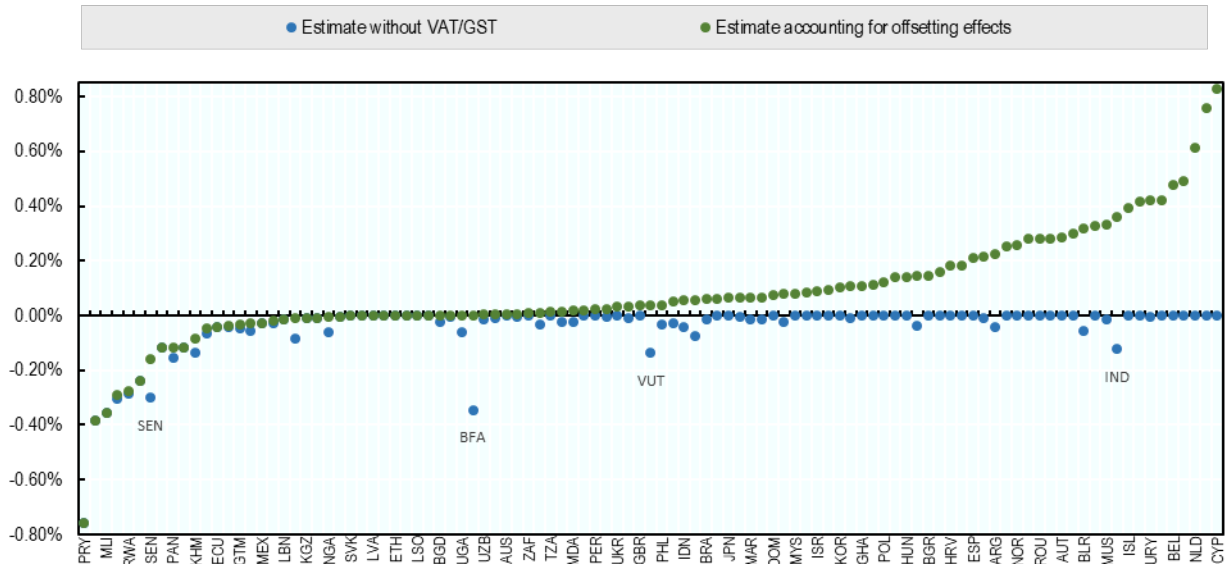
These findings underscore the potential to find fiscal solutions, based on consumption taxes, to collect revenue on immaterial imports based on widely adopted and internationally accepted standards. These have the potential not only to address tax challenges associated with the digital transformation, but also a demonstrated capacity to increase tax revenues (Box 5). They also do not have the shortcomings specific to customs duties, such as detailed product classification (standard VAT/GST rates typically apply to digital deliveries) or the determination of origin (VATs/GSTs apply at the place of final consumption regardless of the place of origin).

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<sup>50</sup> Scaling by the final demand share may lead to an underestimation of VAT revenue generated by digital services imports, as business-to-business transactions where the importing business is not the final consumer are still likely to generate additional VAT/GST revenue through their further sales in domestic value chains. The share of VAT revenue generated through these sales is however harder to quantify and is therefore not included in this exercise.

**Figure 15. Standard VAT/GST taxes applied on digital services imports would offset in most countries the fiscal revenue effects of the Moratorium**

Difference between estimates that exclude the offsetting effects of VAT/GST relative to estimates that include them, as a share of government revenue. Individual dots represent countries, 2021 or latest available year.



Note: The figure shows the net impact of VAT/GST revenue from digital services imports minus foregone customs revenue from the e-commerce Moratorium, as a share of total government revenue. The figure excludes Mongolia (-3.48%), Malawi (-1.57%) and Estonia (+3.02%) for representation purposes.

Source: Own calculations based on BACI, UNCTAD-WTO trade in services statistics, TRAINS, PwC, Avalara, KPMG, World Development Indicators and OECD Tax Revenue Statistics.

### Box 5. Addressing the VAT Challenges of Digital Trade: delivering an effective global solution

Growth in digital trade has created considerable pressures on VAT. For instance, increasing values of online sales of services, including applications, music and video-streaming, often do not incur VAT taxes. This is largely due to complexities in organising, administering and enforcing the payment of the tax on these sales under traditional VAT rules.

The absence of a robust response to these challenges can lead to increasingly significant VAT revenue losses and growing unfair competitive pressure on brick-and-mortar retailers that are increasingly incapable of competing against the continuously rising volumes of online sales, where VAT is not being levied. This issue has become even more important now that the COVID-19 pandemic accelerated a further shift from bricks-and-mortar businesses to online sales.

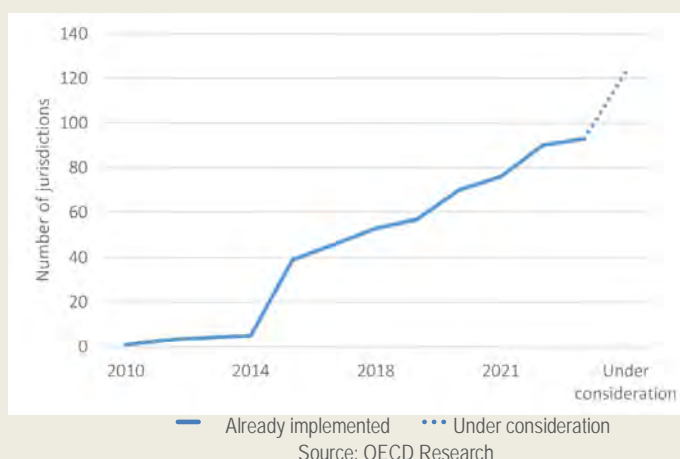
#### *An effective global solution based on international dialogue*

The global policy dialogue organised by the OECD in response to these challenges identified internationally agreed rules and mechanisms to address the VAT challenges of digital trade. They allow governments to secure important VAT revenues on e-commerce and to ensure a level playing field between e-commerce and traditional businesses, without stifling innovation and economic growth. These solutions were developed in an inclusive manner, notably through the Global Forum on VAT, and reflect consensus among more than 100 jurisdictions worldwide. They were delivered as part of the OECD/G20 Base Erosion and Profit Shifting (BEPS) package and have been further complemented with detailed implementation guidance (OECD, 2017<sup>[27]</sup>; 2019<sup>[28]</sup>).

### A growing number of jurisdictions have implemented the recommended solution with very positive results

Over 90 jurisdictions worldwide, including OECD and non-OECD countries, have already implemented the recommended rules and mechanisms for collecting VAT on online sales, and many more are planning to do so. Very positive results have been reported in terms of additional revenue collected and in achieving a level playing field between bricks-and-mortar businesses and online merchants.

Jurisdictions adopting the VAT recommendations on online sales



	Australia nearly USD 1.2 billion in the first four years
	Chile nearly USD 481 million in the first twenty-two months
	EU Members nearly USD 28 billion in the first six years
	New Zealand nearly USD 796 million since implementation (2016-Q3 2022)
	Norway nearly USD 1.4 billion since implementation (2011-Q3 2022)
	South Africa nearly USD 935 million since implementation (2014-2021)
	Thailand nearly USD 171 million in the first ten months (2021-July 2022)

#### Regional VAT Digital Toolkits

The OECD provides assistance to jurisdictions worldwide, including developing economies, to help implement the recommended solutions for the effective collection of VAT on digital trade. Indeed, the Regional VAT Digital Toolkits present detailed guidance for the design, administrative and operational implementation of the recommended framework for the collection of VAT on digital trade. Three Regional Toolkits have been delivered for Latin America and the Caribbean (2021<sup>[29]</sup>), Asia-Pacific (2022<sup>[30]</sup>) and (2023<sup>[31]</sup>), taking account of each region's specific needs and circumstances. They cover all the key implementation and operational aspects including policy design and legislative reform, building the infrastructure to support the registration and compliance processes, communication strategy, effective audit and administrative risk management strategies, including concrete measures to tackle VAT fraud associated with online trade.

Note: See also the OECD International VAT/GST Guidelines (OECD, 2017<sup>[27]</sup>) and the 'The Role of Digital Platforms in the Collection of VAT/GST on Online Sales' (OECD, 2019<sup>[28]</sup>).

## 6. Identifying the potential implications of not renewing the Moratorium

Understanding the implications of the Moratorium requires looking beyond its potential fiscal impacts and identifying some of the benefits that would be foregone with the lapse of the Moratorium. Indeed, previous OECD work (Andrenelli and López González, 2019<sup>[1]</sup>) showed that:

- **Electronic transmissions could help level the playing field, in terms of trade costs, for developing countries** which tend to face higher trade costs on physical products than high-income countries. Developing countries would compete on a more even keel with developed countries given that costs of transmitting items digitally would be similar across countries at different levels of development.
- **Removing existing tariffs on digitisable goods would lead to an overall positive welfare impact.** Analysis from a partial equilibrium model shows that, if all goods that could be digitised

were to become digitally transmitted today, consumer welfare would increase by USD 940 million, outweighing potential revenue losses by USD 73 million.

- **The use of foreign business services, which are increasingly digitally delivered, is associated with growing export competitiveness** – Access to business services was found to be most important for lower-middle income and lower income countries.

Debates about the opportunity cost of the Moratorium often focus on the following three areas.<sup>51</sup> The first is the potential impact of tariffs and trade policy uncertainty and what the lifting of the Moratorium might mean for trade in electronic transmissions. The second is about industrial policy, and whether there might be a case for tariffs on electronic transmissions with a view to spurring greater domestic value creation. The last is on the impact that lifting the Moratorium might have on the most vulnerable businesses, including SMEs and women-owned firms.

### 6.1. Trade policy uncertainty reduces trade

Since the Moratorium has been in place, digital trade, which includes digitally ordered and digitally delivered trade, has thrived, growing from USD 1.26 trillion in 1998 to USD 5.1 trillion in 2018. For countries like the United Kingdom, the United States, India or the Philippines, digital trade now represents more than a third of total exports (López-Gonzalez, Sorescu and Kaynak, 2023<sup>[32]</sup>). While many different factors will have contributed to the expansion of digital trade, lower trade costs and reduced trade policy uncertainty are two which are likely to be particularly important in the context of the Moratorium discussions.

Indeed, existing empirical literature highlights that one key benefit from trade agreements is reduced trade policy uncertainty, especially for lower income countries (Limao and Maggi, 2015<sup>[33]</sup>). On the specific case of tariffs, Osnago, Piermartini and Rocha (2015<sup>[34]</sup>) show that trade policy uncertainty, measured as the difference between bound and applied tariff rates – the water in the tariff – is an important barrier to exports. In the face of tariffs and policy uncertainty, firms delay or reduce their trading activities. Jakubik and Piermartini (2023<sup>[35]</sup>) argue that commitments made at the WTO can contribute to more stable policy environments.

Identifying how the moratorium has affected trade policy uncertainty is difficult because there is no policy change that can be used to capture a direct effect. However, looking at how policy uncertainty has affected trade in physically traded items related to electronic transmissions (i.e. digitisable goods) can provide valuable insights about potential effects. If uncertainty about the trade policy environment already affects digitisable goods trade, not renewing the moratorium could entail the transpositions of this policy uncertainty to electronic transmissions.

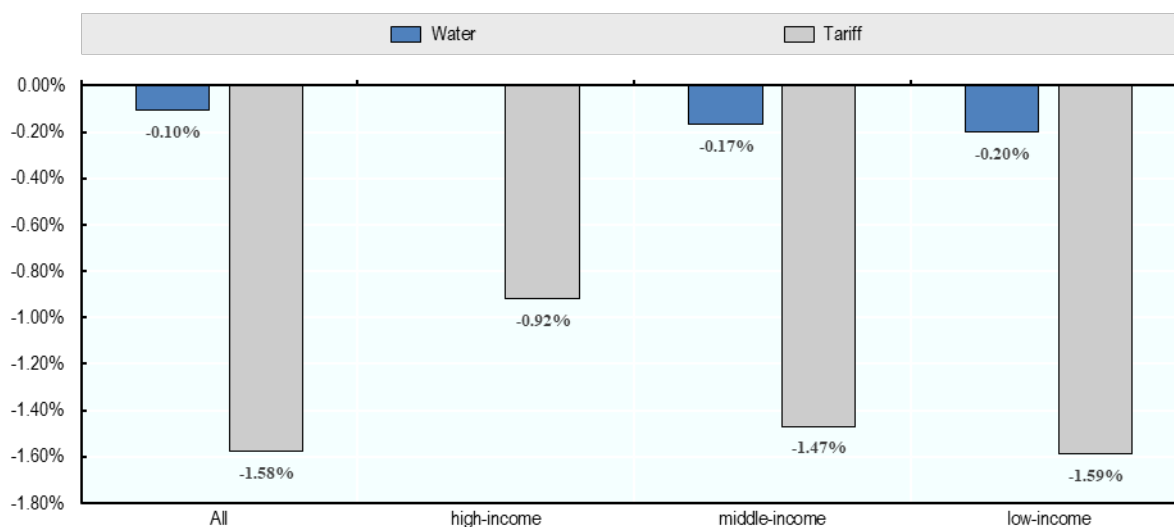
To capture the impact of tariffs and trade policy uncertainty on digitisable goods the methodology set out in Osnago, Piermartini and Rocha (2015<sup>[34]</sup>) is used. A negative relationship between digitisable goods trade and the existing tariff rate and the difference between the bound and the MFN rate, the water in the tariff, emerges (Figure 16). Overall, an increase in trade policy uncertainty, measured as a one percentage point change in the water in the tariff, leads to a further reduction of trade by 0.1% (in parallel, a one percentage point increase in the tariff on digitisable goods leads to a 1.58% decrease in trade).

These results confirm that trade policy uncertainty plays an important role in determining trade in digitisable goods. They also highlight that the impact of trade policy uncertainty is largest for low-income countries, followed by middle income countries. It is worth noting that this trade policy uncertainty effect is not apparent in the case of related digital services (where electronic transmissions are captured in the trade statistics). As expected, neither the tariff nor the water in the tariff have a statistically significant impact on digital services (see Annex Table D.1). This is in line with the hypothesis that the Moratorium is keeping a lid on trade policy uncertainty that is affecting digitisable goods.

<sup>51</sup> These, among others, were highlighted during a meeting held at the WTO on the 2<sup>nd</sup> of June 2023 during a dedicated session on the Moratorium under the e-commerce Work Programme discussions ([https://www.wto.org/english/tratop\\_e/ecom\\_e/ecom\\_0106202310\\_e/ecom\\_0106202310\\_e.htm](https://www.wto.org/english/tratop_e/ecom_e/ecom_0106202310_e/ecom_0106202310_e.htm)).



Figure 16. Trade policy uncertainty reduces trade in digitisable goods



Note: The bars show the coefficients observed from structural gravity model that regresses trade in digitisable goods against tariffs and the water in the tariff (the difference between applied and bound rates). The estimations also control for the presence of FTAs and use country pair, reporter-year, partner-year and sector fixed effects. Sample period is 1995-2020. Table of regression results can be found in Annex Table D.1. Source: Own calculations based on TRAINS data.

## 6.2. Lifting the Moratorium would hit low-income country trade most

One question that is often asked relates to the potential impact of lifting the Moratorium and applying tariffs on electronic transmissions. This can be illustrated by applying the coefficients obtained from the estimations in the previous section to existing digital services trade, which is where electronic transmissions are currently recorded (see Box 2).<sup>52</sup> The results show that the transposition of tariffs currently applied on digitisable goods to digital services would reduce low-income country exports of digital services by 2.5%, exports of middle-income countries by 0.4% and exports of high-income countries by 0.5% (Figure 17a).<sup>53</sup> For greater clarity, this reflects both the impact of greater uncertainty and of countries applying the same duties that are imposed on digitisable goods on digital services.

The higher impact on low-income countries is driven by the fact that 84% of low-income country digital services exports are currently to middle-income countries which tend to have higher applied and bound tariffs, fewer RTA commitments, and fewer NICDET and GATS commitments. In turn, middle income countries tend to export more to high-income countries where there are more commitments not to apply tariffs (Table 3).

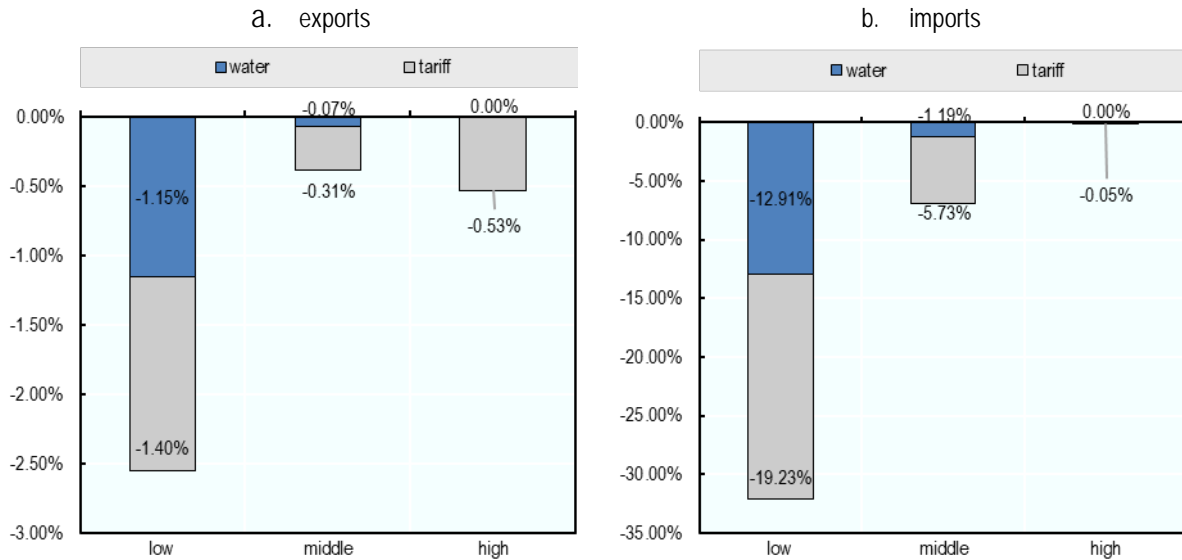
For imports (Figure 17b), the impact would be even more marked. Low-income country imports of digital services stand to fall by 32%, middle-income country imports by nearly 6% and high-income country imports by 0.04%. These results are driven by the fact that low-income countries tend to have high tariffs on digitisable goods, while high-income countries have near zero tariffs.

<sup>52</sup> The impact of the tariffs and uncertainty is obtained by multiplying the value of trade in digital services ( $x_{ij}$  or  $m_{ij}$ ) between two countries by the coefficient obtained for the income group in which the reporting country belongs to from Annex Table D.1 ( $inc\_group\_beta$ ), multiplied by either the water in the tariff ( $water$ ) or the applied tariff ( $AHSrate$ ). See Annex D for a description.

<sup>53</sup> These calculations take into consideration existing preferences in RTAs and NICDET commitments although not GATS commitments (which were difficult to operationalise for this type of analysis). If these are not taken into account the impact would be reductions in low-income country exports of 9% and 32% in imports. For middle income, exports would fall by 0.5% and imports by 8%. For high income, these exports would fall by 0.7% and imports by 0.1%. These differences reflect the fact that high-income countries absorb much trade in services and they currently offer strong preferences for many developing countries.

**Figure 17. Tariffs on digital services would reduce trade significantly, especially in low-income countries**

Potential implications of introducing tariffs and uncertainty on services trade 2019



Note: The calculation is based on applying the tariff and uncertainty coefficients from digitisable goods to digital services.

Source: own calculations using ITPDE database

**Table 3. Trade in digital services by income level**

Share of row nation imports and exports 2019 and tariffs faced

	a. exports to		
	Low-income	Middle-income	High-income
Low-income	5.6%	84.2%	10.3%
Middle-income	0.7%	5.5%	93.8%
High-income	0.5%	11.5%	87.9%
	b. imports from		
	Low-income	Middle-income	High-income
Low-income	0.1%	14.1%	85.8%
Middle-income	0.0%	5.4%	94.5%
High-income	0.0%	11.4%	88.6%

Note: Panel A shows share of exports from row nation to column nation as share of total exports. The first entry shows that 5.6% of low income country exports are destined to low income countries. Panel b does the same for imports.

Source: Own calculations using ITPDE database

Overall, these results suggest that there are potentially important trade losses associated with charging tariffs on digital services, including for access to imported digital inputs. Potential losses would concentrate in developing countries, both in terms of exports and imports given the structure of their trade and tariffs.

### 6.3. Tariffs on electronic transmissions would reduce domestic competitiveness

A key channel through which firms can benefit from electronic transmissions is through the input channel. Businesses have been adopting digital solutions, such as software or computer services (whether imported via physical carrier media or digitally), often sourced from abroad, to enable their digital transformation.

Existing empirical evidence already shows that access to digitally deliverable business services from abroad can lead to growing domestic value added in exports (Andrenelli and López González, 2019<sup>[11]</sup>). More recently, work by Narayanan (2023<sup>[36]</sup>) also highlights the positive impact of digital inputs on gross value added of Indian SMEs. However, there is, to date, no more systematic analysis on the role of digital services and digitisable goods on domestic competitiveness across countries at different levels of development. This is important because it gets to the question of industrial policy. If foreign digital inputs are strongly linked to domestic competitiveness, then there is a case for ensuring duty-free access to those inputs.

Using a similar framework to that of Andrenelli and López-González (2019<sup>[11]</sup>), the use of imported digital services inputs and of digitisable goods is found to make a statistically significant contribution to domestic value addition and therefore competitiveness.<sup>54</sup> This is true across countries at all levels of development (with small differences across these).<sup>55</sup> Access to foreign digital services inputs, which would include internationally sourced software solutions as well as different types of computer services are important enablers of domestic and international competitiveness (Figure 18a).

Moreover, when introducing overall imports of digitisable goods (lagged by one year to avoid mechanical correlations), a positive relationship also emerges (still controlling for digital services imports). That is, imports of digitisable goods, which also include content like software solutions but delivered via a physical carrier medium, also have a positive impact on domestic competitiveness.

Overall, these results imply that any trade cost increases, whether it be on digitisable goods or on digital services, would lead to reduced domestic value added and therefore competitiveness, affecting local production and employment. There is a self-interest case for maintaining a duty-free environment for electronic transmissions.

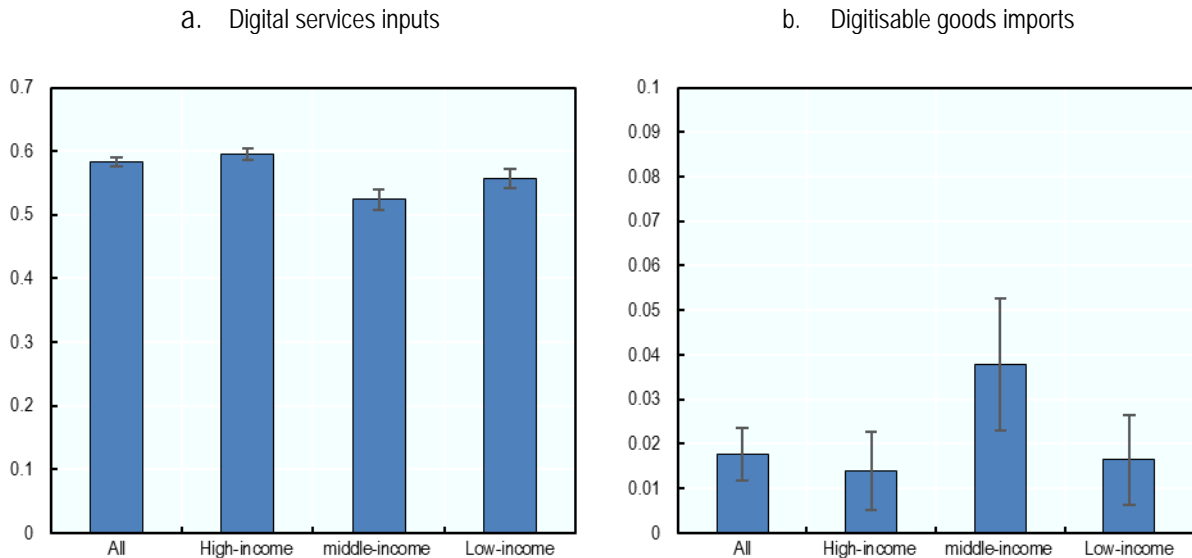
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<sup>54</sup> This is measured as the domestic value added in final consumption which captures the value added generated by firms located domestically. It is a broader measure than the domestic value added in exports which was used in (Andrenelli and López González, 2019<sup>[11]</sup>)

<sup>55</sup> The analysis controls for existing degrees of engagement in GVCs, for differences in capital labour ratios, per capita GDP as well as political stability, FDI inflows and digital connectivity.

**Figure 18. Digital inputs are key determinants of domestic competitiveness**

Standardised coefficients



Note: Figure shows the standardised regression coefficients with their confidence intervals (95%). See Annex D for results table and model specification.

Source: Own calculations based on TRAINS and ITPDE.

#### 6.4. Smaller and women owned firms could be most impacted from tariffs on electronic transmissions

Electronic transmissions also play a strong role in helping smaller and women-led businesses reach global suppliers and customers. SMEs make up the majority of enterprises and employ most of the domestic workforce in developed and developing countries, yet, in relative terms, they represent a low share of value added and exports (López González and Sorescu, 2019<sup>[37]</sup>; WTO, 2018<sup>[38]</sup>; WTO, 2016<sup>[39]</sup>). This is because SMEs tend to be less productive than larger firms, they have more limited access to capital markets for investment in new technologies, and they tend to find it harder to attract and retain talent (WTO, 2016<sup>[39]</sup>). Women-led firms are also fewer, smaller, younger and less well financed than those led by men (Korinek, Moisé and Tange, 2021<sup>[40]</sup>).

However, changes in the global trading landscape, including the digital transformation, offer SMEs and women-led businesses new opportunities to integrate and benefit from the global economy. Those that leverage digital technologies are likely to be better able to face trade costs which tend to represent a higher share of the products they ship relative to larger firms. In many ways, digitalisation and being able to deliver trade digitally levels the uneven playing field between smaller and larger firms.

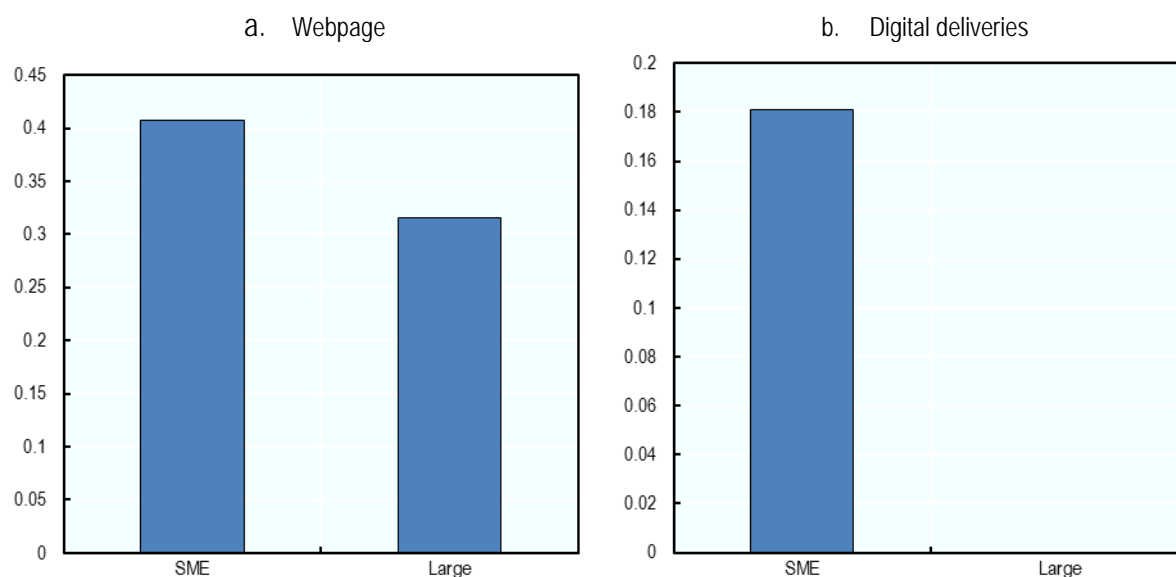
Analysis using the World Bank Enterprise Survey (WBES), which largely covers developing countries, suggests that smaller firms have a lower propensity to export. Nevertheless, econometric analysis, albeit of a cross-sectional nature, suggest that those that use digital tools like webpages have higher propensities to export (Figure 19a).<sup>56</sup> Moreover, being able to deliver trade digitally is found to be associated with higher propensities to export of smaller firms and not larger ones (Figure 19b). Lastly, when looking across the gender aspect of ownership, the results show that women-owned SMEs that use webpages also tend to have a higher propensity to export than male-owned firms that use webpages (Figure 20). While not directly

<sup>56</sup> Having a webpage often involves the purchase of a digital service through which the webpage is designed, and the purchase of hosting space online. The lapse of the Moratorium could affect businesses ability to access such services.

tied to tariffs on electronic transmissions, the results show that digital tools are key for inclusive trade. By proxy, increasing costs to access or engage in digital trade is likely to impact these firms most.

### Figure 19. Smaller firms benefit more from digital deliveries than larger firms

Impact of use of digital tools on propensity to export



Note: Dependent variable is whether or not a firm is an exporter. SMEs are defined as businesses with less than 100 employees. See Annex D for full results.

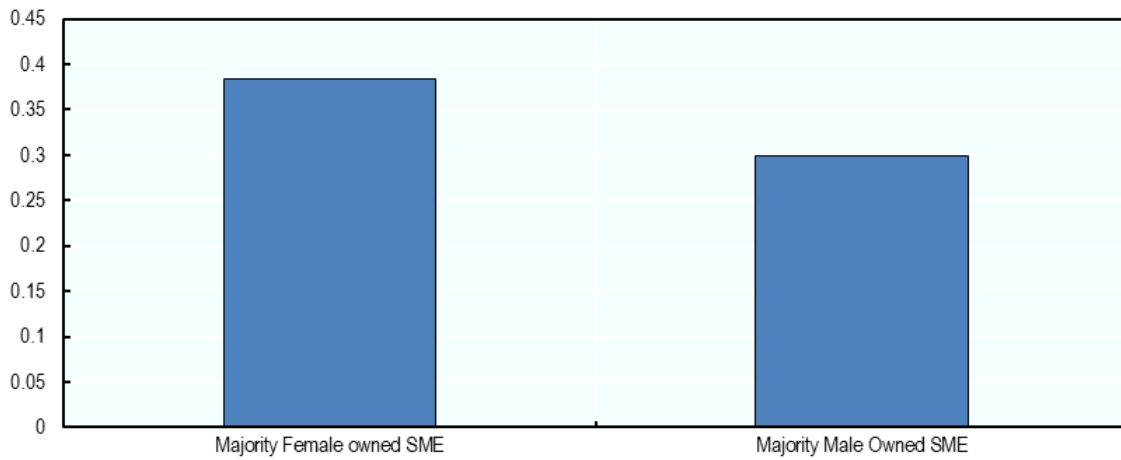
Source: Own calculations using World Bank Enterprise Survey, extracted July 2023.

The use of digital tools is not limited to higher propensities to trade; firms that use webpages are also seen to be more productive and employ more workers, including female workers (Figure 20).<sup>57</sup> SMEs that use webpages are also seen to employ more female workers than larger firms (Figure 21a). They are also more productive (Figure 21b).

<sup>57</sup> Small sample issues made it difficult to also look at the impact of digital deliveries.

**Figure 20. Women owned SMEs benefit more from use of digital tools than male owned SMEs**

Impact of use of webpage on propensity to export

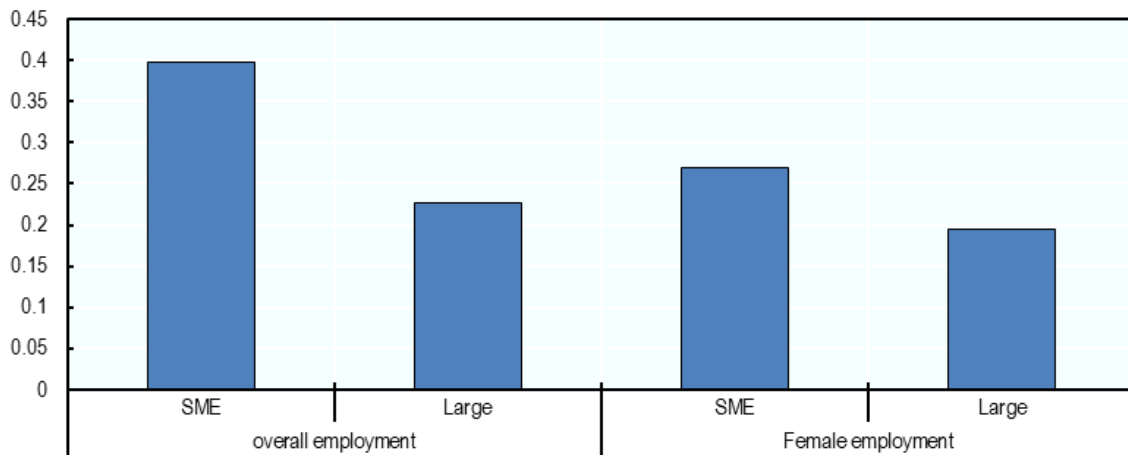


Note: Dependent variable is whether or not a firm is an exporter. SMEs are defined as businesses with less than 100 employees. Female owned firms are those where female ownership is above 50%. See Annex D for full results.  
 Source: Own calculations using World Bank Enterprise Survey, extracted July 2023.

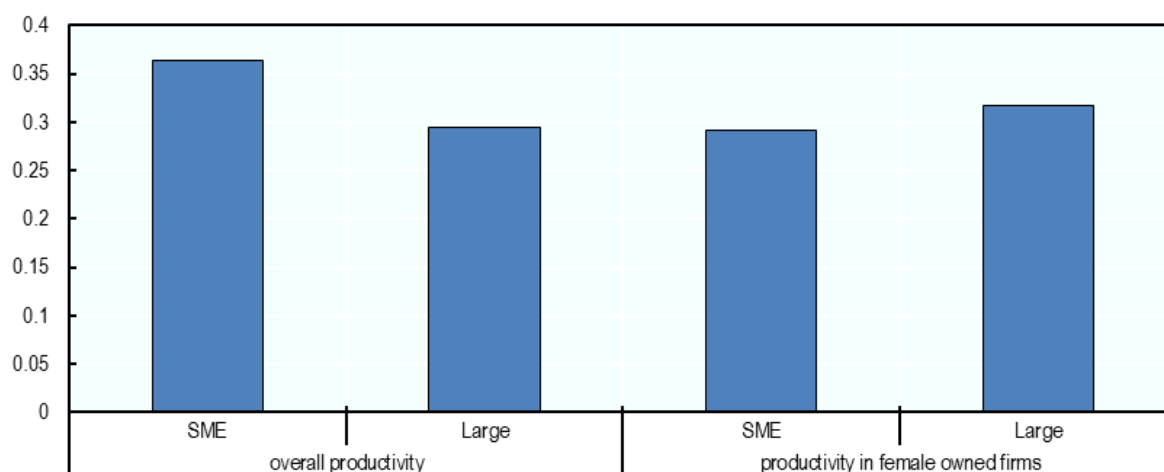
SMEs that use webpages are also seen to employ more female workers than larger firms (Figure 21a). They are also more productive (Figure 21b).

**Figure 21. Digitalisation is associated with more employment, including for women**

a. Impact of using webpages on employment



## b. Impact of using webpages on productivity



Note: Dependent variable is employment in panel a and productivity, measured as output per worker in panel b. SMEs are businesses with less than 100 employees. Female owned firms are those where female ownership is above 50%. See Annex D for full results.

Source: Own calculations using World Bank Enterprise Survey, extracted July 2023.

## 7. Policy observations

The Moratorium, which is the only WTO provision that specifically targets e-commerce, has supported an environment that has enabled digital trade to thrive. Beyond providing guarantees that digital transactions will not attract tariffs, it has also kept a lid on a number of potentially conflictual trade policy issues. While some consider the lack of precision of the e-commerce Moratorium as a challenge, it can also be seen as a strength, as it allows multiple views to co-exist.

The analysis presented herein has shown that language in trade agreements can provide helpful information for discussions about the scope of the moratorium and the definition of electronic transmissions. It has also highlighted that the potential customs revenue implications of the Moratorium are small, amounting to USD 1.3 billion (for 171 countries). This represents a country average of 0.68% of potential total customs revenue. As a share of government revenue, and for a sample of 131 countries across different income levels, this is 0.1% of total revenue. These potential losses are also likely to be completely offset through fiscal revenue from GST and VAT taxes when these apply to digital services imports.

Getting to grips with the potential impact of the Moratorium also requires looking beyond its potential fiscal implications and identifying the benefits of the Moratorium or the potential costs associated with its lapse. The analysis presented herein suggests that the lapse of the Moratorium could generate trade policy uncertainty that would reduce trade. It shows that applying tariffs on electronic transmissions is likely to harm efforts to make trade more inclusive, whether it be low-income country exports, or the exports of smaller or women-owned firms. Last, it shows that tariffs on electronic transmissions would compromise domestic competitiveness, making critical digital inputs more expensive.

Overall, the analysis suggests that, given low potential fiscal costs and potentially large benefits, there is a strong case for the Moratorium to be renewed.



## References

- Andrenelli, A. and J. López González (2019), “Electronic transmissions and international trade - shedding new light on the moratorium debate”, *OECD Trade Policy Papers*, No. 233, OECD Publishing, Paris, <https://doi.org/10.1787/57b50a4b-en>. [1]
- Andrenelli, A. and J. Lopez-Gonzalez (2021), “3D printing and International Trade: What is the evidence to date?”, *OECD Trade Policy Papers*, No. 256, OECD Publishing, Paris,, <https://doi.org/10.1787/0de14497-en>. [2]
- Banga, R. (2022), “WTO Moratorium on Customs Duties on Electronic Transmissions: How much tariff revenue have developing countries lost?”, *South Centre Research Paper* 157. [23]
- Banga, R. (2019), “Growing Trade in Electronic Transmissions: Implications for the South”, *UNCTAD Research Paper*, No. 29, UNCTAD, Geneva. [22]
- Banga, R. and R. Kozul-Wright (2020), “Moratorium on Electronic Transmissions: Fiscal Implications and Way Forward”, *UNCTAD/SER.RP/2020/6*, No. 47, UNCTAD. [7]
- Brenton, P. et al. (2009), “Assessing the Adjustment Implications of Trade Policy Changes using the Tariff Reform Impact Simulation Tool (TRIST)”, *Policy Research Working Papers*, No. 5045, World Bank, Washington, <https://doi.org/10.1017/S1474745610000509>. [55]
- Burri, M. and R. Polanco (2020), “Digital Trade Provisions in Preferential Trade Agreements: Introducing a New Dataset”, *Journal of International Economic Law*, Vol. 23/1, pp. 187-220, <https://doi.org/10.1093/jiel/jgz044>. [8]
- Burri, M., M. Vásquez Callo-Müller and K. Kugler (2022), *TAPED: Trade Agreement Provisions on Electronic Commerce and Data*, <https://www.unilu.ch/en/faculties/faculty-of-law/professorships/burri-mira/research/taped/>. [9]
- Evenett, S. (2021), “Is the WTO Moratorium on customs duties on e-commerce depriving developing countries of much needed revenue?”, *St Gallen Endowment for Prosperity through Trade*. [17]
- Freund, C., A. Mulabdic and M. Ruta (2019), *Is 3D Printing a Threat to Global Trade? The Trade Effects You Didn't Hear About*, <http://documents1.worldbank.org/curated/en/152701569432061451/pdf/Is-3D-Printing-a-Threat-to-Global-Trade-The-Trade-Effects-You-Didnt-Hear-About.pdf> (accessed on 18 May 2021). [25]
- Freund, C., A. Mulubdic and M. Ruta (2022), “Is 3D printing a threat to global trade? The trade effects you didn't hear about”, *Journal of International Economics*, Vol. Volume 138, <https://doi.org/10.1016/j.jinteco.2022.103646>. [24]
- IMF-OECD-UNCTAD-WTO (2023), *Handbook on Measuring Digital Trade: second edition*, <https://doi.org/10.1787/ac99e6d3-en>. [15]

- International Monetary Fund (2009), *Balance of payments and international investment position manual*, International Monetary Fund. [12]
- Jakubik, A. and R. Piermartini (2023), “How WTO commitments tame uncertainty”, *European Economic Review*, Vol. Volume 157, <https://doi.org/10.1016/j.euroecorev.2023.104495>. [35]
- Köhler-Suzuki, N. (2020), *New evidence on the impact of customs duties for digitizable products and electronic transmissions: the cases of Egypt and Vietnam*, <https://doi.org/10.13140/RG.2.2.13986.86726>. [18]
- Korinek, J., E. Moïsé and J. Tange (2021), “Trade and gender: A Framework of analysis”, *OECD Trade Policy Papers*, No. 246, OECD Publishing, Paris,, <https://doi.org/10.1787/6db59d80-en>. [40]
- Lee-Makiyama, H. and B. Narayanan (2019), “The Economic Losses from Ending the WTO Moratorium on Electronic Transmissions”, *Policy Brief*, No. 3, European Centre for International Political Economy, Brussels. [26]
- Limao, N. and G. Maggi (2015), “Uncertainty and Trade Agreements”, *American Economic Journal: Microeconomics*, Vol. 4/7, pp. 1-42, <https://doi.org/DOI:10.1257/mic.20130163>. [33]
- López González, J. and S. Sorescu (2019), “Helping SMEs internationalise through trade facilitation”, *OECD Trade Policy Papers*, No. 229, OECD Publishing, Paris,, <https://doi.org/10.1787/2050e6b0-en>. [37]
- Lopez-Gonzalez, J. (2016), “Using Foreign Factors to Enhance Domestic Export Performance: A Focus on Southeast Asia”, *OECD Trade Policy Papers*, No. 191, OECD Publishing, Paris,, <https://doi.org/10.1787/5jlpq82v1jxw-en>. [51]
- López-Gonzalez, J., S. Sorescu and P. Kaynak (2023), “Of bytes and trade: quantifying the impact of digitalisation on trade”, *OECD Trade Policy Papers*, No. 273, OECD Publishing, Paris,, <https://doi.org/10.1787/11889f2a-en>. [32]
- Mattoo, A., R. Perez-Esteve and L. Schuknecht (2001), “Electronic commerce, trade and tariff revenue: A quantitative assessment”, *World Economy*, Vol. 24/7, pp. 955-970, <https://doi.org/10.1111/1467-9701.00391>. [21]
- Mattoo, A. and L. Schuknecht (2000), “Trade Polices for Electronic Commerce”, *Policy Research Working Paper*, No. 2380, The World Bank, Washington. [20]
- Narayanan-Gopalakrishnan, B. (2023), *The Impact of Cross-Border Digital Transmissions on the MSME Sector in India and the Benefits of the WTO e-commerce Moratorium*. [36]
- Nemoto, T. and J. López-González (2021), “Digital trade inventory: Rules, standards and principles”, *OECD Trade Policy Papers*, Vol. No. 251/OECD Publishing, <https://doi.org/10.1787/9a9821e0-en>. [56]
- OECD (2022), *Digital Trade Review of Brazil*, OECD Publishing, Paris, <https://doi.org/10.1787/0b046dfe-en>. [50]

- OECD (2022), "The Case for the E-Commerce Moratorium", *OECD Trade Policy Brief*, [3]  
[https://issuu.com/oecd.publishing/docs/moratorium\\_policy\\_brief](https://issuu.com/oecd.publishing/docs/moratorium_policy_brief) (accessed on  
 20 January 2023).
- OECD (2019), *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales*, OECD, Paris, <http://www.oecd.org/tax/consumption/the-role-of-digital-platforms-in-the-collection-of-vat-gst-on-online-sales.pdf>. [28]
- OECD (2017), *International VAT/GST Guidelines*, OECD Publishing, Paris, [27]  
<https://doi.org/10.1787/9789264271401-en>.
- OECD/WBG/ADB (2022), *VAT Digital Toolkit for Asia-Pacific*, OECD, Paris, [30]  
<https://www.oecd.org/tax/consumption/vat-digital-toolkit-for-asia-pacific.htm> (accessed  
 on 17 May 2023).
- OECD/WBG/ATAF (2023), *VAT Digital Toolkit for Africa*, OECD, Paris, [31]  
<https://www.oecd.org/tax/consumption/vat-digital-toolkit-for-africa.htm> (accessed on  
 17 May 2023).
- OECD/WTO/IMF (2019), "Handbook on Measuring Digital Trade", [14]  
 No. SDD/CSSP/WPTGS(2019)4, <https://www.oecd.org/sdd/its/Handbook-on-Measuring-Digital-Trade-Version-1.pdf> (accessed on 14 September 2021).
- OECD; WBG; CIAT; IDB (2021), *VAT Digital Toolkit for Latin America and the Caribbean*, [29]  
 OECD, Paris, <https://www.oecd.org/tax/consumption/vat-digital-toolkit-for-latin-america-and-the-caribbean.htm> (accessed on 17 May 2023).
- Osnago, A., R. Piermartini and N. Rocha (2015), "Trade policy uncertainty as barrier to [34]  
 trade", *WTO Working Paper ERSD-2015-05*,  
[https://www.wto.org/english/res\\_e/reser\\_e/ersd201505\\_e.pdf](https://www.wto.org/english/res_e/reser_e/ersd201505_e.pdf).
- Schuknecht, L. and R. Pérez-Esteve (1999), "A Quantitative Assessment of Electronic [19]  
 Commerce", *Staff Working Paper ERAD*, No. 01, WTO, Geneva.
- UN Department of Economic and Social Affairs (2015), "Central Product Classification [13]  
 (CPC) Version 2.1", *M*, No. 77, United Nations Department of Economic and Social  
 Affairs: Statistics Division, New York.
- UN Statistics Division (2011), *International merchandise trade statistics : concepts and [11]  
 definitions 2010*, United Nations.
- WTO (2023), *Global Trade Outlook and Statistics*, World Trade Organisation, [6]  
[https://www.wto.org/english/res\\_e/booksp\\_e/trade\\_outlook23\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/trade_outlook23_e.pdf).
- WTO (2022), "Indonesia's perspective on customs duties on electronic transmissions", [5]  
*WT/GC/W/859*.
- WTO (2022), "Work Programme on Electronic Commerce: Ministerial Decision adopted [54]  
 on 17 June 2022", *WT/MIN(22)/32 or WT/L/1143*.

- WTO (2021), "Work Programme on Electronic Commerce: Draft Ministerial Decision", *WT/GC/W/838/Rev.2*, [4]
- WTO (2018), "Recent Evolution of Developed-Economy MSME Participation in International Trade", *MSME Research note #1*, WTO, [38]  
[https://www.wto.org/english/tratop\\_e/msmes\\_e/ersd\\_research\\_note1\\_msme\\_in\\_developed\\_economies.pdf](https://www.wto.org/english/tratop_e/msmes_e/ersd_research_note1_msme_in_developed_economies.pdf).
- WTO (2017), "Statement by Indonesia: 13 December 2017", *WT/MIN(17)/68*. [52]
- WTO (2017), *Statement by Indonesia: Facilitator's Consultation on Electronic Commerce, Mc11 declaration, and other relevant plenary sessions*(WT/MIN(17)/68). [10]
- WTO (2017), "Work Programme on Electronic Commerce: Ministerial decision of 13 December 2017", *WT/MIN(17)/65*. [53]
- WTO (2016), "Fiscal Implications of the Customs Moratorium on Electronic Transmissions: the Case of Digitisable Goods", WTO. [16]
- WTO (2016), "Levelling the trading field for SMEs", *World Trade Report 2016*, World Trade Organisation, [39]  
[https://www.wto.org/english/res\\_e/booksp\\_e/world\\_trade\\_report16\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/world_trade_report16_e.pdf).
- WTO (2014), "Imports of products that could be used as media to transport software: note by the Secretariat (G/VAL/W/249)", [49]  
[https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=127543,127539,127534,127535,127551,127542,127514,127544,127552,127554,127553,127435,127430,127431,127432,127438,127436&CurrentCatalogueIdIndex=1&FullTextSearch=#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=127543,127539,127534,127535,127551,127542,127514,127544,127552,127554,127553,127435,127430,127431,127432,127438,127436&CurrentCatalogueIdIndex=1&FullTextSearch=#) (accessed on 20 June 2023).
- WTO (2011), "Eighth dedicated discussion on Electronic Commerce under the auspices of the General Council on 20 and 28 October and 9 and 16 November 2011", *WT/GC/W/644*. [48]
- WTO (2009), "Seventh dedicated discussion on Electronic Commerce under the auspices of the General Council on 8, 13, 22 and 27 October and 6 November 2009", *WT/GC/W/614*. [47]
- WTO (2005), "Sixth dedicated discussion on Electronic Commerce under the auspices of the General Council on 7 and 21 November 2005", *WT/GC/W/556*. [46]
- WTO (2003), "Fifth dedicated discussion on Electronic Commerce under the auspices of the General Council on 16 May and 11 July 2003", *WT/GC/W/509*. [45]
- WTO (2003), "Fourth dedicated discussion on Electronic Commerce under the auspices of the General Council on 27 February 2003", *WT/GC/W/492*. [44]
- WTO (2002), "Second dedicated discussion on Electronic Commerce under the auspices of the General Council on 6 May 2002", *WT/GC/W/475*. [42]

WTO (2002), "Third dedicated discussion on Electronic Commerce under the auspices of the General Council on 25 October 2002", *WT/GC/W/492*. [43]

WTO (2001), "Dedicated discussion on Electronic Commerce under the auspices of the General Council on 15 June 2001", *WT/GC/W/436*. [41]

## Annex A. NICDET provisions in RTAs

### Dedicated discussions on E-commerce at the WTO

Starting in July 2001, WTO Members held eight “dedicated discussions” on E-commerce under the auspices of the General Council. These touched on a variety of topics including: the meaning of ‘electronic transmissions’, the fiscal implications of the Moratorium, technological neutrality, or the extent to which e-commerce, as defined by the WTO, may replace traditional forms of commerce (WTO, 2001<sup>[41]</sup>; WTO, 2002<sup>[42]</sup>; WTO, 2002<sup>[43]</sup>; WTO, 2003<sup>[44]</sup>; WTO, 2003<sup>[45]</sup>; WTO, 2005<sup>[46]</sup>; WTO, 2009<sup>[47]</sup>; WTO, 2011<sup>[48]</sup>).

These documents testify to a degree of diversity of views among Members as to how electronic transmissions might be defined. However, they also reflect a degree of common understanding across a number of areas. For instance, as summarised by the WTO Secretariat (WTO, 2001<sup>[41]</sup>; WTO, 2002<sup>[42]</sup>): “[a] majority of delegations agreed that a majority of electronically transmitted products were indeed services. However, there was still a lack of clarity with regard to the classification under GATT or GATS or certain products which can be delivered both in electronic form and on a physical carrier”.

From the early days of the decision, it was indeed clear that there were strong links between the term ‘electronic transmission’ and the concept of products that can be delivered both electronically and in physical format (e.g. cassettes and movies, tapes and music, diskettes and software). Indeed, according to (WTO, 2002<sup>[43]</sup>) “[s]everal delegations had made useful contributions on classification, and there was a need to address the ‘grey’ areas, i.e. classification of electronically delivered products with a physical equivalent”.

A view that emerges from the texts is also that “a premature classification of the products in question could be a mistake” (WTO, 2002<sup>[43]</sup>), as “[m]any delegations [...] felt that it was not desirable to try to seek a definitive determination of the classification of digital products in their entirety as either goods or services” (WTO, 2002<sup>[42]</sup>).

These documents also highlight diverging views among Members, helping understand why the current use of the term ‘electronic transmissions’ remains ambiguous. A good example arises from the Fifth Dedicated Discussion on E-commerce (WTO, 2003<sup>[45]</sup>). While some delegations called for a classification of electronic transmissions as services, by virtue for instance of their intangibility, other highlighted that items like e-books, software, or movies shared the features of goods, as they could be separated from the producer and could be stored (WTO, 2003<sup>[45]</sup>). One delegation raised that “[w]hile classifying all electronic transmissions as services might be a quick and easy way to provide legal certainty, the stakeholders following the present discussion did not think the easiest way was the appropriate way” (WTO, 2003<sup>[45]</sup>).

While these extracts do not provide definitive answers as to the exact meaning of the Moratorium, they tend to refer to electronic transmissions as the “grey areas” (WTO, 2002<sup>[43]</sup>) of items that could potentially be traded in both physical (e.g. a CD, book) as well as in digital formats (e.g. a movie, an e-book). These items are perceived as challenging the distinction between goods and services, creating what is commonly understood as the ‘classification issue’ (WTO, 2001<sup>[41]</sup>; WTO, 2002<sup>[42]</sup>) etc.

These discussions seem to suggest that electronic transmissions might relate to a subset of goods that might be digitisable, or some sub-categories of digitally deliverable trade, but perhaps not e-mail exchange or data traffic.

# THE E-COMMERCE MORATORIUM & WOMEN

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*How the WTO E-commerce Moratorium  
Impacts Women Across the World*



## Executive summary

The E-commerce Moratorium is a 25-year-old trade policy that prohibits the imposition of customs duties on electronic transmissions, which was agreed to and regularly renewed by the members of the World Trade Organization (WTO). During the last WTO Ministerial Conference (MC12), the continuation of this policy was in doubt. A lengthy debate resulted in its conditional renewal until the upcoming Ministerial Conference (MC13) that will take place in Abu Dhabi, in February 2024.

After introducing the importance of applying a gender lens to the E-commerce Moratorium debate in a publication presented to the WTO in 2022, the TradeExpertes proceeded to further explore its impacts on women – including women-led or owned businesses, women working in the digital economy, as well as the effect on their livelihoods – and the possible consequences of the discontinuation of this trade policy. This study is based on research and discussions with experts, women leaders and business owners, and associations' representatives from Latin America and the Caribbean, Africa, and Asia and the Pacific that were held by webinar and one-on-one interviews during the spring of 2023.

The exercise revealed that women have been using digitally delivered services to fuel their jobs and businesses, and that these services were key for their survival or re-invention during the COVID-19 pandemic. The discussions also showed that the E-commerce Moratorium is deeply embedded in how these women think about their business opportunities and it has been instrumental in the adoption of digital services by women-led or owned businesses by keeping costs low, creating a level playing field for firms and workers in developing countries, and providing opportunities to participate in international markets. While the evidence collected is largely anecdotal and more research and gender-disaggregated data is needed to thoroughly understand the socio-economic impacts of the E-commerce moratorium on women in the digital economy, it serves as an important reminder that trade policy has a direct impact on the lives of people everyday. These stories can therefore help inform governments as they develop policies that are responsive to the practical needs of individuals participating in the global economy.

## I. Introduction

The TradeExpertes “Ten Quick Wins for Digital Trade” [report](#) (2022) highlighted the need for a gender lens on discussions under the WTO Joint Statement Initiative on E-commerce. One of the issues being addressed in these discussions, as well as in separate negotiations at the WTO, is the application of customs duties on electronic transmissions. Interested in exploring this issue further, the Australian Government, through the Department of Foreign Affairs and Trade, partnered with the TradeExpertes to launch a research project to examine the gendered impacts of the Moratorium on Customs Duties on Electronic Transmissions (E-commerce Moratorium). During the spring of 2023, the TradeExpertes conducted research and interviews with experts about this topic and organized three regions webinars that included the participation of diverse stakeholders – women entrepreneurs, professionals, academics, and others – who use digitally delivered services (DDS) in their everyday life and work. The goal of these webinars was also to collect and synthesize these varying perspectives from developing countries to understand how these DDS enabled the participation of women-led or owned micro, small and medium enterprises (MSMEs) in local and international markets, and how discontinuing the E-commerce Moratorium might affect their businesses. The three regions chosen to participate in the webinars were Latin America and the Caribbean, Africa, and Asia and the Pacific.

This report highlights the main takeaways from those discussions on the E-commerce Moratorium organized by the TradeExpertes and the possible impacts of its discontinuation on women-led or owned businesses, and on women working in the digital economy.

## 2. The E-commerce Moratorium: A 25-year-old Policy Now in Peril

Since 1998, [WTO Members](#) have periodically agreed not to impose customs duties on electronic transmissions. This policy is generally referred to as the E-commerce Moratorium. Customs duties are normally applied on imported goods, regardless of whether their purchase and payment transaction took place digitally or in person. However, when content is digitally delivered, customs duties do not apply. For example, a book that is bought online through an e-commerce store and delivered physically across borders, will normally be subject to customs duties, but when the content of a book is transferred digitally in an e-book format, WTO Members do not apply customs duties to that electronic transmission. This does not prevent the application of internal taxes (such as Value Added Taxes) that Members are still allowed to impose, provided that they do so on a non-discriminatory basis.

However, the ever-increasing importance of digital trade has sparked discussions among WTO members on whether or not to continue to renew the E-commerce Moratorium. Indeed, during the WTO’s 12th Ministerial Conference (MC12), several members struggled with its renewal, and a last minute agreement was reached to [extend](#) it until the 13th Ministerial Conference (MC13), which will take place in early 2024. Members also agreed to continue discussions regarding the scope, definition and impact of the E-commerce Moratorium, which several studies have identified as key issues in current debates.

Since then, two special dedicated sessions [have taken place](#) at the WTO on these issues. The sessions have also addressed the development dimension of the E-commerce Moratorium. As a result of these discussions, a [group](#) of members clarified that the E-commerce Moratorium has in practice always applied

both to the transmission (the digital delivery of goods or services - e.g. its telecommunication signal) and to its content (the goods or services that are being digitally delivered), and there is consensus that it does not apply to goods that are bought and paid for digitally but delivered physically. There is still uncertainty about what a hypothetical discontinuation of this trade policy would entail; in particular whether customs duties would apply to the transmission itself or also to its content. Some studies have estimated the [economic costs](#) of the failure to renew the moratorium, which have raised significant cause for concern. Others have also assessed the [trade-offs](#) involved in the imposition of duties.

## 3. The TradeExperettes E-commerce Moratorium Study

### 3.1 Why is a gender lens needed?

Recent studies, such as the 2020 joint [report](#) published by the World Bank and the WTO, and a 2021 OECD [policy paper](#), have demonstrated that trade policies are not gender neutral. Looking at trade policy through a gender lens reveals that the policy itself and its implementation impact women and men differently. These studies have also shown how trade policy can promote gender equality and increase women's economic empowerment, which ultimately leads to a positive impact on general economic welfare.

Moreover, post pandemic research has shown that the negative economic consequences of the COVID-19 pandemic disproportionately impacted women, a phenomenon that has been termed the "[She-session](#)." One of the main factors that explain this phenomenon is the fact that the sectors where women are employed, which differ from those in which men are employed, especially in developing countries, were greatly affected by the pandemic. For example, the results of a [survey](#) carried out by the World Bank in Latin America and the Caribbean found that most of the job losses in the region during the pandemic were concentrated in sectors where women are highly represented, such as personal services, education, and hospitality. Furthermore, the role that women play as primary caretakers also helps explain many of these job losses.

Previous studies that have analyzed the economic and social impacts of the E-commerce Moratorium suffer from an obvious gap – they do not address its gender impact, though they acknowledge that it is an area in need of further exploration. Indeed, a [paper](#) by the Organisation for Economic Co-operation and Development (OECD) expressly points to the fact that the evaluation of this trade policy has not focused on traditionally disadvantaged groups, such as women or indigenous peoples.

*"Digital technologies and e-commerce may have profound positive impact on women and MSMEs run by them due to a wide range of facilitation, access and efficiency factors. Unfortunately, the lack of detailed data in developing countries renders it difficult to capture these effects quantitatively."*

– Dr. Badri Narayanan Gopalakrishnan

In 2021, the TradeExperettes released "[Ten 'Quick Wins' for More Equitable Trade](#)," a report that outlines the low-hanging fruit that WTO members could pursue to generate more equity in the multilateral trading system. The report specifically points to the need to "promote inclusivity when drafting trade policy proposals, by including diverse voices and expertise from the initial phases of research and policy development," and to "strengthen and make visible the participation of women in the services sector and the role of women-owned MSMEs, including as suppliers of services to firms in the domestic market, which

then export.” These two points serve as key drivers for this study because it aims to amplify the voices of women stakeholders that might be affected by changes in a trade policy like the E-commerce Moratorium, and also because women-led or owned MSMEs in DDS have greatly benefited from this policy.

The “[Ten Quick Wins for Digital Trade](#)” report launched by the TradeExperettes in 2022 specifically recommends to “Apply a gender lens to the discussions under the Joint Statement Initiative on E-commerce.” As members gear up for MC13, it is critical to consider the importance of the E-commerce Moratorium on gender equality and the participation of women-led or owned businesses in the digital economy. In other words, the application of a gender lens to the E-commerce Moratorium would expand and strengthen existing dialogue on this topic.

### 3.2 Around the World in 180 minutes, Summary of the Discussions

*“We were delighted to find ample evidence during our webinar discussions of women who, with the help of digitally delivered services, went from being unemployed in the start of the pandemic, to becoming global entrepreneurs and then employers over the course of just a few years.”*

– *Hanna Norberg, President, TradeExperettes, Lund, Sweden*

Important inputs for this project were obtained during a series of webinars that focused on three specific regions. The “WTO E-commerce Moratorium and Women,” webinars featured digitally delivered services experts from Latin America and the Caribbean, Africa, and Asia and the Pacific. The discussions included the participation of different stakeholders and experts from a wide range of backgrounds who shared their experiences and knowledge regarding women-led or owned businesses, their participation in the digital economy and the impacts of the E-commerce Moratorium.

Moreover, additional information was obtained through one-on-one interviews with experts and entrepreneurs representing different sectors, backgrounds, and industries.

#### WTO E-commerce Moratorium and Women, Latin America and the Caribbean session

The focus of the discussions was set to address two main topics: (i) how women are participating in the digital economy, and how their participation was impacted by the COVID-19 pandemic, and (ii) how discontinuing the E-commerce Moratorium could potentially affect their businesses, jobs or livelihoods.

### 3.2.1 Digitally Delivered Services (DDS) are game changing inputs that have empowered women across the world, especially during the COVID-19 pandemic

Regarding the first topic, there was wide consensus among the speakers about the positive impact of DDS on women's participation in the economy in general and trade in particular. DDS were described by the participants as a game changing input that has allowed women to participate in the global economy on equal footing with men. For example, the speakers from Africa indicated that digital payment solutions were key for women since they eliminated the risk factor of having to physically move to another town to be able to pay for goods and services under unsafe conditions. Furthermore, the use of digital services was also described as a crucial tool that not only facilitated women-led or owned businesses' access to international markets, but also offered a simple way for women to enter the formal economy. This is an important point, which may offer a solution to a problem that researchers have long grappled with, namely how to bridge the gap between the formal and informal economy, which is a key component of economic development.

*"Businesses that embraced digital transformation during COVID-19 times were the ones that survived."*

– *Anne Wambui Gaitha, Founder & CEO Regal Africa Group, Nairobi, Kenya.*

Furthermore, access to digital services has also enabled women to not only keep their existing businesses, but perhaps even more importantly, allowed many women to start and even grow their business during the COVID-19 pandemic. For instance, one of the speakers of the Latin American and the Caribbean webinar gave the example of a hairdresser who, during the pandemic, started a new line of business giving online tutorials on how to treat a certain type of hair, and was able to reach a global audience using a videoconference service provider, without needing to physically cross any border. Indeed, a [study](#) carried out by Global Affairs Canada found that women-owned small and medium enterprises (SMEs) in Canada rely on innovations and access to e-commerce to become exporters, more than men-led businesses, which according to the anecdotal evidence collected through the webinars is a fact that proves to be applicable to many other regions as well.

#### WTO E-commerce Moratorium and Women - Africa Region session

In order to take advantage of the opportunities that digitally delivered services offer, it is imperative to ensure that women do have digital access. As pointed out by the speakers during the webinar focused on Africa, the digital divide between women and men that exists in the region is an issue that needs special consideration when analyzing women's participation in the digital economy and when discussing inclusion in the development of DDS in Africa.

### 3.2.2. Removing the E-commerce Moratorium implies much uncertainty and risks

Regarding the second topic, the speakers from Latin America agreed that the E-commerce Moratorium is considered business-as-usual for women-led or owned SMEs. They also pointed out the risks of increasing the costs of importing DDS, such as producers and exporters becoming less competitive and losing market-share. One participant gave concrete examples on how taxes on imported intermediate services have affected the competitiveness of her services exports, when compared to similar women exporters in the region. However, the lack of gender-disaggregated data was identified as a barrier to properly calculate the impact of the E-commerce Moratorium on women-led or owned SMEs, and women working in the digital economy.

The possible negative impacts of discontinuing the E-commerce Moratorium on these SMEs was also shared by the stakeholders from Africa, who highlighted that the expected short-term gains of government revenue from the potential customs duties may very well be offset by the detrimental long-term impact on businesses' exports. This would ultimately reduce trade, increase the cost of products, lower job creation, and increase government expenditure.

#### WTO E-commerce Moratorium and Women - Asia and the Pacific session

Along the same lines, the speakers from Asia and the Pacific region emphasized that increasing the cost of intermediate inputs, such as DDS, by imposing a duty would lead to an unlevel playing field for women-led or owned SMEs. They also pointed out that, in this digital age, no trade is purely analog, and that digital services are crucial to complementing or enhancing physical trade. As a result, if the cost of digital services increases, then the cost of physical trade inputs will also be higher, which will in turn affect trade flows in physical goods and reduce a government's overall tariff revenue.

*"Services trade already faces a lot of non-tariff barriers. If we add a tariff to DDS we are going to see a big negative impact, not only for the digital economy, but also for physical trade as such."*

– *Witada Anukoonwattaka, Economic Officer at the UN Economic and Social Commission for Asia and the Pacific, Bangkok, Thailand.*

Some women entrepreneurs that were interviewed also mentioned that, in general, MSMEs produce and sell goods and services that are more expensive when compared to larger firms that may enjoy economies of scale. Therefore, they feared that the imposition of customs duties on their imports would make their already expensive goods or services even more so, affecting their competitiveness in international markets and their bottom lines.

The speakers from the Africa and Asia and the Pacific webinars also pointed out the uncertain implications of lifting the E-commerce Moratorium. Some experts referred to the need to answer many pending questions before taking a policy decision like eliminating the E-commerce Moratorium, such as: How do we define electronic transmissions? Is there an awareness that most digital services are already taxed? Have the financial implications of electronic transmissions been quantified? Have governments assessed the potential impact on inflation from the imposition of duties on E-commerce? What are the overall economic costs and benefits?

Other speakers suggested that WTO Members should put effort into evaluating what needs to be done for the E-commerce Moratorium to be lifted, exploring more moderate alternatives. There were concerns that indefinitely giving up the possibility of imposing customs duties on electronic transactions by developing countries could adversely affect their opportunities to develop some of these technologies and invest in their digital economies. There were additional concerns surrounding development without experiencing international debt. Finally, the issue of how the elimination of the E-commerce Moratorium is going to be implemented was raised, indicating that a systematic assessment is needed to answer: what trade flows will be impacted; who is involved in this trade; will this generate trade divergence; what are the costs to the industry; what are the costs to entrepreneurs, specifically women entrepreneurs; will women lose their sources of employment and livelihoods, and by what amount?

## **4. Conclusions and Recommendations for Policy Makers**

As WTO members gear up for MC13, it is critical to consider the importance of the E-commerce Moratorium on gender equality, and the participation of women in the digital economy. The application of a gender lens to the E-commerce Moratorium discussions can expand and strengthen existing dialogue on this topic.

Previous economic impact assessment studies have shown that the E-commerce Moratorium has been beneficial to both trade and economic growth. Our research into its impact on women-led or owned businesses and women working in the digital economy revealed that it has acted as a gender-equalizer. Indeed, the experiences gathered during the research and discussions for this report show that women have been using DDS as a means and a tool to fuel their jobs and businesses, and that these services were key for their survival or re-invention during the COVID-19 pandemic. The E-commerce Moratorium has been instrumental in the adoption of those services by women-led or owned businesses since it has kept costs low, creating a level playing field for firms in developing countries, and given individuals the opportunity to participate in international markets from wherever they are in the world.

The anecdotal evidence collected through the interviews and webinars also points to the “formalizing effect” of DDS. The use of these services has facilitated the integration of women-led or owned businesses to the formal economy; when women set up their businesses online and sell goods and services online, they generally use digital services to process and receive their payments and thus start participating in the formal economy, which is an important factor for the economic development of a society.

Even when there is not enough gender-disaggregated data and when there are uncertainties related to the scope of the E-commerce Moratorium, the fact that it is deeply embedded in how these women-led or owned MSMEs think about their business opportunities indicates that its elimination and the possible imposition of customs duties to electronic transmissions would directly impact their economic well-being. This in turn would affect the jobs and livelihoods of other women working in these businesses. An increase



in the costs of the DDS used as inputs will also increase the costs of the goods and services they offer and eventually affect their competitiveness in international markets, as well as the possibility to grow their businesses. The potential spillover effects could be vast. Hence, a policy change away from the moratorium will change the accessibility of DDS for all firms, but will particularly affect women-led or owned businesses, decreasing the positive effects that the E-commerce Moratorium has had on them.

## ■ Recommendations for Policy Makers

- > **Use an evidence-based approach.** The E-commerce Moratorium has been in place for 25 years and a wide-ranging set of studies estimate that it has had a positive economic impact. Before making any changes to this policy, significant time and resources should be devoted to studying the potential economic and social impacts of introducing additional restrictions to the free flow of these services globally. This is especially true for women participating in the digital economy, either as workers, professionals or businesses' owners or leaders. An uninformed political decision runs the risk of seriously prejudicing the trade policy landscape, eliminating the equalizing effect that DDS have created thus far, increasing costs for consumers and producers, particularly in developing countries, and ultimately increasing the digital divide.
- > **Renew the E-commerce Moratorium at MC13 and clearly define its scope.** The positive impact of the E-commerce Moratorium on women-led or owned businesses and women working in the digital economy revealed by this research relies on a scenario where this trade policy has been applied by WTO members not only to electronic transmissions, but also to its content. However, the absence of clear wording in past declarations on the E-commerce Moratorium has fueled questions about its scope. Including clear language regarding its scope that reflects the way in which it has been implemented so far by the majority of WTO members would continue to support women businesses, and guarantee precision when measuring and analyzing the possible impacts of the discontinuation of this trade policy.
- > **Deploy financial resources to gather gender-disaggregated data, especially in developing countries.** Commit resources to develop the gender-disaggregated data necessary to carry out further economic research on the micro and macro level effects of DDS and women, as well as the potential social and economic impacts of eliminating the E-commerce Moratorium on women-led or owned businesses, women jobs and corresponding livelihoods, particularly in developing countries.
- > **Launch a dialogue on the role of DDS in helping women participate in the digital economy.** Regardless of the outcome of MC13 in relation to the E-commerce Moratorium, WTO members should continue existing discussions and formally launch a constructive dialogue about the role and effect of DDS on women participating in the digital economy at a global level. Due to the nature of these services, local decisions may have global implications and there is much to be learned by collaborating at a multilateral level.
- > **Explore innovative capacity building solutions to tackle the digital divide.** Work to find ways to bridge the digital divide and make global connectivity a reality, so that the benefits unleashed by DDS can be enjoyed by all.

# EXHIBIT 66A



# GLOBAL DATA ALLIANCE

## TRUST ACROSS BORDERS

### THE CROSS-BORDER MOVEMENT OF DATA: CREATING JOBS AND TRUST ACROSS BORDERS IN EVERY SECTOR

The seamless movement of data across borders—often referred to as “cross-border data flows”—is essential to the global economy. What exactly are cross-border data flows and how do they affect you?

“Cross-border data flows” refer to the movement or transfer of information between servers across country borders. Companies need to be able to freely move data around the world so that wherever you are, you have access to the information and services you need. Everyone from individuals to large corporations relies on transferring data.

Data moving across borders is critical for the services that sustain global commerce, protect consumers from fraud and counterfeit products, improve health and safety, and promote social good.



#### SUSTAINING GLOBAL COMMERCE

##### Transforming Aviation

Digital innovation is transforming the global aviation industry. Data-driven software solutions and technologies improve customer experience and drive predictive maintenance, equipping airline companies with the tools they need to reach new heights.

- 2.7 billion passengers use Panasonic Avionics solutions each year on more than 2,500 connected aircraft. Inflight entertainment, ecommerce analytics platforms, and

personalized inflight maps all help enhance the passenger flight experience and drive business value for airlines. Panasonic relies upon the rapid and seamless movement of information across the globe to provide these services to airlines and passengers.<sup>1</sup>

- United Airlines connects to Airbus’ global cloud-based platform to store, manage, and analyze data more effectively. By analyzing real-time flight data and other performance indicators across its 4,900 daily flights, this data-driven platform helps United Airlines enhance predictive maintenance while also decreasing costs.<sup>2</sup>

##### Connecting Global Businesses

Businesses that operate globally—including hotels, car manufacturers, freight and logistics enterprises, and restaurant chains—benefit from data analytics that allow them to reach more customers, improve customer experiences, and work more efficiently. Businesses use cloud-based services to pool large amounts of data from their operations around the world to accomplish these goals.

- When international and local firms partnered to redevelop Terminal 1 at San Francisco International Airport, Autodesk’s cloud-based BIM 360 Design software brought team members together. Staff from San Francisco, New York, Melbourne, New Delhi, and Dubai were able to coordinate in real time through one common cloud-based model. The ability to transfer data between countries helped studios, contractors, and stakeholders partner with their colleagues across the globe to tackle this complex project.<sup>3</sup>

**Data transfers contribute USD \$2.8 trillion to global economic activity, or 3.5 percent of global GDP, according to the Organization for Economic Cooperation and Development.**

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**60 percent of global GDP will be digitized by 2022, with growth in every industry driven by digitally enhanced offerings, operations, and relationships.**

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- Global retailers leverage solutions that enable them to track products and shipments from around the world. A multi-edge computing system running on Verizon's network empowers retail supply chain managers with increased visibility into the movement of their shipments. The free flow of data helps retailers locate and track products along the supply chain in near-real time, reroute shipments to avoid extended delays, and calculate accurate arrival time data based on traffic conditions and machine learning.<sup>4</sup>

The free flow of information around the world helps businesses connect with international customers and develop products that closely meet their needs. Companies in many industries use Salesforce software to provide employees with real-time customer insights from across the globe. This 360-degree view gives companies' R&D, supply chain, and product groups insight into evolving customer needs and opportunities.

### **Elevating Global Manufacturing**

New digital innovations drive manufacturing today by boosting job growth and efficiency, with economic impacts as transformative as those sparked by the first industrial revolution. Powerful software-driven technologies help expand a manufacturer's strategic options—enabling companies to create new kinds of jobs, drive quality, and improve output.

- Mahindra & Mahindra, an India-based automaker, uses an end-to-end life cycle management solution from IBM to connect employees to teams and projects located across the world. From the design and initial development of a new vehicle to testing and product delivery, the ability to rapidly transfer data across the globe enables closer coordination and transparency in the development stage, helping bring vehicles to market faster and minimizing defects in those vehicles.<sup>5</sup>
- Headquartered in Italy, Biesse Group is a global leader in wood, glass, stone, plastic, and metal processing technology. The company relies on Siemens software to reduce errors and make product information available to all stakeholders across different business areas and roles. Centralizing company data means Biesse can share product information with 1,000 employees in China, India, and Italy. The free movement of information also facilitates collaboration with external partners, design offices, and material suppliers and subcontractors.<sup>6</sup>



## **PROTECTING PEOPLE**

### **Fraud Detection and Cybersecurity**

Detecting payment fraud offers one of the clearest examples of the benefits of cross-border data flows. Effective fraud mitigation depends on cross-border data flows as it demands sophisticated monitoring of historical payment transaction information and global or multi-country data sets.

- Mastercard's Decision Intelligence™ uses artificial intelligence (AI) to detect fraud patterns. By analyzing multiple data points, the solution helps banks make better decisions before authorizing or declining a transaction. This results in an increase in approval rates, a better consumer experience, and a reduction in the number of legitimate transactions that could otherwise be declined based on "false positives."<sup>7</sup>

### **Detecting Counterfeits**

Each year, counterfeit goods cost the global economy billions of dollars—and some phony products can even endanger lives. To combat this problem, brand owners invest time and effort to track down and remove fraudulent products from the market. These efforts help ensure that the products you buy are safe and trustworthy.

- The free movement of data around the world helps brands identify the sources of counterfeit and infringing products. WD-40 Company, which manufactures some of the world's best-known brands, relies on data from e-commerce sites, webshops, social media channels, country registrars, and export and import records to aid them in their efforts to detect and take action against such products.



## KEEPING PEOPLE SAFE AND HEALTHY

### Enhancing 21st Century Medical Care

Cross-border transfers of personal data allow hospitals and other care facilities to use clinical support software. The software analyzes electronic health records, health insurance claims, and data sets to help caregivers improve effectiveness of medical treatments and reduce risks.

- Amgen, a multinational biopharmaceutical company, also uses real-world data to identify global and regional populations of patients whose needs aren't being met by current therapies. This allows the company to optimize selection criteria for trials, which in turn helps speed recruitment of patients and ensure relevant results. The end result: greater understanding of how well different medicines fare in helping people around the world stay productive and healthy.<sup>8</sup>
- Fullerton Health operates an extensive network of about 200 medical clinics in Australia, China, Hong Kong, Indonesia, Malaysia, New Zealand, the Philippines, and Singapore. The organization regards itself as Asia's largest vertically integrated health system and uses Microsoft's cloud services to integrate health care delivery across its medical network. Clinic staff can quickly and securely access shared documents, patient notes, and care plans from any device, regardless of their physical location.<sup>9</sup>

### Feeding the World

In farming, precision agriculture techniques and collaborative software are transforming the industry and maximizing agricultural opportunity. When widely deployed, precision farming technologies can increase global crop yields as much as 67 percent and cut food prices in half. These transformative technologies rely on the movement of data gathered from thousands of sensors located across countries and regions.

- Norway-based Yara, one of the world's largest fertilizer producers, partnered with IBM to build a digital farming

platform. Through the platform, which provides holistic digital services and instant advice to farmers across the globe, Yara and IBM aim to boost the efficiency, transparency, and sustainability of global food production. The initial focus of the joint work lies on farm and field data management as well as data-driven, joint innovation for farmers, which is already successfully launched in various markets across the world.<sup>10</sup>

- Nutreco is an international leader supporting livestock farming and aquaculture, which feed millions of consumers worldwide. AT&T helps connect each of their 200 locations in rural areas across Asia, Europe, Latin America, and North America. AT&T's global network empowers Nutreco employees to connect and collaborate securely, whether they are working in the company's Dutch headquarters or in a remote factory.<sup>11</sup>



## PROMOTING SOCIAL GOOD

### Responding to Disasters

Effective responses to natural disasters—which affect hundreds of millions of people globally each year—largely depend upon responders' ability to locate, reach, and care for affected civilians. In recent years many public and private efforts have sought to leverage data analytics to assist in disaster response and recovery.

- Intel used AI to help the Red Cross map parts of the world that are particularly vulnerable to natural disasters and epidemics. The process began with satellite imagery. An AI model developed by Intel data scientists processed the imagery on Intel hardware and identified bridges that are critical for transportation in Uganda, which is prone to both viral outbreaks and severe flooding. Intel then worked with the Red Cross to validate the dataset and upload it to OpenStreetMaps, a free, volunteer-driven, editable map of the world used by the Red Cross and other NGOs for disaster planning and response to ensure that aid workers get to

**According to the U.S. International Trade Commission, fully half of all global trade in services now depends on access to cross-border data flows.**



people in need—both quickly and safely. This process depends on the ability of information to freely move across national borders.<sup>12</sup>

- After a natural disaster, 96 percent of small businesses see revenue losses, with 35 percent experiencing losses of greater than \$25,000. Visa launched Back to Business in Australia to support small businesses, and mitigate their revenue losses, as part of bushfire disaster relief efforts and community rebuilding. The tool leverages global transaction data to locate small businesses in disaster-affected areas, and points consumers to those merchants that either remain open or have re-opened for business following the natural disaster.<sup>13</sup>

## Fostering Sustainability

Global sustainability efforts rely on accurate data from many countries. Whether scientists are tracking endangered animal populations, analyzing climate data, or combating illegal poaching and fishing, the free flow of data is essential.

- Overfishing is a significant factor in the decline of ocean wildlife populations. The UN Food and Agriculture Organization estimates one-third of all fish stocks are no longer biologically sustainable. To combat this, nonprofit

organization OceanMind uses Microsoft AI technology to map data and work with government authorities around the world to catch perpetrators. OceanMind's system has the capacity to track millions of boats across the globe and gather data from a wide range of sources to identify and report illegal fishing.<sup>14</sup>

## Protecting Children

Sharing information across borders can help law enforcement, nonprofits, and government agencies around the world focus their resources to protect children more effectively. The important work of these organizations requires monitoring, tracking, and information dissemination around the world.

- Save the Children, a nonprofit active in 120 countries, works to give children around the world a healthy start in life. In India, Save the Children works to uplift the 30 percent of the population living in poverty. Using Oracle's cloud-based services, Save the Children India can tap into a global pool of employee specialists as candidates for their emergency-response units. Save the Children staff also rely on Oracle's cloud services for access to real-time financial data from their global locations, which helps them track grants and report outcomes to donors.<sup>15</sup>

## ENDNOTES

- <sup>1</sup> Panasonic, *Reinventing the Flying Experience*, <https://www.panasonic.aero>.
- <sup>2</sup> Airbus, *Airbus partners with United Airlines to manage aircraft data and enhance predictive maintenance capabilities*, <https://www.airbus.com/newsroom/press-releases/en/2019/06/airbus-partners-with-united-airlines-to-manage-aircraft-data-and-enhance-predictive-maintenance-capabilities.html>.
- <sup>3</sup> Autodesk, *Technology Drives Major Redesign at San Francisco International Airport*, <https://www.autodesk.com/customer-stories/woodsbagot>.
- <sup>4</sup> Verizon, *Locate In-Transit Products*, <https://enterprise.verizon.com/solutions/customer-success-stories/use-case-mec-and-in-transit-product-location>.
- <sup>5</sup> IBM, *Mahindra & Mahindra Ltd.: Accelerating Product Innovation with Streamlined, Traceable Systems and Software Engineering*, <https://www.ibm.com/case-studies/o352739q21959b94>.
- <sup>6</sup> Siemens, *Italian manufacturer of processing machinery implements digital transformation with Teamcenter*, <https://www.plm.automation.siemens.com/global/en/our-story/customers/biesse/34858/>.
- <sup>7</sup> Mastercard, *Decision Intelligence*, [https://globalrisk.mastercard.com/online\\_resource/decision-intelligence/](https://globalrisk.mastercard.com/online_resource/decision-intelligence/).
- <sup>8</sup> Amgen Science, *How Real-World Data Is Transforming Drug Development*, <https://www.amgenscience.com/features/how-real-world-data-is-transforming-drug-development>; and Wired, *At Amgen, Data Scientists Partner with Life Scientists to Build a Better Biotech*, <https://www.wired.com/wiredinsider/2018/11/at-amgen-data-scientists-partner-with-life-scientists-to-build-a-better-biotech>.
- <sup>9</sup> Microsoft, *Healthcare Provider's Digital Transformation Is Just What the Doctor Ordered*, <https://customers.microsoft.com/en-gb/story/721639-fullerton-health-digital-transformation>.
- <sup>10</sup> Yara, *Yara and IBM Launch an Open Collaboration for Farm and Field Data to Advance Sustainable Food Production*, <https://www.yara.com/corporate-releases/yara-and-ibm-launch-an-open-collaboration-for-farm-and-field-data-to-advance-sustainable-food-production>; and IBM, *Yara and IBM*, <https://www.ibm.com/services/client-stories/yara>.
- <sup>11</sup> AT&T Business, *AT&T Edge-to-Edge Technologies Provide Platform for Nutreco's Future Growth and Innovation*, <https://www.business.att.com/learn/customer-stories/nutreco.html>.
- <sup>12</sup> Intel, *Red Cross Mapping*, <https://www.intel.ai/case-studies/red-cross-mapping/>.
- <sup>13</sup> Visa, *Rebuilding Communities Through Their Small Business*, <https://www.visa.com.au/support/small-business/back-to-business-project.html>.
- <sup>14</sup> Alex Thornton, *How AI and Satellites Are Used to Combat Illegal Fishing*, Microsoft, <https://news.microsoft.com/on-the-issues/2019/06/06/ocean-mind-illegal-fishing>.
- <sup>15</sup> Oracle, *Oracle Cloud helps Save the Children, India provide relief*, <https://www.oracle.com/customers/applications/save-the-children-india/>.

The **Global Data Alliance** is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. The Alliance supports policies that help instill trust in the digital economy while safeguarding the ability to transfer data across borders and refraining from imposing data localization requirements that restrict trade. BSA | The Software Alliance administers the Global Data Alliance.

# EXHIBIT 66B





# GLOBAL DATA ALLIANCE

## TRUST ACROSS BORDERS

### JOBS IN ALL SECTORS DEPEND UPON DATA FLOWS

In sectors from agriculture to advanced manufacturing, cross-border data transfers provide benefits—enabling innovation, creating jobs, and promoting productivity, safety, and environmental responsibility—through 21st century technologies like cloud computing, blockchain, data analytics, and artificial intelligence (AI).

#### R&D

Multinational R&D teams collaborate across borders to develop new products, cures, and other advances using cloud-based software solutions and research data produced globally.



#### Market Forecasting

AI tools analyze data from around the world to identify patterns that can help predict market demand, customer design preferences, and risk factors relevant to global investment decisions.



#### Safety and Productivity

Real-time analytics of data gathered from sensors embedded in global production facilities, machinery, and other assets can alert operators before hazards or breakdowns can occur—allowing for predictive maintenance and safe, productive working conditions.



#### Sales

From order fulfillment, to invoicing, to responding to customer feedbacks—businesses can meet global customer needs only if they can receive and respond to customer queries transmitted across borders.



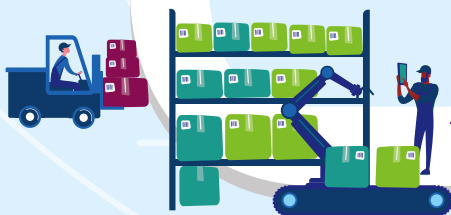
#### Regulatory Compliance

Legal compliance teams gather data from global operations to demonstrate that products and services meet regulatory requirements for transparency, safety, and effectiveness.



#### Inventory Control

Data analytics and AI can be used to adjust global inventories—avoiding shortages and freeing up resources for more productive uses.



#### Supply Chain

Real-time electronic data exchange allows companies to authenticate documents seamlessly, optimize shipping routes, and manage transportation assets for purposes of time, cost, and energy efficiency.



#### Post-Sale Service

Cross-border data transfer allow manufacturers to trace and recall products, and address service requests, transparently, safely, and quickly.

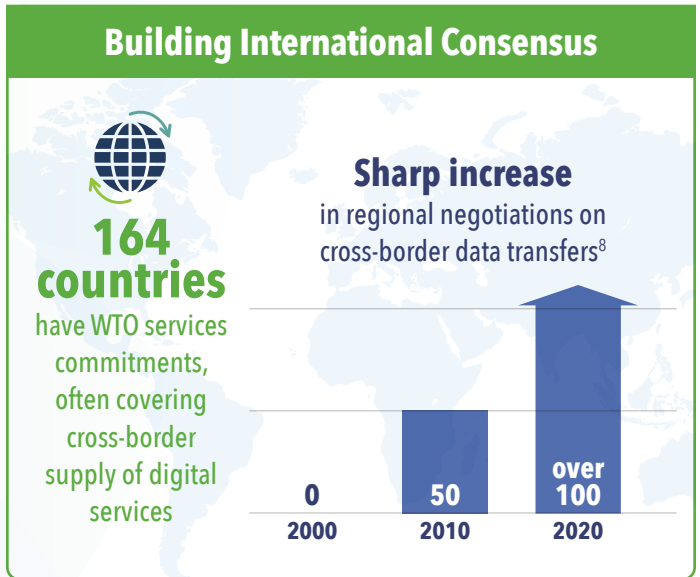
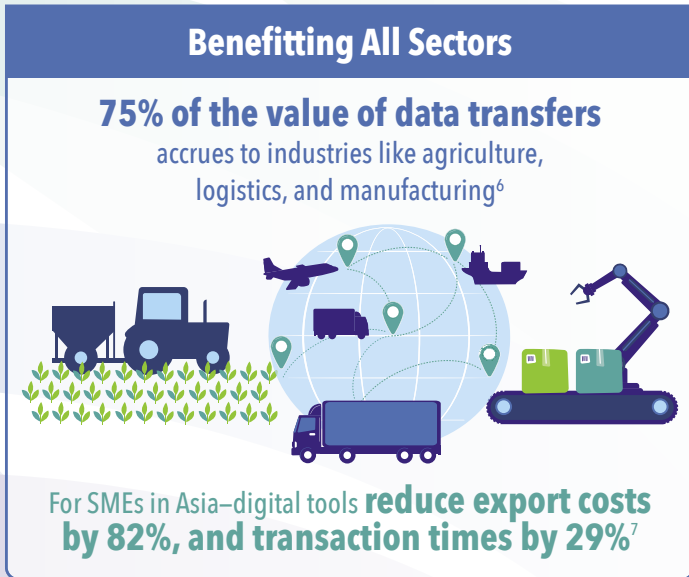
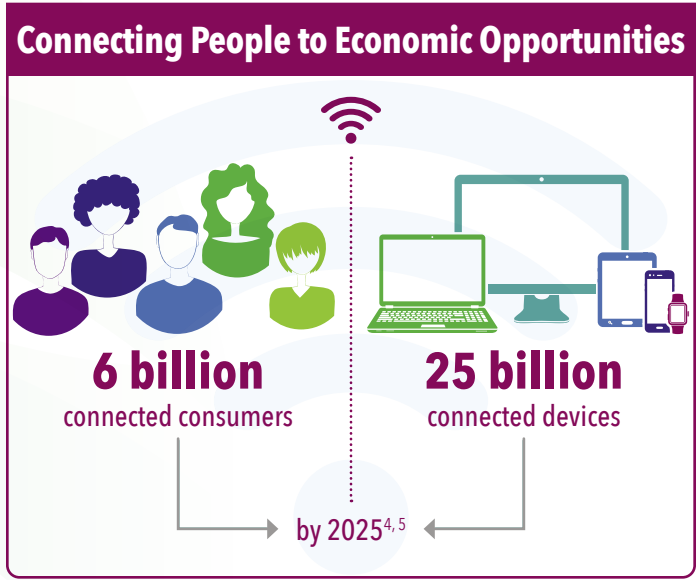
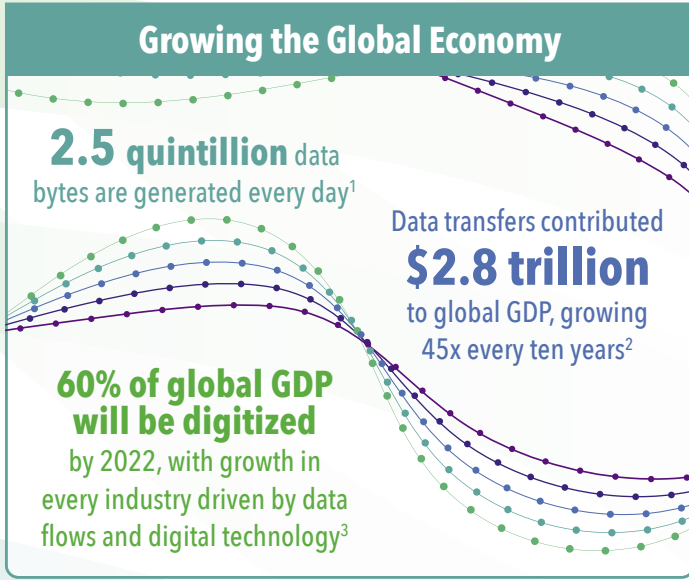


# EXHIBIT 66C



## CROSS-BORDER DATA TRANSFER FACTS AND FIGURES

Cross-border connectivity—the movement of data across borders—powers innovation and job growth in all sectors and for people across the world. The statistical evidence is compelling:



<sup>1</sup> [World's Top Global Mega Trends to 2025 and Implications to Business, Society, and Cultures](#), Frost & Sullivan, 2014.

<sup>2</sup> [Trade and Cross-Border Data Flows](#), OECD, 2019.

<sup>3</sup> [FutureScape—Worldwide IT Industry 2019 Predictions](#), IDC, 2018.

<sup>4</sup> [The Digitization of the World From Edge to Core](#), IDC, 2018.

<sup>5</sup> [The Mobile Economy 2020](#), GSMA, 2020.

<sup>6</sup> [Internet matters: The Net's sweeping impact on growth, jobs, and prosperity](#), McKinsey Global Institute, 2011.

<sup>7</sup> [Micro-Revolution: The New Stakeholders of Trade in APAC](#), Alphabet, 2019.

<sup>8</sup> As of 2010, approximately 50 countries (including 21 APEC members, 34 OECD members and various TPP negotiating parties). As of 2020, over 100 countries (including WTO members engaged in the Joint Statement Initiative e-commerce negotiations, African economies engaged in the African Continental FTA digital trade chapter negotiations, as well as the countries engaged in relevant negotiations in ASEAN, RCEP, the Pacific Alliance, and other bilateral and regional fora).

# EXHIBIT 67



# GLOBAL DATA ALLIANCE

## TRUST ACROSS BORDERS

### SUPPLY CHAIN RESILIENCE SECTOR BRIEF

#### CROSS-BORDER DATA TRANSFERS & THE AUTOMOTIVE INDUSTRY

Manufacturers, suppliers, and service providers in the automotive sector are able to innovate and compete better when they are able to engage in the responsible and protected transfer of data across borders. Data transfers are important from initial conception and design to finished vehicle delivery and post-sale operations.

- Cross-border data transfers and global automotive engineering. Data transfers are essential to industrial lifecycle management and virtualized engineering (e.g., digital twins) in global automotive design processes today. Data transfers enable global engineering teams to collaborate and innovate across borders at every stage of the product development cycle.
- Cross-border industrial cloud. Cross-border data transfers improve end-to-end visibility across an automotive supply chain comprising thousands of global facilities delivering millions of parts on a daily basis. Smart factories also rely on Internet of Things (IoT) sensors and robots to improve control over the manufacturing process from data centers across the world, thanks to the seamless transfer of data across borders.
- Cross-border enhanced safety and maintenance. Cross-border data transfers can be important to remote, digitally-enabled predictive maintenance. By 2022, an estimated 200+ million vehicles worldwide will have Over-the-Air (OTA) update capability — allowing auto manufacturers to seamlessly address energy efficiency, safety, or other performance issues via satellite- and cloud-enabled software updates. Similarly, sensors throughout the vehicle allow for on-the-road monitoring and predictive maintenance via cross-border cloud-enabled technologies.
- Cross-border automotive connectivity. Cross-border data transfers can also help autonomous and other connected vehicles reach their full potential. Connected vehicles generate some 30 terabytes of data each day, and highly automated vehicles will be generating ten-fold more data. Automotive maintenance and fleet operations depends upon connectivity for real-time transmission and analytics of this vehicular data across borders. Vehicle safety can be improved by sharing road and vehicle data — traffic and weather conditions, anonymized performance information from sensors, etc. — to and from roadway operators' cloud-based or edge data centers, and shared for analysis with service providers (e.g., weather apps).

# EXHIBIT 68



# GLOBAL DATA ALLIANCE

## TRUST ACROSS BORDERS

### SUPPLY CHAIN RESILIENCE SECTOR BRIEF

#### CROSS-BORDER DATA TRANSFERS & AGRICULTURE

Cross-border data transfers help make farmers, ranchers, and other agricultural producers more productive, facilitating a smaller environmental footprint and a larger agricultural surplus to feed global populations and support farming economies.

Cross-border enabled technologies support many precision farming techniques that allow producers to maximize crop yields, while improving insights into weather, soil, and other relevant environmental conditions. These technologies can also help mitigate environmental impacts by minimizing water, fertilizer and pesticide use, and by reducing the carbon footprint of agricultural activities.

Small- and large-scale farmers are better positioned for success in planting, harvesting, and selling their agricultural products when they benefit from:

- Cross-border access to satellite and sensor-driven data (often via cell phone) from across regions into temperature, precipitation, drought, and other meteorological trends, as well as soil alkalinity and related analysis;
- Cross-border agricultural data analytics that offers insights and guidance for improved planting and harvesting decision-making at regional and local levels. For instance, data from drones and sensors can measure soil acidity, moisture retention, and various agricultural productivity metrics. A cloud-based AI system can analyze this agricultural data to recommend real-time adjustments that improve crop yields while lowering the costs and environmental effects of farming. The ability for such a system to provide insights to farmers in remote regions of the world depends on the ability to transfer data across borders;
- Cross-border access to up-to-date, reliable information on international commodity markets, pricing, insurance, and shipping options, as well as cost-effective techniques for crop development and protection; and
- Cross-border access to sales opportunities, connecting sellers and buyers online. These tools can help farmers reduce transaction costs, profit-taking and arbitrage by middlemen. This is a particularly important benefit as up to 70 percent of the final value of agricultural products sold by small-scale farmers is often captured by intermediaries through the value chain.



# EXHIBIT 69



# GLOBAL DATA ALLIANCE

## TRUST ACROSS BORDERS

### SUPPLY CHAIN RESILIENCE SECTOR BRIEF

#### CROSS-BORDER DATA TRANSFERS & AGRICULTURE

Cross-border data transfers help make farmers, ranchers, and other agricultural producers more productive, facilitating a smaller environmental footprint and a larger agricultural surplus to feed global populations and support farming economies.

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# EXHIBIT 70



# GLOBAL DATA ALLIANCE

## TRUST ACROSS BORDERS

### SUPPLY CHAIN RESILIENCE SECTOR BRIEF

#### CROSS-BORDER DATA TRANSFERS & FINANCE AND INSURANCE

Cross-border data transfers are an important factor in advancing financial inclusiveness, financial transparency, and financial security for more than 2.5 billion unbanked people worldwide. Cross-border data transfers also enable actuarial analysis and other risks assessments that allow necessary to insure many different aspects of our economic lives. Examples include:

- **Cross-border microlending.** Microfinance institutions use technologies based on data transfers to provide better loans and achieve greater repayment rates and lower interest rates for applicants. For example, in many developing countries, local financial institutions are able to offer micro-loans to citizens and businesses that would not otherwise have access to credit, using cloud-enabled data analytics to determine credit risk profiles and deliver loans through automated processes.
- **Cross-border remittances.** More than ever, remittances are of vital importance in developing countries. According to the World Bank, remittances to low- and middle-income countries reached a record high of \$529 billion in 2018. Companies are also exploring the use of emerging technologies such as blockchain to provide speedier and cheaper remittance processes. Financial institutions that participated in the program reported savings between 40–70% in foreign exchange costs, and payment times averaging just a few seconds.
- **Cross-border data transfers and financial transparency.** From an anti-corruption and anti-money laundering perspective, increased use of “mobile transfers” and “mobile money,” which often depend upon cross-border access to cloud-based financial service platforms, allow for enhanced transparency in public sector spending; reduced corruption and “off the books” cash transactions; and increased confidence, efficiency, and predictability in the banking system. Access to cross-border technologies also allows for data analytics that are better able to identify potential cases involving money laundering, terrorist financing or other criminal financial transactions. In these ways, cross-border data transfers enhance financial legal compliance and improve the ability of financial regulators to identify and respond to emergent criminal activity or other risks.

# EXHIBIT 71



# GLOBAL DATA ALLIANCE

## TRUST ACROSS BORDERS

### SUPPLY CHAIN RESILIENCE SECTOR BRIEF

#### CROSS-BORDER DATA TRANSFERS & HEALTHCARE DELIVERY

Cross-border data transfers are essential to healthcare delivery via telehealth and telemedicine (collectively referred to as “remote health services”), as well as for on-site health services.

Remote health services, secured and enabled through cross-border access to best-in-class technologies, can offer significant benefits from perspectives of accessibility, cost, quality, safety, disease containment, and ongoing monitoring. Similarly, patient care can often be improved in on-site healthcare settings when doctors can support their patients by accessing medical expertise, health research, or analytics from other countries.

- **Cross-border epidemiological control**, based on the cross-border consolidation of anonymized data sets for purposes of real-time statistical tracking, analytics, and monitoring of aggregated anonymized data—e.g., to identify health trends, epidemiological patterns, or localized disease outbreaks.
- **Cross-border access to health-care data analytics** that help doctors evaluate local data samples against databases of relevant information gathered from all over the world—enhancing the reliability and accuracy of diagnoses and treatment recommendations.
- **Cross-border delivery of consultations, remote second opinions**, or other information from a provider in one country to a provider or patient in another. For example, in oncology, a patient may choose to have a biopsy sample sent to a lab overseas for genomic profiling, where the data can be processed and analyzed on a cloud-hosted server overseas and then be sent back to the treating physician on-site. Subject to all applicable privacy and other safeguards, the treating physician may then share anonymized data points with colleagues from other countries for a peer-to-peer consultation service or an international molecular tumor board to help decide the best treatment option for that patient.
- **Cross-border humanitarian assistance to underserved populations.** According to the WHO, “telemedicine networks around the world deliver humanitarian services on a routine basis, many to low-income countries. These networks provide tele-consultations for physicians and other health professionals needing advice about the clinical management of difficult cases, and some also provide education.”
- **Cross-border cost management.** Cross-border data transfers can also help accelerate Real World Data (RWD) collection and Real World Evidence (RWE) generation, which can in turn help local payors design the best outcome-based agreements with manufacturers, improve patient outcomes while controlling costs (value-based healthcare), or simply help local payors accelerate their decision making process or enable patients to have earlier access to the latest diagnostic tests and treatment options.

# EXHIBIT 72





## **SUPPLY CHAIN RESILIENCE SECTOR BRIEF**

### **CROSS-BORDER DATA TRANSFERS & HEALTH RESEARCH**

Cross-border data transfers are critical to the research, development, and delivery of new biopharmaceutical medicines to prevent and treat medical conditions and improve patients' health.

- **Cross-border Data Analytics and R&D Collaboration.** Cross-border data analytics can help speed the early identification of potentially useful drug candidates, shortening discovery timelines from years to months. The health data-sets and genomic data used in this analysis can come from multiple sources, such as clinical trials, data registries, and real-world evidence, but the required expertise, technology, and computer facilities often are not in the same country as where the data originates and, indeed, may be spread among many countries. Pharmaceutical R&D also depends on cross-border access to medical journals and scientific collaboration, reflected in a high degree of international co-authorship and new methods of sharing research and computing resources for cross-border R&D.
- **Cross-border digitization of clinical processes.** Cross-border data flows are essential to the conduct of clinical trials. Data flows are necessary to identify and establish clinical trial sites, identify clinical trial participants, and monitor the conduct of clinical trials. Cross-border data transfers also help companies address different countries' drug regulatory approval requirements, and requirements of Independent Ethics Committees (IEC) and Institutional Review Boards (IRB). Cross-border digitization of clinical trial processes is also reflected in the growing prevalence of cloud-based clinical tools, including wearables, Internet of Things (IoT) devices, data exchange initiatives, and Regulatory Information Management Systems (RIMS) that support safety and efficacy reviews and regulatory compliance across multiple countries.
- **Cross-border demographic representation.** Cross-border studies are also critical to ensuring that new products are safe and effective across different demographics, populations, and regions. Cross-border cloud-enabled technologies can help improve patient access, diversity, and representation in clinical trials, given the importance of a sufficiently large and diverse population of participants. In addition, clinical trials for rare disease drug development are conducted in multiple countries to gather data from a sufficient number of qualified participants.
- **Cross-border regulatory collaboration.** Each country has their own national regulatory agency to ensure that a new medicine is safe and effective. Such agencies require clinical trial sponsors to provide the underlying clinical trial data so they can make their own assessments. As a result, even after the clinical trial data moves from the trial site to the clinical trial sponsor, it must also be able to flow to governments in whatever countries where the new medicine may be approved. Cross-border data transfers also help regulators do their jobs, as reflected in cross-border collaborative frameworks to share information in regulatory reviews among health authorities in different jurisdictions.
- **Cross-border data transfers and good pharmacovigilance practice (GVP).** Cross-border data transfers are also key to post-marketing surveillance of approved products. This often includes cross-border reporting of data on adverse reactions with global regulators; virtual inspections of global manufacturing facilities; and submission of post-authorization safety studies in different countries.

# EXHIBIT 73



# GLOBAL DATA ALLIANCE

## TRUST ACROSS BORDERS

### SUPPLY CHAIN RESILIENCE SECTOR BRIEF

#### CROSS-BORDER DATA TRANSFERS & PUBLISHING AND MEDIA

Cross-border data transfers are essential to healthcare delivery via telehealth and telemedicine (collectively referred to as “remote health services”), as well as for on-site health services.

Cross-border data transfers are critical to the cross-border transfer and exchange of scientific, technological, and other knowledge in the media and publishing sectors, as summarized below:

- **Cross-border data transfers and publishing.** Data transfers enhance the ability of all economies to innovate and compete in the 21st century. This includes the ability to access productivity-enhancing software solutions; scientific, research, and other publications; and manufacturing data, blueprints, and other operational information, as well as the ability to collaborate with other research organizations across borders.
- **Cross-border data transfers and the creative industries.** Film, music, and video game production and distribution requires extensive cross-border exchange of information, ideas, content, and other data collaboration across each of their phases. For example, in many film productions, these phases span from screenwriting, casting, and shooting, to sound recording, pre-production, editing, screening, and commercial distribution of the finished product to global audiences. These processes often involve hundreds of artists and technical experts collaborating across borders and sharing information across transnational IT networks.
- **Cross-border data transfers and the remote economy.** Data transfers also enable the deployment of tools that facilitate teleworking, virtual collaboration, online training, and the remote delivery of services, including virtual healthcare solutions. These tools — which include cloud-based libraries and databases, video-conferencing applications, and interactive collaboration platforms — help foster cross-office R&D and innovation; build workforce productivity and skills; contain costs and carbon emissions; and promote public health and safety.

# EXHIBIT 74



# GLOBAL DATA ALLIANCE

## TRUST ACROSS BORDERS

### SUPPLY CHAIN RESILIENCE SECTOR BRIEF

#### CROSS-BORDER DATA TRANSFERS & SUPPLY CHAIN LOGISTICS

Cross-border data transfers are integral to international supply chains, which depend upon the seamless movement of information across borders to optimize sourcing, freight scheduling, and inventory management; promote safety and fight counterfeiting; increase efficiency and resilience; reduce costs; and minimize disruption.

- **Cross-border data transfers and supply chain integration.** Manufacturing, logistics, and retail industries can benefit from comprehensive process innovation and digital transformation by adopting technologies such as software-as-a-service, Internet of Things (IoT), artificial intelligence (AI) and machine learning, real-time sensing technologies, and advanced analytics. Integrating these technologies can enhance the value chain within a company's cross-border operations and optimize production plans, supply and demand prediction, lead times, and store inventory management.
- **Cross-border data transfers and inventory management.** Data gathered from various sources and geographies can help companies optimize their inventory levels and avoid unnecessary surpluses. AI solutions can leverage a vast amount of publicly available data gathered around the world to help predict how certain events—such as extreme weather and road conditions—may impact supply, production, and delivery.
- **Cross-border data transfers and demand forecasting.** Data analytics tools can be used to examine a vast amount of data that influenced past product demand. AI algorithms can be trained to use that information, combined with other data points to predict when a combination of factors will impact future demand. AI solutions can help companies reduce forecasting errors by 20 to 50 percent; and reduce lost sales caused by product shortage by up to 65 percent.
- **Cross-border data transfers and transportation.** Breakage of or malfunctioning of vehicles, vessels, and equipment used to load cargo can delay delivery and generate financial losses. Technologies that heavily rely on data flows can help optimize predictive maintenance, avoiding or greatly minimizing supply chain disruptions due to transportation delays. Predictive maintenance triggers an intervention when it is really needed and not just when it is pre-planned.
- **Cross-border data transfers and product traceability.** Tracking products through the various steps of their supply chain or tracing back their origin once they reach their destination can be done transparently, safely, and quickly using blockchain. This technology helps manage product recalls very efficiently, increasing consumer safety and reducing costs. Blockchain solutions rely on cross-border data to trace every phase of a product supply chain and can quickly and precisely identify the origin of a problem to help avoid untargeted “bulk” product recalls.

# EXHIBIT 75





# GLOBAL DATA ALLIANCE

## TRUST ACROSS BORDERS

### SUPPLY CHAIN RESILIENCE SECTOR BRIEF

#### CROSS-BORDER DATA TRANSFERS & TELECOMMUNICATIONS

Telecommunication and information technology (IT) network infrastructure, including terrestrial and submarine cables, as well as satellite, cellular, and other wireless technologies, enable cross-border data transfers to connect people, as well as schools, hospitals, factories, and organizations of all types and sizes.

Digital connectivity, supported by cross-border data transfers, is increasing with new infrastructure investment and innovation in telecom and IT networks, such as:

- **Cross-border terrestrial and submarine cabling systems.** Information networks are supported by more than 1.3 million kilometers of terrestrial and submarine cabling that allows data to move across borders.
- **Cross-border wide-area networks.** These networks encompass new cellular technologies (such as 5G) and updates to technologies (such as 4G LTE) that can connect devices globally. With more than \$1 trillion in 5G capital expenditures, telecom companies and other service providers are building out a 5G architecture designed to operate in a cross-border cloud-enabled environment. 5G networks can carry vast quantities of data — up to 10 TB/s/km<sup>2</sup> — for numerous simultaneous users across the globe.
- **Cross-border low-power wide-area networks (LPWAN).** LPWAN innovations include narrowband Internet of Things (IoT) and LTE-M technologies, which enable long-distance IoT data transmissions at a lower cost and lower power consumption than 4G and 5G networks of smartphones and similar computing devices.
- **Cross-border 6G innovation.** Emerging plans for 6G technologies envision cross-border communication capability in the high GHz and THz bands and enhanced edge networking applications.
- **Cross-border satellite connectivity.** Thousands of newly deployed low-earth orbit (LEO) satellites — small, low-orbit devices offering better latency and signal strength over legacy infrastructure — promise to improve cross-border connectivity for remote or underserved regions of the globe.
- **Cross-border connectivity potential of photonics.** New photonics (optics)-based technologies can improve performance indicators in cross-border connectivity relative to current electronics-based technologies.



# EXHIBIT 76

# EXHIBIT 77

# EXHIBIT 78

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# EXHIBIT 81

# EXHIBIT 82



# EXHIBIT 83

# EXHIBIT 84

# EXHIBIT 85

# EXHIBIT 86

# EXHIBIT 87

DECEMBER 09, 2021

# Fact Sheet: Announcing the Presidential Initiative for Democratic Renewal

*“In the face of the sustained and alarming challenges to democracy and universal human rights around the world, more than ever, democracy needs champions.”*

President Joe Biden, December 9, 2021

Today, President Biden opened the first-ever Summit for Democracy, a forum for leaders from around the world to discuss the challenges and opportunities facing democracies in the 21st century. As a core U.S. Government commitment toward achieving the Summit’s objectives, today President Biden announced the establishment of the **Presidential Initiative for Democratic Renewal**, a landmark set of policy and foreign assistance initiatives that build upon the U.S. Government’s significant, ongoing work to bolster democracy and defend human rights globally.

The United States has long worked to strengthen democracy and advance respect for human rights. Not only is this the right thing to do, it is in the United States’ national security interest, because strong, rights-respecting democracies are more peaceful, prosperous, and stable. Democracies also make stronger partners for the United States, as we work together to address the world’s most pressing international challenges, from combating the climate crisis to preventing the next pandemic.

The Presidential Initiative for Democratic Renewal represents a significant, targeted expansion of U.S. Government efforts to defend, sustain, and grow democratic resilience with likeminded governmental and non-governmental partners. In the coming year, the United States is planning to provide up to **\$424.4 million** toward the Presidential Initiative, working with Congress and subject to the availability of appropriations. These efforts will center on five

areas of work crucial to the functioning of transparent, accountable governance:

1. Supporting Free and Independent Media
2. Fighting Corruption
3. Bolstering Democratic Reformers
4. Advancing Technology for Democracy
5. Defending Free and Fair Elections and Political Processes

## **I. Supporting Free and Independent Media**

- **Bolstering Independent Media.** Under the Presidential Initiative, USAID will provide up to \$30 million to the **International Fund for Public Interest Media**, a new multi-donor fund designed to enhance the independence, development, and sustainability of independent media, especially in resource-poor and fragile settings. Additionally, USAID will provide up to \$5 million to launch a **Media Viability Accelerator**, which will improve the financial viability of independent media outlets in both under-developed and more-developed media markets.
- **Protecting Journalists Physically, Digitally, and Legally.** To guard the essential work of journalism from spurious legal claims aiming to silence legitimate work, USAID will provide up to \$9 million to support a global **Defamation Defense Fund for Journalists**, which will offer liability coverage to investigative reporters and their organizations. In parallel, the State Department will provide up to \$3.5 million to establish a **Journalism Protection Platform**, which will provide at-risk journalists with digital and physical security training, psychosocial care, legal aid, and other forms of assistance. And the U.S. Government will increase its engagement with the **Media Freedom Coalition**, an intergovernmental partnership working to advocate for media freedom and the safety of journalists worldwide.

## **II. Fighting Corruption**

- **Supporting Anti-corruption Change Agents.** To support and connect anti-corruption actors across civil society, media, academia, and labor



organizations, USAID will provide up to \$5 million to launch the **Empowering Anti-Corruption Change Agents Program**, which will promote protective measures for whistleblowers, civil society activists, journalists, and others at risk due to their anti-corruption work. The State Department, joined by other donors, will build on its support for the **Global Anti-Corruption Consortium (GACC)** by providing up to \$6 million to enhance the GACC's work to connect media and civil society organizations with one another, expose ill-gotten gains, and support legal or policy changes in support of anti-corruption objectives.

- **Curbing Corruption through Strategic and Regulatory Action.** Earlier this week, the U.S. Government unveiled its first-ever **United States Strategy on Countering Corruption**, which provides a blueprint for cracking down on corruption at home and abroad. In support of this strategy, the Treasury Department will enact regulations to **increase transparency in the U.S. real estate market** by establishing reporting requirements for those closest to real estate transactions. In parallel, the State Department, working with the Departments of Treasury and Justice, will provide up to \$15.1 million to launch the **Democracies Against Safe Havens Initiative**, which will work to build the capacity of partner governments to deny corrupt actors the ability to hide ill-gotten gains through anti-money laundering measures, to encourage like-minded partners to adopt anti-corruption sanctions and visa restriction regimes, and to detect and disrupt complex corruption schemes.
- **Innovating and Partnering to Combat Corruption.** To identify novel approaches to address transnational corruption and its enablers, USAID will provide up to \$15.7 million to launch the **Combating Transnational Corruption Grand Challenge**, a partnership platform to crowd-source innovative solutions from businesses, technologists, philanthropies, and other actors.
- **Strengthening Anti-Corruption Ecosystems.** To enhance partner countries' ability to build resilience against kleptocracy and illicit finance, including by supporting beneficial ownership disclosure, strengthening government contracting and procurement regulations, and improving anti-corruption investigation and disruption efforts, USAID will provide up to \$11.5 million to launch a **Global Accountability**

**Program.** Additionally, to advance the fight against corruption at transitional moments such as during political openings, USAID will provide up to \$17.6 million for an **Anti-Corruption Response Fund**, and the State Department will provide up to \$6.5 million to establish a **Global Initiative to Galvanize the Private Sector as Partners in Combatting Corruption**, to energize and institutionalize existing public sector anti-corruption engagement with the business community.

### III. Bolstering Democratic Reformers

- **Empowering Historically Marginalized Groups and Ensuring All Have a Say in Democracy.** To advance the civic and political leadership of women, USAID and the State Department will provide up to \$33.5 million to launch the **Advancing Women’s and Girls’ Civic and Political Leadership Initiative**, which will help facilitate the full and safe exercise of women’s rights and representation. The State Department will also provide up to \$5 million to launch the **Global LGBTQI+ Inclusive Democracy and Empowerment (GLIDE) Fund**, a new program under the Global Equality Fund that will facilitate the participation and leadership of LGBTQI+ community members in democratic institutions.
- **Supporting Activists, Workers, and Reform-Minded Leaders.** Responding to the increased threat against human rights defenders and activists globally, the State Department will provide up to \$10 million for **Lifeline: Embattled CSOs Assistance Fund**, a multilateral initiative which supports civil society organizations under threat as a consequence of their democracy and human rights work. The State Department will also provide up to \$1 million to establish the **Bridging Understanding, Integrity, and Legitimacy for Democracy (BUILD) Initiative**, which will lay the groundwork for providing career professionals in closed political spaces the skills and resources to navigate democratic openings when they occur. USAID will provide up to \$15 million to launch the **Powered by the People** initiative, which will assist nonviolent social movements by increasing coordination through exchanges, seed grants, and engagement with younger pro-democracy actors. Additionally, the Departments of Labor and State, and USAID, will provide up to \$122 million to establish a **Multilateral Partnership for Organizing, Worker Empowerment, and Rights (M-POWER)**, which will help workers

around the world claim their rights and improve wages and conditions by strengthening democratic and independent worker organizations and supporting labor law reform and enforcement.

#### **IV. Advancing Technology for Democracy**

- **Advancing an Open, Interoperable, Reliable, and Secure Internet.**

The United States embraces a vision of an Internet that is open, interoperable, reliable, and secure, and reaffirms our commitment to protecting and respecting human rights online and across the digital ecosystem. The use of digital technologies should reinforce, not weaken, democracy and respect for human rights; offer opportunities for innovation in the digital ecosystem, including businesses large and small; and maintain connections between societies. To achieve this vision and maintain a high level of security, privacy protection, stability, and resilience of the technical infrastructure of the Internet, the U.S. Government will work with partners to protect and fortify the multi-stakeholder system of Internet governance. As part of this effort, the United States will work to strengthen the **Freedom Online Coalition (FOC)**, a multi-stakeholder effort to support Internet freedom and promote human rights online. The U.S. Government will seek not only to expand FOC membership, but also to deepen the Coalition's diplomatic efforts to address the challenges and opportunities of digital technologies.

- **Expanding Digital Democracy Programming.** To assist partner countries in realizing the benefits of digital technologies that support democratic values and respect human rights, rather than undermining them, USAID will provide up to \$20.3 million to build on **programming supporting open, secure, and inclusive digital ecosystems**. This programming will help governments enshrine democratic principles in their countries' use, development, and governance of technology, while empowering civil society, technologists, and the private sector to encourage the same.

- **Advancing Democracy-Affirming Technologies.** To incentivize innovation in technologies that asymmetrically advantage democratic values and governance, the National Science Foundation, the National Institute of Standards and Technology, and the Open Technology Fund,

alongside international partners, will provide up to \$3.75 million for a series of **International Grand Challenges on Democracy-Affirming Technologies**. This series of prize competitions will focus on topics such as harnessing artificial intelligence for an open Internet and advancing and deploying privacy-preserving technologies.

- **Defending against Digital Authoritarianism.** To reduce the potential for human rights abuses enabled by some dual-use technologies, the U.S. Government and likeminded partners will launch an **Export Controls and Human Rights Initiative**, in which participating governments will work together to determine how export control tools could better monitor and, as appropriate, restrict the proliferation of such technologies. In parallel, to counter authoritarian censorship of the Internet, the State Department will provide up to \$4 million to establish and seed a **Multilateral Surge and Sustain Fund for Anti-Censorship Technology**, which will enable the connection of more users to the uncensored Internet, sustain those connections in times of greatest need, and invite likeminded partners to contribute jointly.

## **V. Defending Free and Fair Elections and Political Processes**

- **Strengthening Electoral Integrity.** To advance electoral integrity globally, USAID will provide up to \$2.5 million to launch a **Coalition for Securing Electoral Integrity**, which will bring together governmental and non-governmental partners within the international electoral integrity community to develop norms, guiding principles, and codes of conduct on prioritized electoral integrity issues, while promoting adherence to those basic standards.
- **Piloting and Scaling Innovative Approaches to Defend Democratic Elections.** As a complement to the Coalition for Securing Electoral Integrity, USAID will provide up to \$17.5 million to establish a **Defending Democratic Elections Fund** to pilot, scale, and apply evidence-based responses to threats to electoral integrity and related political processes globally. This Fund will address issues such as cybersecurity; domestic and foreign electoral manipulation; electoral violence, including gender-based violence; illicit domestic and foreign political financing; election-

related disinformation; and barriers to the political participation of marginalized populations.

Finally, as part of the Presidential Initiative for Democratic Renewal, the U.S. Government will launch two new cross-cutting rapid response programs aimed at supporting the Summit for Democracy's objectives.

- **Demonstrating that Democracy Delivers.** To help countries experiencing a democratic transition demonstrate democracy's tangible benefits, USAID will provide up to \$55 million to launch **Partnerships for Democracy**. This new, global, and flexible funding mechanism will enable the U.S. Government to surge cross-sectoral assistance to reform-minded partner governments to assist them in delivering visible benefits to their populations in areas such as health care and education.
- **Advancing the Democratic Renewal Agenda.** To advance global democracy priorities that frequently intersect, such as strengthening rule of law, fighting corruption, bolstering civilian security, and promoting human rights, the State Department will provide up to \$10 million to launch the **Fund for Democratic Renewal (FDR)**. This flexible, rapid-response fund will enable State Department bureaus and offices under the Under Secretary for Civilian Security, Democracy, and Human Rights to respond collectively and collaboratively to support partners working on democracy's front lines.

# EXHIBIT 88



## MEMORANDUM

### LEGAL ANALYSIS OF USTR DIGITAL TRADE POLICY REVERSAL

This memorandum analyzes the legal and policy bases asserted by the Office of the US Trade Representative (USTR) to justify its withdrawal of longstanding US support for pro-democracy, pro-inclusion, and pro-science rules on digital trade and cross-border access to information.

USTR has indicated that this policy reversal applies not only to World Trade Organization (WTO) negotiations, but also to negotiations with allies in the Indo-Pacific and across the Western Hemisphere under the Indo-Pacific Economic Framework (IPEF) and the Americas Partnership for Economic Prosperity (APEP). Furthermore, USTR has extended this policy perspective to its treatment of significant foreign trade barriers under the National Trade Estimate process required by Section 181 of the Trade Act of 1974.

In relation to matters affecting cross-border access to information, data localization, and other cross-border data matters, USTR's policy now appears to be governed by the following principles:

- The US will no longer commit to refrain from treating US allies in ways that are arbitrary, discriminatory, disguised, or unnecessary; and
- The US will not ask US allies to treat the US according to these same standards of democratic accountability.

We respectfully submit that USTR's policy stance is unsupported by substantial evidence and the law, and undermines US economic, security, and strategic interests.

#### Overview

USTR appears to base its new policy positions on the argument that it: (1) hasn't received sufficient direction from Congress or the White House on US cross-border data policy to commit to refrain from treating US allies in ways that are arbitrary, discriminatory, disguised, or unnecessary; and (2) must abandon these norms of democratic accountability in order to create space for US government actions on digital policy matters. USTR's reasoning is reflected in the following public statements.

On September 28, 2023, in an [address](#) at the University of North Carolina, the Trade Representative stated:

Until the United States is able to articulate our own [digital governance] ... policies, I got nothing to bring to the table in the international conversation, because I'm just a trade negotiator. If I do something through our trade policies that either forces domestic action at home, or that makes our domestic political actors feel like I'm tying their hands, that's the end of our trade policy, and that's the end of my job.

On October 24, 2023, in an [official statement](#), USTR stated:

In order to provide enough policy space for [domestic] debates [on data and source code] to unfold, the United States has removed its support for proposals that might prejudice or hinder those domestic policy considerations....

On December 7, 2023, the Trade Representative [stated](#) that digital trade rules raised questions about:

Who gets to decide or control how freely the data can flow and when it can be restricted, where it needs to be stored? [Given] massive amounts of debate and questioning, then I as USTR am committing massive malpractice and probably committing policy suicide by getting out ahead of .. other conversations and decisions that we need to make as a country.

On May 16-17, 2024, the Trade Representative repeatedly asserted in US Trade Agenda hearings before the [House Committee on Ways & Means](#) and the [Senate Finance Committee](#) that pending legislative and administrative actions prevent the US government from taking steps to safeguard US access to cross-border data in the future. The USTR cited, for example, the [Executive Order on Americans' Sensitive Personal Data](#), the accompanying Department of Justice (DoJ) [Advance Notice of Proposed Rulemaking \(ANPRM\)](#), and the [Protecting Americans' Data from Foreign Adversaries Act](#). The following exchange between Senator Elizabeth Warren (D-MA) and the USTR is illustrative.

Senator Warren: “[Did you reverse US digital trade policy] so that the US government can take actions like the President’s Order to Protect Americans’ Data from Adversaries?”

US Trade Representative: “Senator Warren, the short answer is Yes. Both with respect to the Administration’s order safeguarding the security of Americans’ data flowing into China and never coming back, but also with respect to all of the activity happening up here in Congress. We saw a data broker bill move through the House and pass on a 414-to-0 basis. We see that the data broker bill has been introduced ...to define the right that Americans have with respect to their data, as well as being concerned with the onward flow of that data to places that make it unsafe for us.”

### **USTR’s Action Contradicts Congressional and White House Direction and is Legally Unsound**

Below, we address the suggestion that: (1) USTR hasn’t received sufficient direction from Congress or the White House to attempt to secure US cross-border access to data from US allies; and (2) in order to create space for US government actions on digital policy matters, USTR can no longer commit to refrain from treating US allies in ways that are arbitrary, discriminatory, disguised, or unnecessary.

#### **A. USTR’s Action Contradicts Congressional Direction and White House Policy**

To answer USTR’s question re “who gets to decide or control how freely the data can flow and when it can be restricted...,” the US government – including Congress and the White House – “gets to decide” these questions. The USTR alone does not. It is not up to a single agency or cabinet official to unilaterally change longstanding US government policy.

For decades, Democratic and Republican administrations alike have supported international trade rules that promote cross-border access to information. These rules were [negotiated at Congress’ direction](#); have been formally certified by multiple US presidents as fully consistent with US law; and have been repeatedly approved in US legislation supported by bipartisan majorities of both the US House and Senate. Through TPA and other acts,



Congress has called on USTR to negotiate rules to ensure other countries do not “restrict [cross-border data flows](#) or require local storage or processing of data.”<sup>1</sup>

Congress has reacted swiftly to USTR’s repeated acts of disregard for congressional direction and USTR’s ongoing efforts to dismantle past accomplishments. This includes in late 2023:

- A [bipartisan letter](#) from dozens of senators stated: “Retreating from our longstanding principles without offering a viable alternative does not help US workers, it does not help US consumers, it does not help US businesses, and it does not help US allies; it only helps our adversaries.”
- A [bipartisan letter](#) from dozens of representatives stated: “The void created by this decision will harm American workers, companies, security, and innovation, while benefiting our largest competitors in the digital space.”

Following USTR’s decision in Spring 2024 to reduce attention to digital barriers by up 70% from 2023, Congress again reacted swiftly – sending letters condemning USTR’s move and demanding detailed explanations in the USTR’s Trade Hearings.

White House reaction to USTR’s missteps have also been swift. Following USTR’s October 2023 announcement, an NSC spokesperson reassured the public that the United States continues its “[longstanding support for the trusted free flow of data](#) and an open Internet with strong and effective protections for individual privacy.” This clarification was necessary because USTR’s announcement appeared to contradict established Administration policy, including:

- White House commitments to pursue “high-standard rules of the road in the digital economy, including [standards on cross-border data flows and data localization](#).”
- The US Indo-Pacific Strategy goals of a “free and open Indo-Pacific” that include norms to govern “[cross-border data flows according to open principles](#).”
- The IPEF Ministerial Statement aim to “enhance access to online information and use of the Internet; facilitate digital trade; address discriminatory practices,” and “work to promote and support... [trusted and secure cross-border data flows](#).”<sup>2</sup>
- Similar commitments in the [Declaration on the Future of the Internet](#), the [National Cybersecurity Strategy](#), and the [National Security Strategy](#), as well as the [Cyberspace and Digital Policy Strategy](#).

USTR claims that it simply wished to avoid “getting out ahead” of other policy makers or “tying their hands.” Unfortunately, preempting and prejudicing other US government interests is precisely the outcome that USTR’s actions have produced.

Over the past seven months, USTR has unilaterally unraveled longstanding US cross-border data policy, disregarded express congressional direction, and ignored the official policy of the White House and other agencies. In so doing, USTR isolated the United States from its allies, created a (wholly unnecessary) appearance of US alignment with China’s digitally authoritarian policies, and harmed cooperation with US allies on challenges relating to democratic governance, the economy, environment, health, safety, and security.

## **B. USTR’s Legal Justifications are Unsound**

USTR suggests that negotiating rules on cross-border data or digital trade would legally “prejudice” legislative policy efforts. These legal claims are unsound.

**First**, some 100 senators and representatives – many of them leaders in digital governance matters – disagree. In all, USTR has received nearly a dozen letters signed by scores of lawmakers from both political parties in both chambers of Congress, urging it to reverse course. As noted in [one of many](#) bipartisan Senate critiques of USTR:

[T]here is much interest in the digital regulation space, particularly with the rapid adoption of artificial intelligence technology. We welcome discussions and debate on the best way to protect consumers, promote privacy, and ensure a competitive marketplace. However, these efforts do not require the United States to walk away from negotiating strong rules at the WTO that support US businesses and workers—nor would these rules constrain the ability of the United States to regulate. In fact, the commitments under discussion have built-in exceptions that ensure countries can legislate in the public interest.

A bipartisan letter from [three dozen representatives](#) offers a similar perspective:

We wholeheartedly agree that the United States and our allies must maintain sufficient room to regulate the digital economy in a fair and transparent manner. Further, we agree that consumers must be protected as they interact with the digital economy, including by bolstering consumer data privacy protections and cybersecurity safeguards. That said, the US can regulate companies within our borders without giving foreign countries, including our adversaries, the impression that the United States will no longer protect our industries and workers against discrimination, push back against the PRC's model of data censorship and surveillance, promote the free and secure flow of data across borders, and defend American companies against source code theft.

To defend its position, USTR relies heavily on a single [February 24 letter](#) signed by a group of House representatives. USTR's reliance on this letter is misplaced. [Nothing in this letter supports a refusal to engage with US allies to secure future US cross-border access to data](#). Instead, this letter states that “trade officials should not attempt to preempt Congress on domestic policy through trade negotiations” and that the United States should be able to “restrict... the flows of Americans' data for national security or privacy reasons.” These are uncontroversial statements. US trade officials do not preempt Congress through trade negotiations, because Congress consistently insists that any US trade negotiating outcomes must be [based in, and consistent with, US law](#). Indeed, the cross-border data rules in question comprise [due process norms grounded in US law](#). It was the Obama Administration that first drafted and advanced these norms as a means of countering the digital authoritarian governance models being promoted by US adversaries. Nothing in these American democratic procedural safeguards would constrain the ability to restrict data flows on grounds of national security or privacy. On the contrary, these trade rules protect and advance American democratic norms. Their absence does the opposite.

**Second**, USTR's contention that digital trade negotiations would preempt legislative action on digital policy is belied by the accomplishments of US allies. The situation in the European Union is instructive. The EU has not only enacted laws on [digital marketplace competition](#), [data privacy](#), [data sharing](#), and [AI](#), but it has also [agreed with allies](#) to refrain from imposing cross-border data restrictions that are [arbitrary, discriminatory, disguised, or unnecessary](#). In fact, some 40 US allies have agreed to digital trade norms containing the democratic procedural safeguards that USTR has now abandoned.<sup>3</sup> Certainly, no minister or senior official from any of these countries has suggested that it be “[massive malpractice](#)” or “[policy suicide](#)” to commit in trade agreements to basic norms of due process that are already based in that country's own law.

**Third**, USTR disregards the wide berth that US trade agreements grant to domestic regulators. US trade agreements make clear that the United States is free to regulate in the public interest, and every digital trade commitment that the United States has negotiated to date has included exceptions for such activities.<sup>4</sup> US trade agreements give the United States absolute discretion to impose stricter rules on its own enterprises than on foreign enterprises. The United States also retains absolute discretion to act in its national security interest: US trade agreements contain a blanket exception for national security, which affords complete discretion to (for example) “[decide or control](#) how freely data can flow and when it can be restricted.”<sup>5</sup>

**Fourth**, USTR suggests that we should discount Congressional and White House guidance given “[massive amounts of debate and questioning](#).” This suggestion is wrong. Just one year ago, the White House directed USTR to negotiate “[standards on cross-border data flows and data localization](#)” and to promote norms that govern “[cross-border data flows according to open principles](#).” Prior thereto, Congress approved these digital trade provisions by overwhelming bipartisan, bicameral majorities (385 to 41 in the House, 89 to 10 in the Senate) in the USMCA Implementation Act. Before that, bipartisan majorities in Congress directed USTR to negotiate the cross-border data rules at issue here.

**Finally**, in relation to the EO on Americans’ Sensitive Personal Data and the accompanying DoJ ANPRM, the USTR suggests that targeted restrictions on bulk data broker sales to six US adversary nations necessarily prevent the United States from cooperating with close US allies to broadly protect the US supply chain and US interests through agreements with allied nations on cross-border data. USTR’s view is contradicted by statements from DoJ, the National Security Council (NSC), and the Department of Homeland Security (DHS), which have emphasized that the EO and ANPRM (like the Data Broker legislation) represent a “carefully calibrated national security action” directed at Russia, China, Iran, North Korea, Cuba, and Venezuela at a time of armed conflict and increasing geopolitical tension. The United States—like every other country—retains complete discretion to act in its sovereign national security interest, as it is now doing under the EO and ANPRM. To this end, US trade agreements contain a blanket exception that allows for national security-based data restrictions, such as those contained in the EO. See e.g., USMCA Art. 32.2. In sum, we respectfully submit that US negotiations on cross-border data with close US allies are not preempted by the EO.. Senator Ron Wyden (D-OR) summed the issue up succinctly in comments immediately after the colloquy between USTR and Senate Warren:

“On this point with respect to digital, I feel strongly that keeping these markets for digital free and open, and fighting these sleazy data brokers, are not mutually exclusive. We can do both.”<sup>6</sup>

The United States must not further delay negotiations with our allies lest it create an opening for others to drive a wedge between the United States and its allies and enter into new cross-border data agreements on terms unfavorable to the United States

## Conclusion

We urge the Biden-Harris Administration to take steps to secure future US cross-border access to data from US allies. To do so, we must re-engage in negotiations with US allies so as to advance US democratic norms of due process in the relation to cross-border data policy matters. If we do not re-engage with our allies, international norms that reflect US law, US values, and US interests will be replaced with norms that don’t.

<sup>1</sup> In the *Bipartisan Congressional Trade Priorities and Accountability Act of 2015*, Congress established a series of “Principal Trade Negotiating Objectives” for the United States in trade negotiations, including an objective to secure rules ensuring that “governments refrain from implementing trade-related measures that impede digital trade in goods and services, restrict cross-border data flows, or require local storage or processing of data[.]” See *Bipartisan Congressional Trade Priorities and Accountability Act of 2015*, 19 U.S.C. § 4201(b)(6), <https://www.congress.gov/114/plaws/publ26/PLAW-114publ26.pdf>. Contrary to the Trade Representative’s assertions, the objective specifically recognizes that such rules would not prevent the domestic regulation of such activities. *Id.*, § 4201(b)(6)(D).

<sup>2</sup> See also, the National Security Strategy call to “to promote the free flow of data and ideas with trust, while protecting our security, privacy, and human rights, and enhancing our competitiveness”; and the National Cybersecurity Strategy call to “rally like-minded countries, the international business community, and other[s] to advance our vision for the future of the Internet that promotes secure and trusted data flows, respects privacy, promotes human rights, and enables progress on broader challenges.”

<sup>3</sup> These include the principles of governmental accountability and good governance found in cross-border data and localization provisions in the [Digital Economy Partnership Agreement \(DEPA\)](#), [Australia-Singapore Digital Economy Agreement \(DEA\)](#), [Australia-UK Free Trade Agreement \(FTA\)](#), [Japan-EU Economic Partnership Agreement \(EPA\)](#), [Japan-UK EPA](#), [Japan-US Digital Trade Agreement \(DTA\)](#), [Korea-Singapore DPA](#), [UK-NZ FTA](#), [UK-Singapore DEA](#), the [UK-Ukraine DTA](#), as well as the [USMCA](#) and the [CPTPP](#).

<sup>4</sup> For example, the cross-border data flow provision in the USMCA includes text that explicitly protects the ability of USMCA parties to prohibit or restrict cross-border data flows for legitimate public policy reasons, as long as the restrictions are not unreasonably or unjustifiably discriminatory. USMCA, Article 19.11 (Cross-Border Transfer of Information by Electronic Means). The agreement’s general exceptions also apply to the Digital Trade chapter, further protecting policymakers’ discretion. See *id.*, Article 32.1(2).

<sup>5</sup> USTR also ignores that US trade agreements have no direct effect in US law. US trade agreement implementing bills include provisions stating that “[n]o provision of [the trade agreement], nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect” and that “[n]othing in this Act shall be construed ... to amend or modify any law of the United States, or ... to limit any authority conferred under any law of the United States, unless specifically provided for in this Act.” See, e.g., USMCA Implementation Act, Section 102(a)(1)-(2).

<sup>6</sup> <https://www.finance.senate.gov/hearings/the-presidents-2024-trade-policy-agenda>

# EXHIBIT 89



### MYTHS VS. FACTS

## Cross-Border Data and Access to Information

The ability of the United States and its allies to share knowledge and information [supports](#) scientific progress, digital transformation, and economic opportunity. Over many years, the United States and its allies negotiated international trade rules to support more predictable information sharing amongst them. The US Trade Representative (USTR) has [publicly withdrawn](#) its support for that practice. This document addresses several myths that have emerged.

MYTH	FACT
<b>Cross-border access to data doesn't benefit US workers.</b>	The US economy and American workers in virtually every sector benefit from cross-border access to information. Restrictions on that access threaten the 40 million American jobs <a href="#">supported</a> by international trade and over \$1 trillion in US digitally enabled goods and services exports. When other governments erect barriers to US digitally enabled exports—such as aircraft, vehicles, semiconductors, creative content, and financial and other services—they <a href="#">hurt workers</a> that design, produce, and deliver them. Allowing other governments to force US companies to localize operations abroad also undermines the <a href="#">US tax base</a> .
<b>Trade rules on cross-border data undermine democracy and human rights.</b>	The <a href="#">ACLU</a> , the <a href="#">Center for Democracy and Technology</a> , and <a href="#">Freedom House</a> have raised alarms at USTR's rejection of legal constraints on arbitrary, discriminatory, disguised, or unnecessary government action in the digital environment. Noting that USTR's action "may be read to signal an abandonment of principles of openness, freedom, and non-discrimination," these entities highlighted "unique risks for people's privacy, free expression, access to information, and other fundamental freedoms," as well as vulnerabilities to "foreign surveillance and privacy breaches." The US must not support digital authoritarianism abroad—even indirectly or inadvertently. The US should return to cross-border data norms that <a href="#">protect human rights</a> and <a href="#">counter digital authoritarianism</a> , consistent with the <a href="#">Presidential Initiative for Democratic Renewal</a> , the <a href="#">National Security Strategy</a> , the <a href="#">National Cybersecurity Strategy</a> , and the <a href="#">Declaration for the Future of the Internet</a> .
<b>Trade rules on cross-border data prevent Congress from legislating on AI or privacy.</b>	Nothing in these trade rules would prevent Congress from creating new AI or consumer privacy rules. The situation in the European Union is instructive. The EU has not only enacted laws on <a href="#">digital marketplace competition</a> , <a href="#">data privacy</a> , <a href="#">data sharing</a> , and <a href="#">AI</a> , but it has also <a href="#">agreed with allies</a> to refrain from imposing cross-border data restrictions that are <a href="#">arbitrary, discriminatory, disguised, or unnecessary</a> . In fact, some 40 US allies have agreed to the digital norms containing the democratic procedural safeguards that USTR has now abandoned. Certainly, no minister in these allied economies has suggested that it would be " <a href="#">massive malpractice</a> " or " <a href="#">policy suicide</a> " to commit to basic norms of good governance in the digital environment.  Indeed, the US itself maintains stringent federal privacy rules on <a href="#">health data</a> , <a href="#">children's data</a> , and <a href="#">financial data</a> ; over a dozen <a href="#">US states</a> have enacted privacy laws; and major federal privacy bills have advanced—with no conflict vis-à-vis our pro-democracy and pro-human rights rules on cross-border data.
<b>Trade rules on cross-border data only benefit "Big Tech."</b>	The importance of data transfer rules extends far beyond the technology sector. These rules help promote millions of US <a href="#">jobs</a> , including in the <a href="#">agriculture</a> , <a href="#">automotive</a> , <a href="#">clean energy</a> , <a href="#">finance and insurance</a> , <a href="#">healthcare</a> and <a href="#">medical technology</a> , <a href="#">logistics</a> , <a href="#">media</a> , <a href="#">pharmaceutical</a> , and <a href="#">telecommunications</a> sectors.  Small- and medium-sized businesses ( <a href="#">SMEs</a> ) are key <a href="#">beneficiaries</a> of cross-border data transfers; they are also most vulnerable to digital barriers. As stated in a <a href="#">letter</a> to USTR from the House <a href="#">Committee on Small Business</a> , "97% of [US] digital exports come from small and medium businesses," which "make up 99.9% of all businesses in the US... Dramatic policy reversals, such as this one, remove the stability required to ensure small businesses have a fair shot at competing."



MYTH	FACT
Trade rules on cross-border data undermine competition in the digital economy.	<p>It has been suggested that USTR's refusal to support rules that benefit the entire economy stems from a competition policy concern about "[a] <a href="#">very small number</a> of extremely powerful and dominant [technology] companies." Yet, there is no conflict between antitrust and cross-border data norms. Nothing in these norms impedes new antitrust legislation or enforcement. On the contrary, USTR's action distracts from competition concerns relating to gatekeeper platforms and the app economy.</p> <p>Data localization mandates have the most severe impacts on smaller firms, which do not wield the resources to develop in-country data centers. Allowing trading partners to arbitrarily mandate data localization and restrict data transfers will raise new barriers to entry and increase the power of incumbent firms and "foreign monopolies and firms that are <a href="#">state-owned [or] state sponsored</a>"—contrary to the President's <a href="#">Executive Order on Competition</a>. Likewise, allowing foreign governments to impose undue restrictions on US cross-border access to data from abroad will only amplify the market power of those that have amassed massive data sets. USTR's policy reversal will harm—not help—competition.</p>
Trade rules on cross-border data undermine US leadership on artificial intelligence.	<p>Without cross-border access to data, the US and its allies will not be able to maintain their edge in <a href="#">innovation</a> and <a href="#">artificial intelligence</a>. US companies in all sectors and of all sizes—and the US government itself—need cross-border access to overseas data in order to fulfill the potential of AI consistent with the President's <a href="#">Executive Order on Artificial Intelligence</a>. As a result of the recent USTR decision, the countries assessed as having some of the most restrictive data transfer policies in the GDA's <a href="#">Cross-Border Data Policy Index</a> will now be in a better position to write digital trade rules and lead on AI.</p>
Trade rules on cross-border data harm national security and the public interest.	<p>The US—like every other country—retains absolute discretion to act in its national security interest. Our trade agreements contain a blanket exception that allows for national security-based data restrictions, such as those contained in the <a href="#">Executive Order to Protect Americans' Sensitive Personal Data</a>. Moreover, US agreements provide broad latitude to regulate in the public interest.</p> <p>USTR's historic policy reversal will have national security consequences. The calculus is simple: If the US government abandons efforts to ensure greater fairness and due process on cross-border data transfers, then other governments—including adversaries—will fill the vacuum. Those governments will be free to replace cross-border data rules that reflect US interests, US values, and US law with new norms that don't.</p>
US leadership on cross-border trade rules is a relic of the Trump Administration.	<p>For decades, Democratic and Republican administrations alike have supported international trade rules that promote cross-border access to information. These rules were <a href="#">negotiated at Congress' direction</a>; formally certified by multiple US presidents as fully consistent with US law; and repeatedly approved in US legislation supported by bipartisan congressional majorities. These rules reflect US legal principles of <a href="#">transparency, fairness, and accountability</a> that the US has espoused globally for over 75 years. These norms are core to US democracy and our place in the world. We should not abandon them.</p>
USTR's action has received broad support.	<p>USTR's policy reversal has provoked bipartisan criticism from <a href="#">nearly 100 Senators</a> and <a href="#">House representatives</a>; sparked congressional inquiries on <a href="#">small business impacts</a> and <a href="#">competition</a>; and raised alarms among <a href="#">academics</a>; <a href="#">civil society</a>; <a href="#">think-tanks</a>; <a href="#">human rights advocates</a>; <a href="#">strategic, cybersecurity</a> and <a href="#">national security experts</a>; <a href="#">small businesses</a>; <a href="#">individual enterprises</a>; <a href="#">economy-wide</a> and <a href="#">sectoral associations</a>; <a href="#">CEOs</a>; and some <a href="#">50 business groups</a> that represent thousands of companies and millions of workers across the country.</p> <p>As expressed in a <a href="#">bipartisan letter</a> signed by dozens of Senators: "Retreating from our longstanding principles without offering a viable alternative does not help US workers, it does not help US consumers, it does not help US businesses, and it does not help US allies; it only helps our adversaries."</p>

### About the Global Data Alliance

The Global Data Alliance ([globaldataalliance.org](http://globaldataalliance.org)) is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. The Alliance supports policies that help instill trust in the digital economy while safeguarding the ability to transfer data across borders and refraining from imposing data localization requirements that restrict trade. Alliance members are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, electronics, energy, financial and payment services, health, consumer goods, supply chain, and telecommunications sectors, among others. BSA | The Software Alliance administers the Global Data Alliance.

# EXHIBIT 90





# GLOBAL DATA ALLIANCE

## TRUST ACROSS BORDERS

### CONGRESS' VIEW OF USTR'S DIGITAL POLICY REVERSAL

#### COMPILATION OF CONGRESSIONAL STATEMENTS ON USTR'S DIGITAL TRADE POLICY REVERSALS

Over 100 Senators and Representatives have raised concerns regarding actions taken by the Office of the US Trade Representative (“USTR”) in 2023-2024 to withdraw support for digital trade-related due process norms that are based in US law. USTR’s actions allow US trading partners – even US allies – to block US cross-border access to data for reasons that are arbitrary, disguised, discriminatory, or unnecessary. USTR’s action also allow foreign adversaries to replace international norms that reflect US law, US democratic values, and US strategic interests with new international norms that don’t.

#### **Selected Statements from US Senate Finance Hearings on US Trade Agenda**

*Senate Finance Committee Chairman Ron Wyden (D-OR)*

“I’ll also note our country, particularly my home state, has set the standard on high-tech, innovative industries. The United States needs to be a leader in setting the rules of the road for digital trade so our creators and innovators get a fair shake in foreign markets. I take a backseat to no one when it comes to privacy, security, and antitrust enforcement. While lawmakers look to domestic tech regulation, we must also push for digital trade rules that will protect the free and open internet, help small businesses, and push back on China’s model of digital surveillance and censorship.”

“On this question of technology policy, I showed up in the US Senate when only one senator knew how to use a computer... I decided then that it was one of the areas that I wanted to go in on, and my horse was small business. I put on this kind of prism that the big guy is going to be able to take care of themselves, my interest is small business. So I’m very glad that the White House is now working with everybody on this, the whole of government approach. Just so everybody knows, I am going to be pushing hard that these policies like forced localization are just poison for small businesses. There is just no way they can move ahead if they are going to be paying for servers and all the rest.”

“On this point with respect to digital, I feel strongly that keeping these markets for digital free and open and fighting these sleazy data brokers are not mutually exclusive, we can do both.”

*Senate Finance Committee Ranking Member Mike Crapo (R-ID)*

“When it comes to discriminatory trading practices, our trading partners expect USTR to simply note that it is considering all options, as it did with Canada’s decision to move forward with its discriminatory digital services tax, and further expect that USTR’s consideration of all options is likely to be indefinite...(USTR) should at least...negotiate key rules on technical barriers to trade... [in areas like] intellectual property and key digital provisions such as non-discrimination and free data flows.”

“Thus far, USTR has failed to do so...and the trade agenda indicates this will continue...This benefits China...The proposals... for USMCA for technical barriers to trade, for intellectual property and for digital trade ensured we could regulate and also rise to China’s challenge. Simply abandoning coordinated and reasoned proposals without consulting Congress—is a profound mistake.”

*Senator Tom Carper (D-DE)*

“In February this year, the American Civil Liberties Union, along with Freedom House and a number of other advocacy groups as well as academics, sent a letter expressing concern with the United States decision to withdraw from the key digital commitments at the World Trade Organization. That letter outlines the impact of digital trade across sectors, and the importance of ensuring that the United States has a seat at the table in order to help write the rules of the road, both for creators and small and medium-sized businesses that must adapt to the changing digital landscape.”

“Here’s my question. As you work with our friends in the White House and other agencies to develop the United States position on digital trade, can you commit to us to working with a broad group of stakeholders as well as US creators across industries to build out the United States posture on digital trade commitments?”

*Senator Chuck Grassley (R-IA)*

“There has been a bipartisan agreement on this committee on critical issues such as cross-border data flows, data localization, open markets, and intellectual property protection. However, this has been undermined by actions of this Administration, so other countries end up setting the rules on digital trade. These bipartisan principles are the foundation of the digital economy and U.S. companies enjoy a significant competitive advantage relative to foreign competitors.”

“Our competitors repeatedly seek to discriminate against U.S. companies and impede access to their markets, yet the Biden Administration has pulled back from negotiations on digital services trade and rejected long-term, long-held bipartisan principles against discriminatory practices of our partners. USTR has abdicated its leadership role in this important issue. So why is USTR allowing other countries to set the rule that will put American companies at a disadvantage? This can’t be consistent with USTR’s mission.”

*Senator Marsha Blackburn (R-TEN)*

“I do want to talk to you about digital trade. I thank you for the response to my letter on small business impact of the digital trade rules. I disagree with you on that because I think the change in digital trade policy is not one that has been welcome. The Biden Administration might think the change is going after ‘big tech,’ but what you’re doing is really hurting countless small businesses. And you made a comment in your opening that you were slow-walking the changes, you brought up the work we were doing in the Judiciary Committee on privacy and you brought up KOSA as a justification for not doing something on digital trade provisions. And I would remind you that international agreements on digital trade do not preclude countries from passing privacy laws. You can look at the EU, you can look at GDPR, you can look at New Zealand, you can look at Canada, you can look at Australia, so that is an excuse and not an accuracy.”

*Senator Todd Young (R-IN)*

“I am going to continue to pull on the thread that Senators Carper and Wyden have, as they have emphasized the importance of digital trade to our country, to our national security, to our people. I think not everyone associates the state of Indiana and the industrial Midwest with digital trade and the importance of digital trade, but they should. This is a potential opportunity for countless Hoosiers to lower costs, especially something top of mind at a time of inflation concerns. This creates new opportunities for consumers and workers alike, this is an opportunity for us to advance our global competitiveness, increasingly services industries and IT-related industries, are an important part of Indiana’s economy and the rest of the country’s economy.”

I happen to believe, and I think our committee has demonstrated on a broadly bipartisan basis that digital trade is increasingly important to our country. At this moment in history however, our government has not acted as though it is as important as this committee seems to believe. Under your leadership, USTR is diminishing our role in defending open digital trade rules, to put it pointedly.”

*Senator John Thune (R-SD)*

“I would echo what my colleague Senator Grassley said about digital trade, and that’s something I’ve worked with the Chairman on a lot. It seems like we have abdicated our role as a leader on digital trade and very quickly allowing China to step into the gap.”

## Selected Statements from US House Ways & Means Hearings on US Trade Agenda

### *Rep. Darin LaHood (R-IL)*

“Rather than providing a free market alternative to the CCP’s digital governance model, this administration sends mixed messages on the global stage by walking back long-held bipartisan digital trade proposals outlined at the World Trade Organization without clearly articulating a policy path forward. Last November, Congresswoman DelBene and I led a bipartisan letter along with 36 house colleagues to you underscoring how your decision threatens America’s leadership and ultimately harms American businesses and workers.”

“This decision, as we mentioned, was made without any sufficient Congressional input. So when I mentioned frustration, Ambassador Tai, we continue to have concerns and frustration with this decision and the successive abandonment of digital trade in IPEF or to understand what the policy position of the administration is moving forward.”

### *Rep. Jimmy Panetta (D-CA)*

“I do believe that if we want to incentivize countries to implement labor, environment, and enforcement mechanisms, it takes more. It takes deals, it takes multilateralism, it takes FTAs, and it does take working with Congress... There is a perception that trade is toxic. And what we don’t want is for us to be sitting on the sidelines just because of that perception. We want to make sure that we are a part of the economic integration that is going on right now, as we’re seeing in the Pacific, especially as China tries to fill that void with its being a part of the CPTPP and RCEP.”

### *Rep. Kevin Hern (R-OK)*

“In an increasingly interconnected global community, access to free digital trade is critical to U.S. economic growth and innovation. Preventing digital trade barriers has historically been bipartisan. It is also a requirement of the 2015 bipartisan Congressional Trade Priorities and Accountability Act.”

“Yet USTR has continuously failed to protect digital trade, USTR pulled back on its support for digital trade protections at the WTO, sidelined digital trade negotiations in the Indo-Pacific Economic Framework deal, and most recently failed to include digital trade barriers in the 2024 National Trade Estimate report on foreign trade barriers. Internet and digital technologies have revolutionized commerce, enabling businesses of all sizes to access global markets and consumers like never before. However, this potential is being undermined by the rise of digital trade barriers imposed by some of our trading partners.”

“These barriers come in various forms, from data localization requirements to discriminatory regulations and censorship measures. They not only stifle innovation and economic growth, but also undermine the competitiveness of American businesses in the digital age. An increasing number of U.S. trading partners are adopting digital restrictions, modeled after Chinese laws, that hurt American workers and impede foreign market access of U.S. exports, which is why I was greatly concerned to see USTR fail to include the majority of these restrictions in this year’s NTE. USTR stated that these exclusions only applied to any barrier that is an effort to regulate in the public interest. Ceding these protections to the interests of foreign governments who would undermine the success of American companies and as a result the people they employ is simply unacceptable.”

### *Rep. Brian Fitzpatrick (R-PA)*

“U.S. digital trade policy has consistently been a bipartisan issue in this Chamber and in this Congress, and Congress has remained committed to supporting the promotion of digital trade and the removal of foreign barriers to digital trade that directly harm our companies right here in the United States. Moreover, digital trade bolsters American leadership and encourages innovation and levels the playing field for U.S.-based companies and workers competing against foreign businesses while also promoting democracy abroad.”

“Ambassador Tai, last year, your office made the unilateral decision to withdraw support of the WTO’s digital trade principles. I believe this to be an unfortunate decision, I believe it abandoned longstanding bipartisan digital trade principles, it allows communist China to have more of a say over the global rules of the road for internet, for e-

commerce, and cross-border data flow rules and information access. I believe this change in posture by the USTR will hurt U.S. businesses and will threaten our national security interests if adversaries like China are able to impose national requirements for data localization and get away with harming American businesses at the WTO.”

*Rep. Suzan DelBene (D-WA)*

“Trade is critical for Washington state’s economy. More than 40% of our jobs are tied to trade... I do worry we are not doing enough to negotiate trade rules that are commercially meaningful, enforceable, supported by Congress, and reflective of the modern-day challenges we face as a nation.”

*Rep. Lloyd Smucker (R-PA)*

“Let me start by echoing several of my colleagues’ comments regarding our disappointment to see digital trade barriers not included in the National Trade Estimate.”

“I am very concerned about the global proliferation of digital services taxes, but I am equally concerned with the fact that our own Administration sees the rise of DSTs around the globe as an opportunity to question if digital innovation born and bred in the U.S. actually is American. I believe comments like that send the wrong signal to the international community that our administration welcomes their efforts to cut into the share of taxes that companies are paying. I strongly urge you to pursue aggressive action to ensure our companies are not discriminated against and I hope new Section 301 investigations or other tools to respond to DSTs are under consideration. We need to show other countries that there are consequences for unfair practices.”

### **Bipartisan Senate Statement**

**Senators Wyden (D-OR), Crapo (R-ID), Barrasso (R-Wyoming), Budd (R-North Carolina), Cantwell (D-Washington), Capito (R-West Virginia), Cardin (D-Maryland), Carper (D-Delaware), Cassidy (R-Louisiana), Coons (D-Delaware), Cornyn (R-Texas), Cortez Masto (D-Nevada), Cramer (R-North Dakota), Cruz (R-Texas), Daines (R-Montana), Gillibrand (D-New York), Grassley (R-Iowa), Johnson (R-Wisconsin), Kaine (D-Virginia), Kelly (D-Arizona), King (I-Maine), Lankford (R-Oklahoma), Lummis (R-Wyoming), Murray (D-Washington), Padilla (D-California), Risch (R-Idaho), Rosen (D-Nevada), Sinema (I-Arizona), Tillis (R-North Carolina), Tim Scott (R-South Carolina), Van Hollen (D-Maryland) and Young (R-Indiana) ([here](#))**

“We write to express our concerns with the decision of the United States Trade Representative (USTR) to stop supporting key commitments in the e-commerce negotiations at the World Trade Organization (WTO)—and potentially in other negotiations. These commitments reflect bipartisan principles that, until now, the United States has strongly supported across political parties, administrations, and the federal government: an open internet that promotes the flow of information across borders to support American exports and American values. USTR’s decision to abandon these commitments at the WTO creates a policy vacuum that China and Russia will fill. Accordingly, before changing the longstanding U.S. position, we request that you work with Congress and run a comprehensive consultation process—with other federal agencies, with the public, and with us—to reach a consensus U.S. position on these issues that promotes U.S. competitiveness, innovation, and jobs.

For decades, the United States has been at the helm of global leadership on protecting, promoting, and expanding the open internet as both a means of worldwide connectivity and an engine of U.S. economic growth



and opportunity. This effort has long been a feature of U.S. trade policy: the United States advocated for commitments to ensure the free flow of information in WTO rules agreed to almost 30 years ago, and our trade agreements with Korea, Mexico, Canada, and Japan include strong digital trade rules guaranteeing the right to move data across borders. In this vein, the United States joined negotiations on e-commerce at the WTO, working with like-minded democratic allies to create rules for a digital economy that is open, fair, and competitive for all. The United States has supported proposals to spur economic growth, encourage free expression and access to information, and promote consumer protections online, while also allowing countries to address concerns regarding security, privacy, surveillance, and competition. These negotiations are crucial to our strategic approach to outcompeting our adversaries: both China and Russia are at the negotiating table, actively pushing their cyber-agenda of censorship, repression, and surveillance that not only hurts their own citizens but also undercuts U.S. competitiveness. Indeed, China is actively seeking to weaken the very principles at issue so it can promote its own version of internet governance.

In spite of this, on October 25, 2023, USTR reversed course and announced that it was walking away from the negotiating table on several core commitments in the e-commerce negotiations. These commitments, which again have broad bipartisan support, are fundamental to the modern economy, supporting U.S. businesses of all sizes across all sectors. Specifically, USTR abandoned the following commitments:

- Promoting the free flow of data. Almost every sector of the U.S. economy requires cross-border data flows, from manufacturers sharing product specifications, to airlines diagnosing problems mid-flight, to farmers leveraging precision agriculture to maximize crop yield. Arbitrary and trade-distorting restrictions on cross-border data flows that serve no legitimate public policy purpose can prevent American firms from doing business abroad, stifle economic growth here at home, and trample on human rights in authoritarian countries. Russia, for example, has weaponized data-restrictive laws to crack down on dissent, control information, and expel civil society organizations amidst its ongoing invasion of Ukraine. Recognizing the importance of data flows to U.S. economic and foreign policy goals, the United States' original proposal at the WTO sought to ensure that consumers, companies, and non-governmental organizations could move data across international borders, while recognizing that countries must be able to act in the public interest, such as to protect personal data from abuse and foreign surveillance.
- Combating forced data localization. China and Russia, as well as other countries emboldened by their actions, have increasingly pursued data localization measures that require certain domestic data to be stored or processed within their borders. These policies require companies to build or maintain capital- and energy-intensive infrastructure in every market they enter, a major expense for large businesses, but an insurmountable hurdle for small and medium-sized enterprises. Small and medium-sized businesses are then left with an impossible choice: enter a risky joint venture with a foreign enterprise or get shut out of the market entirely. In this way, authoritarian governments leverage data localization measures to discourage competition and facilitate governmental access to data within their borders, helping them access trade secrets, censor and surveil their citizens, and hide human rights abuses, including forced labor. The United States' proposal sought to limit data localization, while acknowledging that in certain circumstances, data localization may be appropriate to address national security, law enforcement, and privacy concerns....

As indicated above, each of these commitments maintained flexibility to regulate for legitimate public policy reasons.

USTR provided no policy alternatives to these longstanding and bipartisan U.S. positions, nor a timeline for providing them. We are concerned that USTR's retreat will hurt workers and employers across all sectors of the U.S. economy, with disproportionate effects on small and medium-sized businesses in creative industries like film, music, and book publishing; innovative industries like software, medical devices, and precision agriculture; travel, tourism, and transportation; logistics, shipping, and supply chain management; and manufacturing, including the critical automotive and semiconductor sectors. Moreover, with this abrupt change in policy, USTR has not only turned its back on our democratic allies and undermined U.S. credibility in other negotiations and fora around the world, but it has also empowered authoritarian regimes like China and Russia, who are eager to fill the void and regulate U.S. jobs out of existence.

We recognize that there is much interest in the digital regulation space, particularly with the rapid adoption of artificial intelligence technology. We welcome discussions and debate on the best way to protect consumers, promote privacy, and ensure a competitive marketplace. However, these efforts do not require the United States to walk away from negotiating strong rules at the WTO that support U.S. businesses and workers—nor would these rules constrain the ability of the United States to regulate. In fact, the commitments under discussion have built-in exceptions that ensure countries can legislate in the public interest. Retreating from our longstanding principles without offering a viable alternative does not help U.S. workers, it does not help U.S. consumers, it does not help U.S. businesses, and it does not help U.S. allies; it only helps our adversaries.

We continue to support the core commitments that USTR has distanced itself from in the WTO e-commerce negotiations. We request that you run a consultation process before changing the historical, consensus U.S. position on these important issues. We look forward to working with you to address this and other bipartisan Member concerns.”

### **Bipartisan House Statements**

**Representatives LaHood (R-IL), DelBene (D-WA), Smith (R-NE), Sewell (D-IL), Buchanan (R-FL), Beyer Jr. (D-VA), Kelly (R-PA), Schneider (D-IL), Schweikert (R-AZ), Panetta (D-CA), Wenstrup (R-OH), Meeks (D-NY), Arrington (R-TX), Bera (D-CA), Ferguson (R-GA), Connolly (D-VA), Estes (RKS), Correa (D-CA), Smucker (R-PA), Gottheimer (D-NJ), Miller (R-WV), Himes (D-CT), Fitzpatrick (R-PA), McLane Kuster (D-NH), Tenney (R-NY), Larsen (D-WA), Fischbach (R-MN), Quigley (D-IL), Moore (R-UT), Peters (D-CA), Steel (R-CA), Plaskett (D-VI), Van Duyne (R-TX), Schrier (D-WA), Feenstra (R-IA), Strickland (D-WA), Carey (R-OH), Swalwell (D-CA) ([here](#))**

November 15, 2022: “We write to express our opposition to the Office of the U.S. Trade Representative’s (USTR) decision to abandon important bipartisan digital trade proposals at the World Trade Organization (WTO). This action, which was made without sufficient consultation with Congress, runs counter to the interests of American workers and businesses of all sizes and cedes more leverage to other foreign powers, including the Peoples’ Republic of China (PRC), that seek to write the rules of the 21st-century digital economy. We urge the administration to reconsider its approach.

Digital trade is vital to American workers and businesses of all sizes and virtually all industries, and the growth of e-commerce has only accelerated in recent years. In 2021, the U.S. digital economy produced \$3.70 trillion in gross output, a 36-percent increase from 2016, and the sector supported over 8 million jobs. Further, U.S. digital services exports equated to more than 75 percent of total services exports or \$594 billion in 2021. Digital trade is more critical than ever, impacting the competitiveness of nearly every American industry, from manufacturing and traditional technology to agriculture and services.

We are concerned by an increasing number of policies and proposals around the world that unfairly target American businesses and workers and threaten to undermine the leading position U.S. innovators have achieved. These policies include restrictive data localization requirements that fail to advance legitimate public policy objectives, controls on cross-border data flows, intellectual property theft and the forced transfer of technology, discriminatory regulations and digital service taxes, web filtering, and cybercrime.

American leadership in shaping digital trade rules is critical for competing globally in the longterm and countering the unfair trade practices of other foreign powers, including the PRC. We are especially concerned by the PRC's efforts to advance a model of digital governance domestically and through its Digital Silk Road Initiative that permits censorship, surveillance, human and worker rights abuses, forced technology transfers, and data flow restrictions.

We wholeheartedly agree that the United States and our allies must maintain sufficient room to regulate the digital economy in a fair and transparent manner. Further, we agree that consumers must be protected as they interact with the digital economy, including by bolstering consumer data privacy protections and cybersecurity safeguards. That said, the U.S. can regulate companies within our borders without giving foreign countries, including our adversaries, the impression that the United States will no longer protect our industries and workers against discrimination, push back against the PRC's model of data censorship and surveillance, promote the free and secure flow of data across borders, and defend American companies against source code theft.

...

These provisions maintain broad support in the United States, and we are troubled that USTR has abandoned these positions without meaningful consultations with Congress and without putting forth any alternative approaches to advance the key objectives we outline above. The void created by this decision will harm American workers, companies, security, and innovation, while benefitting our largest competitors in the digital space. We reiterate our request for the administration to reassess its decision.”

### **Other Statements by Senate Democrats**

#### **I. [Carper \(D-DE\)](#)**

October 25, 2023: The U.S. must lead the world in establishing the rules of the road for digital trade. Unfortunately, today's decision by USTR sets us back from the standards outlined by USMCA when we need to be leading global competition and innovation.

#### **II. [Coons \(D-DE\)](#)**

November 7, 2023: U.S. Senator Chris Coons (D-Del.) released the following statement in response to the decision by the Office of the U.S. Trade Representative (USTR) to rescind support for longstanding U.S. negotiating objectives on digital trade: “Digital trade rules ensuring the free flow of information and protecting proprietary technology serve to strengthen the global competitiveness of the U.S. economy and provide valuable guarantees for U.S. businesses in every industry. That’s why I’m so disappointed to see USTR abandoning those priorities in our trade negotiations, despite years of broad bipartisan support and their inclusion in trade agreements negotiated by presidents of both parties. Important domestic debates on regulating technology should not hold us back from continuing to work with our allies to develop guardrails for the global digital economy that reflect our shared values. If we are not at the negotiating table, we are giving China a free pass to set the rules of the road for the future of the global economy.” Senator Coons is Chair of the Senate Judiciary’s Subcommittee on Intellectual Property.

### III. [Van Hollen \(D-MD\)](#)

November 15, 2023: Senator Van Hollen (D-MD) made the following remarks in a November 15 US Senate Foreign Relations Committee Hearing, entitled *US Leadership on Artificial Intelligence in an Era of Strategic Competition*, at 01:17:20. “What the USTR did at the WTO was [to] totally undermine the principles... of free flow of information and [of] ... resistance to data localization, which empowers authoritarian regimes, as well as our efforts to prevent forced tech transfer. Those are all principles that we had advocated for. And it’s my view that, when we back away from that, we lose our credibility around the world.” Senator Van Hollen’s exchange with Ambassador Nathaniel Fick also made clear that USTR failed to consult with Ambassador Fick prior to withdrawing its support for provisions on cross-border information.

### IV. [Wyden \(D-OR\)](#)

Oct. 25, 2023: Senate Finance Committee Chairman Ron Wyden blasted the Office of the U.S. Trade Representative’s decision today to abandon support for key digital trade principles, principles that allow the free flow of information across borders, protect against the forced transfer of American technology and promote open markets for digital goods exported by businesses large and small. Contrary to claims by the Trade Representative’s office, this decision was made with virtually zero consultation with Congress or the Finance Committee, and USTR failed to propose any alternative to longstanding U.S. policies.

“USTR’s decision to walk away from the negotiating table in Geneva is a win for China, plain and simple,” Wyden said today. “In addition to abandoning our democratic allies in these negotiations, USTR is leaving a vacuum that China—an active participant in these negotiations--will be more than pleased to fill. USTR’s action today is a win for the Chinese government’s efforts to have unlimited access to U.S. data, a win for Chinese tech giants who want to bully smaller countries into following the Chinese model of internet censorship, and a win for China’s Great Firewall, which locks out American companies and locks Chinese citizens into a repressive regime of government surveillance. The U.S. can regulate companies operating in America without giving a green light to the malign efforts of China, Russia, and others who want to mine data for economic and security benefits, censor citizens at home and abroad, and abuse human rights.

“USTR’s unilateral decision to abandon any leverage against China’s digital expansionism, and to oppose policies championed by allies like Australia, Japan, the U.K. and Korea, directly contradicts its mission as delegated by Congress. It may be time to reconsider the degree of that delegation going forward.”



### **Other Statements by Senate Republicans**

#### **I. Crapo (R-ID), Barrasso (R-WY), Blackburn (R-TN), Cornyn (R-TX), Daines (R-MT), Grassley (R-IA), Scott (R-SC), Tillis (R-NC), Young (R-IN)**

Oct. 26, 2023: Senate Finance Committee Ranking Member Mike Crapo (R-Idaho) and Finance Committee members Chuck Grassley (R-Iowa), John Cornyn (R-Texas), Tim Scott (R-South Carolina), Steve Daines (R-Montana), Todd Young (R-Indiana), John Barrasso (R-Wyoming), Thom Tillis (R-North Carolina) and Marsha Blackburn (R-Tennessee) issued the following statement in response to the U.S. Trade Representative's (USTR) decision to end U.S. support for combatting China's predatory practices in international digital trade negotiations.

"We have warned for years that either the United States would write the rules for digital trade or China would. Now, the Biden-Harris Administration has decided to give China the pen.

"The USTR announced in Geneva that it will abandon support for proposals made during the Trump Administration to allow free data flows between countries. In so doing, USTR, which touts a 'Worker-Centered Trade Policy,' is choosing to side with China over the 8 million Americans who work in the digital economy and generate 10 percent of U.S. GDP. China made clear it opposes free data proposals precisely because it wants the right to require all data be stored under whatever terms China's laws or regulations may dictate, including forcing data to undergo government security reviews. China's laws and regulations routinely facilitate technology theft, human rights abuses and the loss of American jobs.

"The Biden-Harris Administration's claim that it wants to ensure 'policy space' is spurious. The Trump Administration's proposals—supported by a number of U.S. allies—explicitly permit legitimate public policy regulation of how companies might handle customer data. The United States-Mexico-Canada Agreement (USMCA), which passed Congress overwhelmingly, also includes these commitments. Unfortunately, the only party getting any 'space' here is China, and that space allows China to assume the leadership role formerly held by the United States.

"USTR not only failed to consult with Congress before reversing its policy on free data flows, but misled it. As recently as this weekend, USTR officials told congressional staff that they had not abandoned support for negotiating the free data flow commitments at issue.

"Regrettably, we are not surprised. This is simply one of the many instances where USTR fails to engage with Congress—even though Congress has the constitutional responsibility for trade. Moreover, Ambassador Tai makes clear in her speeches and through her actions that foreign countries are free to discriminate against U.S. companies and workers as long as these countries and USTR can concoct an excuse. Failing to stand up for America and against foreign discrimination—particularly from China—is contrary to the USTR mission. We, however, will work, through Congress, to ensure the American people have the agency they need and deserve."

#### **II. Young (R-IN)**

I agree with my colleague @RonWyden. @USTR decision to walk away from the @wto negotiating table on digital trade is a win for China. This is unacceptable and goes against Congress' explicit direction. We must hold @USTR accountable.

## **Other Statements by House Democrats**

### **I. [DelBene \(D-WA\), Beyer \(D-VA\), Fletcher \(D-TX\), Hines \(D-CT\), Larsen \(D-WA\), Meeks \(D-NY\), Panetta \(D-CA\), Plaskett \(D-USVI\), Quigley \(D-IL\), Sewell \(D-AL\), Stanton \(D-AZ\)](#)**

November 9, 2023: “The international flow of digital goods, services, and information has become increasingly vital to American workers and businesses of all sizes, including countless small businesses. We must safeguard the success of the U.S. in the digital economy by ensuring that American companies and workers face a fair and level playing field when competing in foreign markets. It is critical that the U.S. leads in shaping the rules that govern the digital economy.

- With frequent and robust consultation of Congress, assert U.S. leadership of digital trade by engaging with like-minded countries to forge responsible, inclusive, and forward looking digital trade rules in order to uphold American values and counter China’s concerning digital agenda.
- Seek opportunities to push the European Union (EU) to amend its proposals targeting American technologies and companies and enforce its laws in an even-handed manner, including through continued Trade and Technology Council (TTC) discussions.
- Advance digital trade policies that will grow American industries, ensure workers are treated fairly, protect consumers’ privacy, and give small businesses the digital tools they need to succeed in the 21st century economy. These include policies that protect against the forced transfer of American technology, enable the free flow of information across borders, defend American workers and businesses of all sizes against unfair discrimination, and maintain the longstanding ban on tariffs on digital goods and services at the World Trade Organization (WTO).”

### **II. [DelBene \(D-WA\)](#)**

October 26, 2023: “USTR’s decision to abandon important, longstanding, and bipartisan U.S. digital trade priorities at the WTO runs contrary to American interests. Instead of promoting policies that Congress set in the bipartisan U.S.-Mexico-Canada Agreement that protect against the forced transfer of American technology, enable the free flow of information across borders, and defend American industries, small businesses, and workers against discrimination, USTR has unilaterally decided to walk away from these important rules without the consent of Congress. This decision provides more leverage for other foreign powers, including the Chinese Communist Party, to write the rules of the global digital economy into the future. We strongly urge the Biden administration to reconsider its approach.”

## Other Statements by House Republicans

### I. Smith (R-MO)

October 26, 2023: Ways and Means Committee Chairman Jason Smith (MO-08) issued the following statement after the U.S. Trade Representative's office announced plans to withdraw longstanding U.S. negotiating proposals that promote high-standard digital trade provisions, undercutting U.S. global competitiveness, and surrendering America's digital trade leadership to China.

"The Biden-Harris Administration's decision to walk away from longstanding bipartisan positions on digital trade undermines American leadership and competitiveness, surrenders the playing field to the Chinese Communist Party, and abandons our closest trading partners. There is absolutely nothing in the Biden-Harris Administration's decision that will benefit American workers. Moreover, if the Administration does not reverse course and support high-standard digital trade provisions like those included in the United States-Mexico-Canada Agreement, American businesses that serve customers around the world will have to risk handing away their competitive advantage and storing data on unreliable, unsecured servers such as those of Chinese companies like Huawei.

"This foolish approach is part of a broader, misguided policy of the Biden-Harris Administration to circumvent the will of Congress with a go-it-alone approach to trade policy. I look forward to working with my colleagues on both sides of the aisle to address these concerning developments, particularly given ongoing negotiations."

### II. Others

October 26, 2023: "USTR's decision to abandon important, longstanding, and bipartisan U.S. digital trade priorities at the WTO runs contrary to American interests. Instead of promoting policies that Congress set in the bipartisan U.S.-Mexico-Canada Agreement that protect against the forced transfer of American technology, enable the free flow of information across borders, and defend American industries, small businesses, and workers against discrimination, USTR has unilaterally decided to walk away from these important rules without the consent of Congress. This decision provides more leverage for other foreign powers, including the Chinese Communist Party, to write the rules of the global digital economy into the future. We strongly urge the Biden administration to reconsider its approach." (Lahood, R-IL). "The Biden administration has announced plans to surrender our digital trade leadership, which would help the Chinese Communist Party while hurting American workers and businesses." (Emmer, R-MN). "This abdication tees up China to step into a leadership vacuum at the expense of American innovators, businesses, and consumers. At the current geopolitical crossroads, relinquishing digital trade opportunities and leaving our democratic allies high and dry is unacceptable." (Smith, R-ME). "The Biden admin's reckless decision to circumvent Congress and capitulate to China on digital trade rules surrenders America's competitive advantage while harming U.S. workers and businesses. We must stand up to China." (Schweikert (R-AZ). "The Biden Admin is abandoning U.S. trade interests to the benefit of the CCP. Digital trade is an important avenue to build global relationships and surrendering our leadership gives China the upper hand. Our digital trade provisions must be reinstated." (Miller, R-WV)

# EXHIBIT 91

# United States Senate

WASHINGTON, DC 20510

November 30, 2023

The Honorable Joseph R. Biden, Jr.  
President of the United States  
The White House  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

Dear President Biden:

We write to express our concerns with the decision of the United States Trade Representative (USTR) to stop supporting key commitments in the e-commerce negotiations at the World Trade Organization (WTO)—and potentially in other negotiations. These commitments reflect bipartisan principles that, until now, the United States has strongly supported across political parties, administrations, and the federal government: an open internet that promotes the flow of information across borders to support American exports and American values. USTR's decision to abandon these commitments at the WTO creates a policy vacuum that China and Russia will fill. Accordingly, before changing the longstanding U.S. position, we request that you work with Congress and run a comprehensive consultation process—with other federal agencies, with the public, and with us—to reach a consensus U.S. position on these issues that promotes U.S. competitiveness, innovation, and jobs.

For decades, the United States has been at the helm of global leadership on protecting, promoting, and expanding the open internet as both a means of worldwide connectivity and an engine of U.S. economic growth and opportunity. This effort has long been a feature of U.S. trade policy: the United States advocated for commitments to ensure the free flow of information in WTO rules agreed to almost 30 years ago, and our trade agreements with Korea, Mexico, Canada, and Japan include strong digital trade rules guaranteeing the right to move data across borders. In this vein, the United States joined negotiations on e-commerce at the WTO, working with like-minded democratic allies to create rules for a digital economy that is open, fair, and competitive for all. The United States has supported proposals to spur economic growth, encourage free expression and access to information, and promote consumer protections online, while also allowing countries to address concerns regarding security, privacy, surveillance, and competition. These negotiations are crucial to our strategic approach to outcompeting our adversaries: both China and Russia are at the negotiating table, actively pushing their cyber-agenda of censorship, repression, and surveillance that not only hurts their own citizens but also undercuts U.S. competitiveness. Indeed, China is actively seeking to weaken the very principles at issue so it can promote its own version of internet governance.

In spite of this, on October 25, 2023, USTR reversed course and announced that it was walking away from the negotiating table on several core commitments in the e-commerce negotiations. These commitments, which again have broad bipartisan support, are fundamental to the modern economy, supporting U.S. businesses of all sizes across all sectors. Specifically, USTR abandoned the following commitments:

- *Promoting the free flow of data.* Almost every sector of the U.S. economy requires cross-border data flows, from manufacturers sharing product specifications, to airlines diagnosing problems mid-flight, to farmers leveraging precision agriculture to maximize crop yield. Arbitrary and trade-distorting restrictions on cross-border data flows that serve no legitimate public policy purpose can prevent American firms from doing business abroad, stifle economic growth here at home, and trample on human rights in authoritarian countries. Russia, for example, has weaponized data-restrictive laws to crack down on dissent, control information, and expel civil society organizations amidst its ongoing invasion of Ukraine.<sup>1</sup> Recognizing the importance of data flows to U.S. economic and foreign policy goals, the United States' original proposal at the WTO sought to ensure that consumers, companies, and non-governmental organizations could move data across international borders, while recognizing that countries must be able to act in the public interest, such as to protect personal data from abuse and foreign surveillance.
- *Combating forced data localization.* China and Russia, as well as other countries emboldened by their actions, have increasingly pursued data localization measures that require certain domestic data to be stored or processed within their borders. These policies require companies to build or maintain capital- and energy-intensive infrastructure in every market they enter, a major expense for large businesses, but an insurmountable hurdle for small and medium-sized enterprises. Small and medium-sized businesses are then left with an impossible choice: enter a risky joint venture with a foreign enterprise or get shut out of the market entirely. In this way, authoritarian governments leverage data localization measures to discourage competition and facilitate governmental access to data within their borders, helping them access trade secrets, censor and surveil their citizens, and hide human rights abuses, including forced labor.<sup>2</sup> The United States' proposal sought to limit data localization, while acknowledging that in certain circumstances, data localization may be appropriate to address national security, law enforcement, and privacy concerns.
- *Preventing forced tech transfer.* The U.S. government opposes the Chinese government's practice of conditioning market access on the sharing of proprietary information belonging to U.S. innovators, creators, and start-ups—a threat to both our economic and national security.<sup>3</sup> The United States' proposal sought to ensure that countries could not

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<sup>1</sup> Justin Sherman, The Brookings Institution, *Russia is Weaponizing Its Data Laws Against Foreign Organizations* (Sept. 27, 2022), <https://www.brookings.edu/articles/russia-is-weaponizing-its-data-laws-against-foreign-organizations/>.

<sup>2</sup> Freedom House, *User Privacy or Cyber Sovereignty?* (2020), <https://freedomhouse.org/report/special-report/2020/user-privacy-or-cyber-sovereignty>.

<sup>3</sup> Daniel Wagner, *The Global Implications of China's National and Cyber Security Laws*, International Policy Digest (Aug. 10, 2020), <https://intpolicydigest.org/the-global-implications-of-china-s-national-and-cyber-security->



force businesses to surrender their source code or share it with domestic competitors as a condition of doing business, while preserving the ability of governments to access source code to achieve legitimate public policy objectives, such as conducting investigations and examinations and promoting consumer health and safety.

- *Open, competitive markets for digital goods and services.* The principle of non-discrimination has been a central component of U.S. trade policy for decades and underlies the international trading system that the United States helped create. It has opened markets for American exporters across industries, from farmers to filmmakers. At its core, non-discrimination ensures that foreign governments treat U.S. companies fairly. It ensures that countries cannot gain a competitive edge by targeting their regulations on imports from one or multiple countries without regulating similarly situated domestic businesses. China, in particular, has leveraged discriminatory policies to handicap international competitors and nurture its domestic companies, many of which are state-owned enterprises that operate at the behest of the Chinese government.<sup>4</sup> Not only do these homegrown giants facilitate human and worker rights abuses, particularly in the Uyghur community in Xinjiang, but they have the ability to grow without competition and then undercut American competitors in international markets. Recognizing this, the U.S. WTO proposal sought to ensure that protections against discrimination would apply to digital products (e.g., apps, music, games, and movies), ensuring that American creators, innovators, and businesses could operate on a level playing field around the world.

As indicated above, each of these commitments maintained flexibility to regulate for legitimate public policy reasons.

USTR provided no policy alternatives to these longstanding and bipartisan U.S. positions, nor a timeline for providing them. We are concerned that USTR's retreat will hurt workers and employers across all sectors of the U.S. economy, with disproportionate effects on small and medium-sized businesses in creative industries like film, music, and book publishing; innovative industries like software, medical devices, and precision agriculture; travel, tourism, and transportation; logistics, shipping, and supply chain management; and manufacturing, including the critical automotive and semiconductor sectors. Moreover, with this abrupt change in policy, USTR has not only turned its back on our democratic allies and undermined U.S. credibility in other negotiations and fora around the world, but it has also empowered authoritarian regimes like China and Russia, who are eager to fill the void and regulate U.S. jobs out of existence.

We recognize that there is much interest in the digital regulation space, particularly with the rapid adoption of artificial intelligence technology. We welcome discussions and debate on the best way to protect consumers, promote privacy, and ensure a competitive marketplace. However, these efforts do not require the United States to walk away from negotiating strong rules at the WTO that support U.S. businesses and workers—nor would these rules constrain the

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[laws](#).

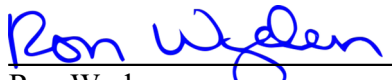
<sup>4</sup> U.S.-China Economic and Security Review Commission, *2021 Annual Report to Congress* at p. 165, <https://www.uscc.gov/annual-report/2021-annual-report-congress> (“The Chinese Communist Party (CCP) views achieving technological self-sufficiency as essential for both economic growth and political survival.”).





ability of the United States to regulate. In fact, the commitments under discussion have built-in exceptions that ensure countries can legislate in the public interest. Retreating from our longstanding principles without offering a viable alternative does not help U.S. workers, it does not help U.S. consumers, it does not help U.S. businesses, and it does not help U.S. allies; it only helps our adversaries.

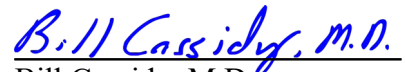
We continue to support the core commitments that USTR has distanced itself from in the WTO e-commerce negotiations. We request that you run a consultation process before changing the historical, consensus U.S. position on these important issues. We look forward to working with you to address this and other bipartisan Member concerns.


Sincerely,


  
Ron Wyden  
United States Senator


  
Mike Crapo  
United States Senator


  
Thomas R. Carper  
United States Senator


  
Bill Cassidy, M.D.  
United States Senator

  
Chris Van Hollen  
United States Senator

  
Thom Tillis  
United States Senator

  
Christopher A. Coons  
United States Senator

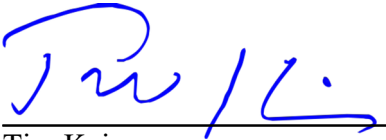
  
John Barrasso, M.D.  
United States Senator



Catherine Cortez Masto  
United States Senator



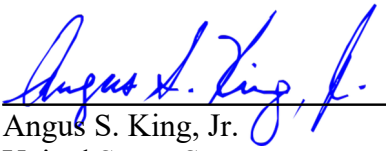
Charles E. Grassley  
United States Senator



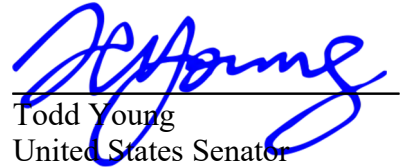
Tim Kaine  
United States Senator



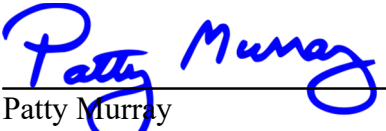
Ted Budd  
United States Senator



Angus S. King, Jr.  
United States Senator



Todd Young  
United States Senator



Patty Murray  
United States Senator



Shelley Moore Capito  
United States Senator



Kirsten Gillibrand  
United States Senator



Steve Daines  
United States Senator



Maria Cantwell  
United States Senator



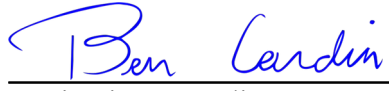
Kevin Cramer  
United States Senator



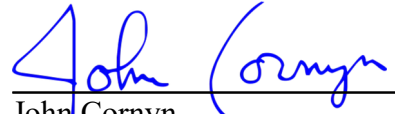
Kyrsten Sinema  
United States Senator



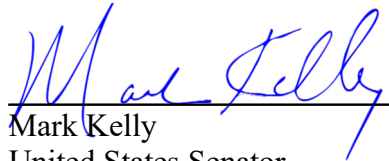
Cynthia M. Lummis  
United States Senator



Benjamin L. Cardin  
United States Senator



John Cornyn  
United States Senator



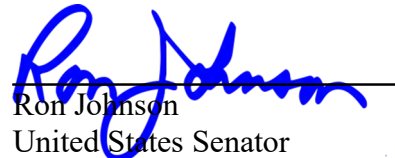
Mark Kelly  
United States Senator



James E. Risch  
United States Senator



Ted Cruz  
United States Senator



Ron Johnson  
United States Senator



Jacky Rosen  
United States Senator



Alex Padilla  
United States Senator



Tim Scott  
United States Senator



James Lankford  
United States Senator

# EXHIBIT 92

# Congress of the United States

Washington, DC 20515

November 15, 2023

Ambassador Katherine Tai  
United States Trade Representative  
600 17<sup>th</sup> St NW  
Washington, DC 20006

Dear Ambassador Tai:

We write to express our opposition to the Office of the U.S. Trade Representative's (USTR) decision to abandon important bipartisan digital trade proposals at the World Trade Organization (WTO). This action, which was made without sufficient consultation with Congress, runs counter to the interests of American workers and businesses of all sizes and cedes more leverage to other foreign powers, including the Peoples' Republic of China (PRC), that seek to write the rules of the 21<sup>st</sup>-century digital economy. We urge the administration to reconsider its approach.

Digital trade is vital to American workers and businesses of all sizes and virtually all industries, and the growth of e-commerce has only accelerated in recent years. In 2021, the U.S. digital economy produced \$3.70 trillion in gross output, a 36-percent increase from 2016, and the sector supported over 8 million jobs. Further, U.S. digital services exports equated to more than 75 percent of total services exports or \$594 billion in 2021. Digital trade is more critical than ever, impacting the competitiveness of nearly every American industry, from manufacturing and traditional technology to agriculture and services.

We are concerned by an increasing number of policies and proposals around the world that unfairly target American businesses and workers and threaten to undermine the leading position U.S. innovators have achieved. These policies include restrictive data localization requirements that fail to advance legitimate public policy objectives, controls on cross-border data flows, intellectual property theft and the forced transfer of technology, discriminatory regulations and digital service taxes, web filtering, and cybercrime.

American leadership in shaping digital trade rules is critical for competing globally in the long-term and countering the unfair trade practices of other foreign powers, including the PRC. We are especially concerned by the PRC's efforts to advance a model of digital governance domestically and through its Digital Silk Road Initiative that permits censorship, surveillance, human and worker rights abuses, forced technology transfers, and data flow restrictions.

We wholeheartedly agree that the United States and our allies must maintain sufficient room to regulate the digital economy in a fair and transparent manner. Further, we agree that consumers must be protected as they interact with the digital economy, including by bolstering consumer data privacy protections and cybersecurity safeguards. That said, the U.S. can regulate companies within our borders without giving foreign countries, including our adversaries, the impression that the United States will no longer protect our industries and workers against

discrimination, push back against the PRC's model of data censorship and surveillance, promote the free and secure flow of data across borders, and defend American companies against source code theft.

To combat these challenges, we have encouraged the Biden administration to embrace a bold digital strategy that puts American values front and center. We continue to support an approach that ensures fair competition by addressing protectionist data flow and localization restrictions, prohibiting web blocking, and protecting against forced source code transfer as a condition of market access. All these objectives were advanced by successive administrations, implemented in the bipartisan United States-Mexico-Canada Agreement, and previously supported by the United States in the WTO Joint Initiative on E-Commerce.

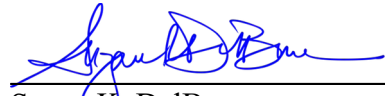
These provisions maintain broad support in the United States, and we are troubled that USTR has abandoned these positions without meaningful consultations with Congress and without putting forth any alternative approaches to advance the key objectives we outline above. The void created by this decision will harm American workers, companies, security, and innovation, while benefitting our largest competitors in the digital space. We reiterate our request for the administration to reassess its decision.

Sincerely,



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Darin LaHood  
Member of Congress



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Suzan K. DelBene  
Member of Congress



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Adrian Smith  
Member of Congress



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Terri A. Sewell  
Member of Congress



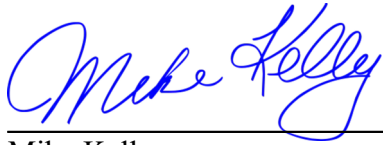
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Vern Buchanan  
Member of Congress



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Donald S. Beyer Jr.  
Member of Congress



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Mike Kelly  
Member of Congress



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Bradley Scott Schneider  
Member of Congress



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David Schweikert  
Member of Congress



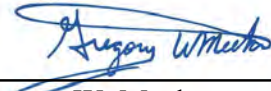
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Jimmy Panetta  
Member of Congress



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Brad R. Wenstrup, D.P.M.  
Member of Congress



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Gregory W. Meeks  
Member of Congress



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Jodey C. Arrington  
Member of Congress



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Ami Bera, M.D.  
Member of Congress



---

A. Drew Ferguson IV  
Member of Congress



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Gerald E. Connolly  
Member of Congress





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Ron Estes  
Member of Congress



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J. Luis Correa  
Member of Congress



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Lloyd Smucker  
Member of Congress



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Josh Gottheimer  
Member of Congress



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Carol D. Miller  
Member of Congress



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Jim Himes  
Member of Congress



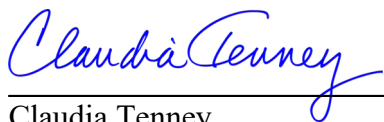
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Brian Fitzpatrick  
Member of Congress



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Ann McLane Kuster  
Member of Congress



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Claudia Tenney  
Member of Congress



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Rick Larsen  
Member of Congress



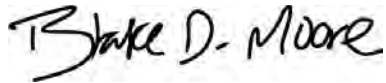
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Michelle Fischbach  
Member of Congress



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Mike Quigley  
Member of Congress



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Blake D. Moore  
Member of Congress



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Scott H. Peters  
Member of Congress



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Michelle Steel  
Member of Congress



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Stacey E. Plaskett  
Member of Congress



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Beth Van Duyne  
Member of Congress



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Kim Schrier, M.D.  
Member of Congress



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Randy Feenstra  
Member of Congress



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Marilyn Strickland  
Member of Congress



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Mike Carey  
Member of Congress



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Eric Swalwell  
Member of Congress

# EXHIBIT 93

Congress of the United States  
U.S. House of Representatives  
Committee on Small Business  
2561 Rayburn House Office Building  
Washington, DC 20515-6515

February 26, 2024

The Honorable Katherine Tai  
Ambassador  
U.S. Trade Representative  
600 17<sup>th</sup> Street NW  
Washington, DC 20006

Dear Ambassador Tai:

As the 13<sup>th</sup> World Trade Organization (WTO) Ministerial Conference commences, the House Committee on Small Business (Committee) writes to express concern over your recent policy decision to abandon support for core U.S. digital trade priorities.<sup>1</sup> The Committee is disappointed that this sudden change in the U.S. position was done with little consultation with Congress and within the Executive Branch. Newfound opposition to longstanding policies run contrary to the interests of safeguarding American workers and businesses, particularly small businesses. We strongly urge the Administration reconsider this approach especially in light of the important role American small businesses play in the digital economy and urge you to reconsider your decision with meaningful consideration of small businesses.

The global digital economy enables job growth and creation in the U.S. and around the world, while empowering competition and innovation. In fact, U.S. exports in the digital economy accounted for 75 percent of all U.S. services exports, totaling \$594 billion, in 2021.<sup>2</sup> Due to American innovation, the U.S. has emerged as a global leader in the digital economy. Significantly, 97 percent of these digital exports come from small and medium businesses.<sup>3</sup> Many small businesses rely on the predictability and scale of global digital platforms to grow and thrive.<sup>4</sup> Dramatic policy reversals, such as this one, remove the stability required to ensure small businesses have a fair shot at competing.

For small businesses that are already facing excessive regulatory burdens, rising inflation, and uncertainty with the U.S. economy, the impact of your decision will be far more pronounced and burdensome in comparison to large companies. In the words of one small business owner, “the companies being hurt by these [restrictive trade] policies . . . is not Meta, it’s us.”<sup>5</sup> Your

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<sup>1</sup> Press Release, Off. of the U.S. Trade Rep., USTR Statement on WTO E-Commerce Negotiations (Oct. 24, 2023).

<sup>2</sup> DANIELLE M. TRACHTENBERG, CONG. RESEARCH SERV., IF12347, DIGITAL TRADE AND DATA POLICY: SELECT KEY ISSUES, 1 (Mar. 16, 2023).

<sup>3</sup> Letter from Engine Advocacy to Laura Buffo, Chair, Trade Policy Staff Committee, Off. of the U.S. Trade Rep. (Oct. 23, 2023).

<sup>4</sup> Tiffany Smith, *A Good Week for Digital Trade – Almost*, NAT’L FOREIGN TRADE COUNCIL (Feb. 9, 2024).

<sup>5</sup> See *supra*, note 6.

decision takes the Biden Administration's over-regulation agenda international, adding to the 289 million hours of paperwork hours and \$452.3 billion in compliance costs *already* imposed on American businesses by the Biden Administration.<sup>6</sup>

Further, there are an increasing number of policies implemented around the world targeting American small businesses and threatening U.S. innovation.<sup>7</sup> These policies include restrictive data localization requirements, cross-border data flow controls, and compelled technology transfers.<sup>8</sup> If these policies replace the longstanding digital trade principles that were previously championed by the U.S., small business will face a disproportionate burden.<sup>9</sup> This drastic change in policy threatens the U.S. economy overall and further harms small businesses, their workers, and their ability to fairly compete in the global economy.

The Office of the U.S. Trade Representative (USTR) generally relies on advice from other agencies, including the U.S. Small Business Administration (SBA), through the Trade Policy Staff Committee (TPSC) and the Trade Policy Review Group (TPRG), to develop positions on international trade issues.<sup>10</sup> However, the Committee learned that this decision was made with little to no input from other agencies, including the SBA. The Committee is concerned that you failed to thoroughly consider other perspectives, or the consequences resulting from this policy reversal.

As the 13<sup>th</sup> WTO Ministerial Conference approaches, we strongly suggest that you reconsider your decision to withdraw support for core digital trade priorities, and properly assess the impact of such policy changes on small businesses. Small businesses—which make up 99.9 percent of all businesses in the U.S.—must be heard and considered. Therefore, we request the following information no later than March 11, 2024:

1. Why was the SBA not included in roundtables about the impact of Ambassador Tai's decisions?
2. Did the USTR conduct any sort of economic impact analysis, including the impact on U.S. small businesses, before announcing its unwillingness to support longstanding trade principles?
3. What has the USTR done to ensure small businesses are considered in decisions involving international trade issues?

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<sup>6</sup> *Explore the Data*, Regulation Rodeo, AM. ACTION FORUM (last visited Feb. 15, 2024), <https://regrodeo.com/?year%5B0%5D=2024&year%5B1%5D=2023&year%5B2%5D=2022&year%5B3%5D=2021>

<sup>7</sup> See e.g., Brian Fung, *EU officials agree on sweeping new rules targeting Big Tech*, CNN (Mar. 25, 2022) (demonstrating, for example, the European Union's Digital Markets Act almost exclusively applies to U.S. big-tech companies).

<sup>8</sup> Letter from Darin LaHood, Chairman, H. Comm. on Ways and Means, Subcomm. on Work and Welfare, Katherine Tai, Amb., Off. of the U.S. Trade Rep. (Nov. 15, 2023).

<sup>9</sup> Hua Wang, *Restful Nights and Regulatory Insights: A Conversation with Olivia Walch*, Arcascope Founder, GLOBAL INNOVATION FORUM (Dec. 15, 2023).

<sup>10</sup> *Executive Branch Agencies on the Trade Policy Staff Committee and the Trade Policy Review Group*, OFF. OF THE U.S. TRADE REP. (last visited Feb. 16, 2024).

The Honorable Katherine Tai

February 26, 2024

Page 3 of 3

To schedule delivery of your response or ask any related follow-up questions, please contact the Committee on Small Business Majority Staff at (202) 225-5821. The Committee on Small Business has broad authority to investigate “problems of all types of small business” under House Rule X. Thank you in advance for your cooperation with this inquiry.

In God We Trust,

A handwritten signature in black ink that reads "Roger Williams". The signature is written in a cursive style with a large, stylized initial "R".

Roger Williams  
Chairman  
Committee on Small Business

cc: The Honorable Nydia M. Velasquez, Ranking Member  
Committee on Small Business

The Honorable Jake Sullivan, National Security Advisor  
U.S. National Security Council



# EXHIBIT 94

# Congress of the United States

Washington, DC 20515

[[DATE]]

The Honorable Katherine Tai  
Ambassador  
Office of the United States Trade Representative  
600 17<sup>th</sup> Street NW  
Washington, DC 20508

The Honorable Lina Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

The Honorable Jonathan Kanter  
Assistant Attorney General  
Antitrust Division  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Ambassador Tai, Chair Khan and Assistant Attorney General Kanter:

We write to express concern and disappointment with the U.S. Trade Representative Ambassador Tai's recent decision to abandon support for proposed World Trade Organization (WTO) digital trade principles. It is shocking that USTR's political leadership has chosen to retract its backing for long-standing, bipartisan core trade values that safeguard against compelled technology transfers, data localization, source code disclosure and further discriminatory trade practices.

Digital trade is a cornerstone of American economic prosperity, fostering innovation, job creation, and global competitiveness. According to the United Nations Conference on Trade and Development, just over half of all U.S. service exports were attributed to digital trade in 2022.<sup>1</sup> Proposals focused on digital trade serve as a facilitator for international collaboration concerning cybersecurity and the detection of fraudulent activities. Furthermore, data movements augment the capacity of allies to collaborate effectively, ensuring that AI systems receive training from a wide range of demographic and geographic datasets.

Information movement and regulations in the digital realm also remain instrumental for small enterprises to utilize internet and cloud services in connecting with customers globally, conducting sales, and efficiently managing diversified supply chains. A document from USTR<sup>2</sup> highlighted numerous industries reliant on data flows, which encompass sectors like mining, automotive manufacturing, aviation, accounting, medical diagnostics, security services, healthcare, research, and agriculture. Strong digital service providers and rules to support them are critical to ensuring the strong and resilient supply chains the Biden Administration has stated are a priority.

Consequently, the decision to step back from negotiations not only undermines the competitive edge of U.S. companies and small businesses, but also relinquishes leadership to strategic competitors who remain actively engaged in ongoing digital trade discussions. Authoritarian states like China aim to wield control over the internet and its informational access, while stringent regulators in the European Union limit the free enterprise

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<sup>1</sup> <https://unctad.org/news/digitally-deliverable-services-boom-risks-leaving-least-developed-countries-behind>

<sup>2</sup> "Conference on the Economic Benefits of Cross-Border Data Flows" held June 17, 2019, and Communication by the United States, [SC/C/W/382](#).

of U.S. firms. The decision also establishes a troubling precedent that could extend well beyond digital trade priorities, impacting the enforcement of the United States-Mexico-Canada Agreement (USMCA) and potentially paving the way for the USTR to backtrack on advancing American trade interests in other domains.

This decision will have detrimental consequences for American businesses, workers, and consumers by allowing for the expansion of protectionist and authoritarian views on digital trade. We respectfully request transparency and consultation with Congress regarding the reasons behind this change in stance and appreciate further clarity about USTR's strategy moving forward. **We ask that each of you provide us with the following information by February 16, 2024:**

1. About 97 percent of the American companies that export are small and medium-sized businesses. Regardless of whether these exports are digital or physical goods and services, the vast majority have a digital footprint in the countries in which they do business. Thus, they rely heavily on pushing back against anti-competitive policies. Small businesses are sounding the alarm that withdrawal from digital trade priorities will harm them more than their larger counterpart market incumbents.
  - If the Biden Administration does not reconsider Ambassador Tai's decision to drop digital trade priorities in WTO talks, how will USTR and other participants in an interagency process account for American small businesses' interest in upholding long-standing digital trade priorities?
2. According to the Department of Commerce,<sup>3</sup> "data flows account for at least 2.4 million U.S. jobs."
  - How does Ambassador Tai's decision to reverse longstanding digital policy help to keep and create American jobs? How does allowing countries of concern to block data flows, demand proprietary source code, localize data, and discriminate against US-based technologies support job creation?
3. A wide range of groups across the political spectrum have condemned USTR's decision. Freedom House said that removing these digital trade rules will "fragment the internet, embolden authoritarian governments, and violate rights around the world."<sup>4</sup> Center for a New American Security said that the U.S. was "needlessly gutting its own position on key digital trade provisions."<sup>5</sup> New America said that you "just handed a victory to China on digital sovereignty."<sup>6</sup>
  - How did the Biden Administration consider the consequences of this decision on internet freedom and national security?
4. The National Security Council disagreed with Ambassador Tai's decision. The State Department said they were not informed and instead "read about USTR's decision in the press."<sup>7</sup>

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<sup>3</sup> Office of Digital Services Industries, International Trade Administration of U.S. Department of Commerce, <https://www.trade.gov/about-us/office-digital-services-industries>

<sup>4</sup> Brody, Jennifer, *Reversal of US Trade Policy Threatens the Free and Open Internet*. Tech Policy Press. 15, November 2023. <https://techpolicy.press/reversal-of-us-trade-policy-threatens-the-free-and-open-internet/>

<sup>5</sup> Emily Kilcrease & Jacob Stokes, "Senior Fellow responds: APEC summit." Center for a New American Security, <https://www.cnas.org/press/press-note/cnas-responds-apec-summit>

<sup>6</sup> Cory, Nigel. "China Gains as U.S. Abandons Digital Policy Negotiations." Lawfare, 15 Nov. 2023, [www.lawfaremedia.org/article/china-gains-as-u.s.-abandons-digital-policy-negotiations](http://www.lawfaremedia.org/article/china-gains-as-u.s.-abandons-digital-policy-negotiations).

<sup>7</sup> U.S. Leadership on Artificial Intelligence in an Era of Strategic Competition. 118<sup>th</sup> Cong. (2023) (Testimony of Dr. Matthew Graviss).

- Were foreign governments, including China, aware of this decision before other parts of the U.S. government or Congress?
  - Is it appropriate for USTR, DOJ, and FTC to conduct backroom deals on foreign policy without informing Congress?
  - Did other parts of the Department of Justice, including the National Security Division and the Criminal Division, agree with the Antitrust Division's efforts to deprioritize United States interests in digital trade?
5. Earlier this year, USTR considered issuing a federal register notice to investigate the impact of EU regulations on China, including areas where EU regulations could require American data and IP to be transferred to China.
- Given the detrimental and discriminatory impact of EU regulations of American economic growth and innovation, when will USTR issue this federal register notice?
  - Did DOJ or FTC communicate with USTR in any way about this federal register notice?
  - Did either FTC or DOJ encourage, or attempt to dissuade, USTR in issuing this federal register notice?

Further clarity and transparency on these critical issues hold significant implications for American jobs and national security. We look forward to your response.

[[CLOSING]]

[[SIGNATURES]]

# EXHIBIT 95

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051  
<https://oversight.house.gov>

May 1, 2024

The Honorable Katherine Tai  
United States Trade Representative  
600 17th Street NW  
Washington, D.C. 20508

Dear Ambassador Tai:

The Committee on Oversight and Accountability is continuing to investigate the consultation process utilized by the Office of the United States Trade Representative (USTR) leading to its decision to stop supporting key commitments protecting U.S. workers and global Internet freedom. The Committee wrote to you on March 4, 2024, seeking documents and information related to our concerns.<sup>1</sup> On April 18, 2024, USTR provided an inadequate response to that letter and failed to address the Committee's concerns.<sup>2</sup> As such, we are reiterating our full document request along with an additional request that USTR make Jillian DeLuna, Director for ICT Services and Digital Trade, available for a transcribed interview.

As we wrote previously, the Committee is concerned about how USTR conducted itself as a handful of ideologically aligned organizations influenced the agency's decision to abandon longstanding and bipartisan positions on digital trade during a meeting of the World Trade Organization's (WTO) Joint Statement Initiative (JSI) on e-commerce. In its April 18 response, USTR neglected to address concerns articulated by the Committee, pointing instead to the agency's consultation process and transparency principles.<sup>3</sup> While the Committee is aware USTR consults with outside stakeholders, records produced in response to a Freedom of Information Act (FOIA) request reveal USTR employees appeared to provide certain favored interest groups with special treatment, including through a clandestine communications channel that suggest an intentional and possibly illegal effort to avoid requirements of the Federal Records Act.<sup>4</sup>

Some of the emails disclosed through the FOIA suggest select nonprofits had access to key USTR staff.<sup>5</sup> In one of the emails, a senior advisor at USTR connected Ms. DeLuna with the

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<sup>1</sup> Letter from Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Hon. Katherine Tai, Office of U.S. Trade Representative (Mar. 4, 2024).

<sup>2</sup> Letter from Hon. Katherine Tai, Ambassador, United States Trade Representative, to Hon. James Comer, Chair., H. Comm. on Oversight & Accountability (Apr. 18, 2024).

<sup>3</sup> *Id.*

<sup>4</sup> *Supra*, n.2.

<sup>5</sup> *Supra*, n.2.

director of Rethink Trade, an ideological advocacy group with a close relationship to your senior staff.<sup>6</sup> The email also described Ms. DeLuna as the leader of JSI negotiations. Given the Committee's previously raised concerns regarding USTR's decision at the WTO, the Committee seeks information directly related to Ms. DeLuna's activities while at USTR.<sup>7</sup>

The Committee reiterates its previous requests for information from USTR. For your convenience, below are the requests from the Committee's March 4 letter:

1. Copies of the Signal chat between Heather Hurlburt and Lori Wallach in February 2023 preserved to comply with FRA legal obligations.
2. All other 2023 communications from Heather Hurlburt that utilized Signal or other non-official communications channels (such as personal email) for official business and were preserved to comply with Federal Records Act obligations.
3. All 2023 correspondence between USTR employees and individuals at the following organizations:
  - a. Open Markets Institute
  - b. American Economic Liberties Project (including Rethink Trade)
  - c. New America
  - d. Public Citizen
  - e. Center for Digital Democracy
4. All 2023 notes, memos, and internal correspondence mentioned related to individuals at organizations or organizations themselves in request #3.
5. All 2023 inputs and written consultation related to digital trade sent to or received by federal agencies.
6. All 2023 memos, notes, and internal correspondence related to USTR's efforts to engage Congress on digital trade positions and negotiation.
7. All 2023 memos, notes, and internal correspondence related to discussion of any potential public comment periods on or relating to digital trade matters.
8. All documents, notes, drafts, and correspondence showing how USTR assessed and arrived at its October 25 action withdrawing the U.S. position at the WHO JSI on e-commerce.
9. All 2023 documents, notes, and correspondence capturing or reporting reaction to USTR's October 25 withdraw action or positioning on digital trade.

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<sup>6</sup> *Supra*, n.2.

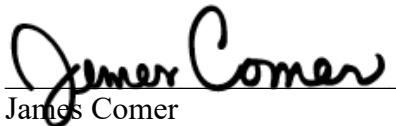
<sup>7</sup> *Supra*, n.2.

10. Provide documents responsive to all unfulfilled requests from the Committee's October 12, 2023, oversight request letter, including:
  - a. All correspondence with the DOJ and/or FTC relating to the digital trade provisions in the IndoPacific Economic Framework (IPEF);
  - b. All correspondence with the DOJ and/or FTC relating to the EU's Digital Markets Act, Digital Services Act, or any other EU laws, regulations or policies regarding digital markets; and
  - c. All correspondence between USTR and the White House regarding IPEF negotiations and digital trade

In addition to the abovementioned information, the Committee requests USTR make available Ms. DeLuna for questioning by the Committee in a transcribed interview. If USTR is unable or unwilling to comply with these requests, USTR should contact Committee staff no later than May 8, 2024, so the Committee is able to evaluate additional actions it may take to obtain the information it seeks from USTR.

To schedule the interview or ask any related follow-up questions, please contact Committee on Oversight and Accountability staff at (202) 225-5074. The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. Thank you in advance for cooperating with this inquiry.

Sincerely,



James Comer  
Chairman  
Committee on Oversight and Accountability

cc: The Honorable Jamie Raskin, Ranking Member  
Committee on Oversight and Accountability



# EXHIBIT 96



November 9, 2023

The Honorable Joseph R. Biden, Jr.  
President of the United States  
The White House  
1600 Pennsylvania Ave NW  
Washington, DC 20500

Dear President Biden,

As Members of the New Democrat Coalition (NDC) Trade Task Force, we share your commitment to a worker-centered trade agenda, which we believe is critical to realizing our shared vision to lower costs and grow the economy from the bottom up and the middle out. We write to share our Coalition's bold solutions to help advance a strong and proactive trade agenda that delivers resilient, sustainable, and inclusive growth for all Americans.

This Congress, the NDC Trade Task Force will continue its work to maintain the United States as a leader in the global marketplace and enact trade policies that will benefit American workers, consumers, growers and producers, and businesses. Being actively engaged in global trade allows us to lead geopolitically, grow our economy, expand opportunity, and export our goods, services, and values. The New Democrat Coalition was integral to the bipartisan engagement and support of the historic United States-Mexico-Canada Agreement (USMCA), which presents a model for pursuing an ambitious worker-centered trade agenda that delivers broad-based economic growth. Together, we have an opportunity to build on this progress. New Dems look forward to working with your Administration to deliver on the following priorities:

### **Counter Competitive Threats and Abuses from China**

New Dems believe we must leverage and enhance diplomatic, trade, and economic tools with strong congressional oversight to strengthen American competitiveness in the global economy and meet the challenge of the People's Republic of China's unfair trade practices, market manipulations, censorship and surveillance, and human rights abuses.

- Strengthen ties and coordinate with our allies and close trading partners to confront the anti-competitive and non-market policies and practices of the People's Republic of China.
- Defend American values in the United Nations (UN), World Trade Organization (WTO), and other venues against "digital sovereignty" campaigns by China.
- Reauthorize the Generalized System of Preferences (GSP) to encourage companies to move production out of China and into developing nations.

### **Establish a Durable and Sustainable Approach to Trade**

The historic United States-Mexico-Canada Agreement (USMCA) presents a way toward a more balanced, worker-centered trade model capable of delivering broad-based economic growth that advances workers' rights and addresses unnecessary barriers to trade. Its strong and enforceable labor provisions were the result of a sustained, authentic dialogue between labor organizations and businesses that Congress helped shape. The bipartisan engagement and approach of the USMCA should be used as a model for pursuing ambitious, substantive, and durable trade agreements.

- Leverage market access agreements to encourage and incentivize trading partners to adopt high labor and environmental standards.
- Strengthen enforcement, labor, and environmental commitments and ensure implementation does not adversely impact U.S. businesses, consumers, or workers.
- Support the modernization and reauthorization of the Trade Adjustment Assistance (TAA) program, to allow American workers, companies, and growers and producers adversely impacted by increased U.S. tariffs and the reciprocal actions taken by other countries to be eligible for TAA.
- Consult with labor organizations to reform and reinvest in workforce development programs that promote workers' rights so American workers and businesses can compete and win in a dynamic global economy.
- Support efforts to further study how our trade policies align with our workforce strategy.
- Promote trade in environmental products and explore new environmental goods agreement negotiations, particularly with countries with market-based economies and high standards.

### **Return to Reciprocal Bilateral/Regional Trade Agreements**

To maintain American leadership in the global economy and counter the competitive threats from China, it's clear that the U.S. must increase economic cooperation and pursue trade agreements with our allies and close trading partners that share our values.

- Reassert congressional oversight and authority over international trade. New Dems believe trade agreements approved by Congress are more durable than initiatives concluded as executive agreements and urge the Biden Administration to coordinate and consult with Congress, affected stakeholders, and the American people.
- Pursue free trade agreements with trading partners like the United Kingdom, Taiwan, and Kenya to secure global supply chains, open new markets for U.S. goods, and strengthen economic coordination amongst nations that share our values.
- Eliminate both tariff and non-tariff barriers to trade.

### **Strengthen the Indo-Pacific Economic Framework (IPEF)**

New Dems welcomed the Biden Administration's decision to negotiate an Indo-Pacific Economic Framework (IPEF), improve coordination with like-minded countries on supply chains, the climate crisis, and labor standards, and champion a free and open Indo-Pacific region with strong democratic values. The IPEF is an important first step in furthering our relationships in the Indo-Pacific following the Trump Administration's misguided decision to withdraw from the region. However, frameworks are not substitutes for trade agreements approved by Congress that open markets for U.S. products. New Dems believe we must pursue a more robust trade agenda in the critically important Indo-Pacific region and urge the Biden Administration to finalize a deal

that bolsters U.S. global leadership and meaningfully delivers for American workers, farmers, and businesses.

- Support meaningful enforcement provisions for binding commitments.
- Include tariff reductions or tariff-based market access in the agreement to make meaningful progress on our priorities.
- Strengthen U.S. leadership in digital trade negotiations in IPEF and promote high standard rules for the global digital economy.

### **Build a More Robust Trade Relationship with Taiwan**

New Dems were encouraged by the announcement of the Biden Administration's initial agreement under the U.S.-Taiwan Initiative on 21st-Century Trade. We view this as an opportunity to deepen our economic relationship and advance mutual trade priorities. New Dems stand ready to work with the Administration as it consults with Congress in ongoing negotiations with Taiwan.

- Pursue a free trade agreement with Taiwan.
- Support a U.S.-Taiwan tax agreement to reduce double taxation, prevent tax evasion, remove barriers to trade, and bolster a shared defense against China.
- Explore opportunities to promote exports of U.S. products and services and increase Taiwanese investment in the U.S.

### **Reduce Barriers to Trade that Increase Costs for Americans and Hurt U.S. Businesses**

Tariffs and other trade barriers limit the access of American businesses to global markets and drive up the costs of goods for U.S. consumers. New Dems have long advocated for rolling back harmful Trump-era tariffs and trade policies. By working with the Biden Administration to limit such barriers, New Dems will continue to reduce prices and expand access to markets for American families, workers, growers and producers, and businesses.

- Establish a comprehensive, fair, and transparent exclusion process for existing Section 301 tariffs to cut costs for Americans and ease global supply chain constraints.
- Support negotiations to transition away from imposing tariffs on our closest allies.
- Prioritize legislation on the renewal of expired or expiring programs, such as the Generalized System of Preferences (GSP) program, Miscellaneous Tariff Bill (MTB), African Growth and Opportunity Act (AGOA), and the Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE) and the Haiti Economic Lift Program (HELP) Acts.
- Advance equity in trade policy by considering solutions to reduce gender bias and regressivity of the tariff system, in consultation with Congress.

### **Promote the U.S. Digital Economy and Lead Negotiations on Agreements Related to Digital Trade**

The international flow of digital goods, services, and information has become increasingly vital to American workers and businesses of all sizes, including countless small businesses. We must safeguard the success of the U.S. in the digital economy by ensuring that American companies and workers face a fair and level playing field when competing in foreign markets. It is critical that the U.S. leads in shaping the rules that govern the digital economy.

- With frequent and robust consultation of Congress, assert U.S. leadership of digital trade by engaging with like-minded countries to forge responsible, inclusive, and forward looking digital trade rules in order to uphold American values and counter China's concerning digital agenda.
- Seek opportunities to push the European Union (EU) to amend its proposals targeting American technologies and companies and enforce its laws in an even-handed manner, including through continued Trade and Technology Council (TTC) discussions.
- Advance digital trade policies that will grow American industries, ensure workers are treated fairly, protect consumers' privacy, and give small businesses the digital tools they need to succeed in the 21st century economy. These include policies that protect against the forced transfer of American technology, enable the free flow of information across borders, defend American workers and businesses of all sizes against unfair discrimination, and maintain the longstanding ban on tariffs on digital goods and services at the World Trade Organization (WTO).

### **Support Agricultural Exports by Reducing Tariff and Non-Tariff Barriers**

U.S. agricultural producers are capable of feeding the world and rely on markets abroad to export local harvests. However, our farmers and ranchers often face protective tariffs or discriminatory non-tariff barriers, such as non-scientific sanitary and phytosanitary (SPS) measures, that put American agricultural products at a disadvantage or prevent their trade entirely. We must both negotiate deals that reduce tariffs and non-tariff barriers and work with trade partners to open agricultural markets.

- Seek high-standards agreements with trade partners that lower tariffs for American agricultural products that put U.S. producers at a disadvantage.
- Support agreements that address non-tariff barriers, including requiring that SPS measures meet high scientific standards.
- Enforce agricultural provisions of existing agreements, such as the USMCA, to prevent countries from discriminating against crops made with biotechnology.
- Work with trade partners to address non-tariff barriers with specific products and improve customs procedures abroad that delay the entry of perishable products.

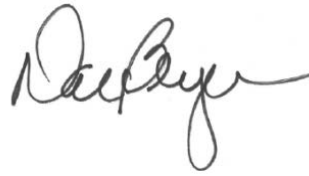
The New Democrat Coalition stands ready to work with your Administration and our colleagues in Congress to execute a strong and proactive trade agenda. We ask that you continue to work with our Coalition and Members, consider our policy priorities, and keep Congress informed of developments on these priorities as you work to revitalize U.S. trade leadership.

Sincerely,



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Rep. Lizzie Fletcher  
Chair, Trade Task Force  
New Democrat Coalition



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Rep. Don Beyer  
Vice Chair, Trade Task Force  
New Democrat Coalition



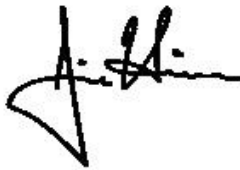
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Rep. Jimmy Panetta  
Vice Chair, Trade Task Force  
New Democrat Coalition



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Rep. Suzan DelBene  
Member of Congress



---

Rep. Jim Himes  
Member of Congress



---

Rep. Rick Larsen  
Member of Congress



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Rep. Gregory Meeks  
Member of Congress



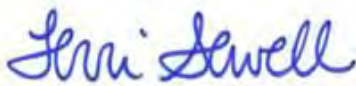
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Rep. Stacey Plaskett  
Member of Congress



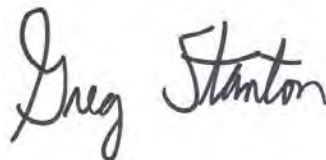
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Rep. Mike Quigley  
Member of Congress



---

Rep. Terri Sewell  
Member of Congress



---

Rep. Greg Stanton  
Member of Congress

CC:

Ambassador Katherine Tai, United States Trade Representative

Secretary Gina Raimondo, Department of Commerce

Secretary Janet Yellen, Department of the Treasury

Secretary Antony Blinken, Department of State

# EXHIBIT 97

# Congress of the United States

Washington, DC 20515

April 11, 2024

Ambassador Katherine Tai

U.S. Trade Representative

600 17th Street NW

Washington, DC 20508

Dear Ambassador Tai,

We write with deep concern about the recently released National Trade Estimate (NTE) on Foreign Trade Barriers, which does not include references to trade barriers in the digital sector and other sectors. This new approach of excluding these barriers is alarming and undermines the purpose for which Congress created the NTE, which is to identify and address foreign trade barriers. In addition to our substantive opposition to such an approach, we note with disappointment that USTR has failed to consult with Congress about this significant policy change, which we learned about through press reports before the release of this year's NTE.

Digital trade is central to U.S. economic growth and innovation as well as U.S. global leadership. According to the U.S. Department of Commerce, U.S. companies earned \$626 billion from digitally-enabled service exports in 2022. Moreover, the livelihoods of 3 million Americans depend on open trade channels in the digital and e-commerce sector. Unfortunately, these jobs and U.S. competitiveness are at risk from digital trade barriers around the world. Countless countries are actively seeking to knee-cap American technology firms in a variety of unfair, discriminatory, and trade-distorting ways. For instance, the Republic of Korea is considering discriminatory platform monopoly legislation, while many others, including Canada and France, are imposing digital services taxes targeted at American companies. It is in the national interest to take proper stock of these efforts so that we can mount an effective response.

Recognizing the importance of taking proper stock, Congress created the NTE in the Trade Act of 1974. Significantly, for our present purposes, the law requires an "an inventory of significant foreign barriers to, or distortions of, U.S. exports of goods and services, including...U.S. electronic commerce." Operationalizing the principle that you can't fight what you can't see, the NTE has helped the United States knock down a wide range of trade barriers, including digital trade barriers, thereby supporting U.S. technological competitiveness abroad.



We find USTR's explanation that scaling back references to digital trade barriers warranted with respect to any barrier that is "an effort to regulate in the public interest" to be as curious as it is concerning. Immediately, the question comes to mind: the interest of what public? Certainly, the American public does not benefit from trade barriers that reduce our national competitiveness. Nor did the American public elect those foreign policymakers seeking to discriminate against U.S. firms. In fact, they elected Members of Congress to make policy on these issues. Perhaps the Office of the United States Trade Representative believes it capable of objectively ascertaining the interest of a foreign public. However, it is not in the interest of the United States to allow other countries deploy the "public interest" as a talisman to ward off legitimate critique.

If anything, the decision to change the standard of inclusion for digital barriers sets USTR on quite a slippery slope. Surely, any trading partner enacting a tax or regulation that unfairly harms American farmers, manufacturers, or workers will argue that its measure advances its "public interest," but that excuse does not reduce the resulting harm to Americans! Coming on the heels of USTR's recent pullback on longstanding digital trade priorities at the World Trade Organization and in ongoing negotiations of the Indo-Pacific Economic Framework trade pillar, this NTE decision further suggests the administration is uninterested in supporting American digital economy leadership.

Ultimately, a weaker stance on digital trade in this year's NTE is a signal that USTR will no longer resist new foreign digital trade barriers, an even more expansive position than the current digital trade abdication. Therefore, we strongly encourage you to continue the NTE's focus on digital trade barriers, consistent with your statutory mandate. This is critical to provide the American companies that depend on the free flow of these products the adequate protections to which they are entitled. We strongly encourage you to uphold your Congressionally authorized role and look forward to working with you to resolve this matter to ensure U.S. companies can continue to compete on the world stage, with confidence that the U.S. government will forcefully confront unfair trade practices imposed by foreign governments in all sectors of the economy.

Sincerely,



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Carol D. Miller  
Member of Congress



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Ron Estes  
Member of Congress



---

Adrian Smith  
Member of Congress



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Michelle Steel  
Member of Congress



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Lloyd Smucker  
Member of Congress



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David Schweikert  
Member of Congress



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Beth Van Duyne  
Member of Congress



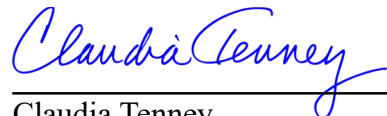
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Randy Feenstra  
Member of Congress



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Darin LaHood  
Member of Congress



---

Claudia Tenney  
Member of Congress



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Mike Kelly  
Member of Congress



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Kevin Hern  
Member of Congress

*A. Drew Ferguson IV*

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A. Drew Ferguson IV  
Member of Congress

# EXHIBIT 98

# Congress of the United States

Washington, DC 20515

January 17, 2024

The Honorable Katherine Tai  
United States Trade Representative  
600 17th St NW  
Washington, DC 20006

Dear Ambassador Tai:

We write to express support for the World Trade Organization (WTO) Moratorium on Customs Duties on Electronic Transmissions (the Moratorium) and urge the Biden administration to make its renewal a top priority at the thirteenth WTO Ministerial Conference (MC13).

Since 1998, the United States and all other WTO members have agreed to refrain from imposing tariffs on electronic transmissions. WTO members have extended the Moratorium at subsequent WTO Ministerial Conferences, most recently in June 2022. The Moratorium covers electronic transmissions of both digital goods (e.g., e-books, music, movies, and video games) and digital services (e.g., software, emails, and text messages), enabling a stable environment for growing digital trade and American jobs.

The international flow of digital goods and digital services has become increasingly vital to American workers and businesses of all sizes, including the countless small businesses that use digital tools to export products and services across the globe. Failing to renew the Moratorium for the first time in a quarter century would undermine the strength of the American economy, jobs, and innovation.

If the Moratorium is not renewed, governments around the world would be free to impose tariffs and other trade barriers on numerous American industries that transmit products and services electronically and rely heavily on the free flow of data around the globe, including manufacturing, agriculture, entertainment, software, financial services, semiconductors, aerospace, autos, robotics, and medical devices. The Moratorium is particularly beneficial to small and medium sized businesses and entrepreneurs who use digital tools to reach new customers overseas and cannot set up physical operations in every country in which they sell in order to avoid duties imposed on electronic transmissions.

Unfortunately, countries are actively seeking to exploit a potential lapse in the Moratorium. For example, Indonesia has already adopted a customs regime to impose tariffs on certain digital goods and services. If the Moratorium is not extended, new digital trade barriers will likely proliferate. Such barriers could harm American exports, disrupt supply chains, increase prices for American consumers and businesses, and risk potential retaliation.

Although some countries have advocated to end the Moratorium on the grounds that it deprives them of tariff revenue, studies<sup>1</sup> have consistently found that countries applying customs duties on electronic transmissions

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<sup>1</sup> Tibor Hanappi, Adam Jakubik, Michele Ruta, "Fiscal Revenue Mobilization and Digitally Trade Products: Taxing at the Border or Behind It?," *International Monetary Fund* (September 2023), <https://www.imf.org/en/Publications/IMF-Notes/Issues/2023/09/07/Fiscal-Revenue-Mobilization-and-Digitally-Traded-Products-Taxing-at-the-Border-or-Behind-It-538487>; Andrea Andrenelli and Javier Lopez Gonzalez, "Electronic Transmissions and International Trade – Shedding New Light on the Moratorium Debate," *OECD* (November 2019), [https://www.wto.org/english/tratop\\_e/ecom\\_e/ecom\\_webinar\\_13jul2020\\_e/lopez\\_gonzalez.pdf](https://www.wto.org/english/tratop_e/ecom_e/ecom_webinar_13jul2020_e/lopez_gonzalez.pdf); Hosuk-Lee Makiyama and Badri Narayanan, "The Economic Losses from Ending the WTO Moratorium on Electronic Transmissions," *European Centre for International Political Economy* (August 2019), <https://ecipe.org/publications/moratorium/>.

would lose considerably more in broader economic growth than they would gain in tariff revenue. Additionally, many stakeholders<sup>2</sup> across developing countries strongly support an extension, emphasizing the Moratorium’s importance to small businesses in particular. To that end, we appreciate Ambassador Pagán’s recent comments noting that extending the Moratorium “can be a concrete step that WTO Members take to foster robust digital economic activity and support digital inclusion that encompasses the developing world.”<sup>3</sup>


The United States has been a consistent defender of the Moratorium, and we urge your continued support and advocacy at MC13. Thank you for your attention to this important matter.

Sincerely,



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Darin LaHood  
Member of Congress



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Suzan K. DelBene  
Member of Congress



---

Adrian Smith  
Member of Congress



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Earl Blumenauer  
Member of Congress



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Randy Feenstra  
Member of Congress



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Bill Pascrell, Jr.  
Member of Congress



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Brian Fitzpatrick  
Member of Congress



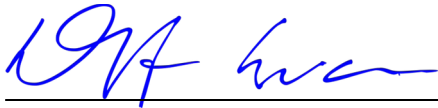
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Jimmy Panetta  
Member of Congress

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<sup>2</sup> “Global Industry Statement on the WTO Moratorium on Customs Duties on Electronic Transmissions.”  
[https://www.wto.org/english/thewto\\_e/minist\\_e/mc12\\_e/global\\_industry\\_statement\\_wto.pdf](https://www.wto.org/english/thewto_e/minist_e/mc12_e/global_industry_statement_wto.pdf).

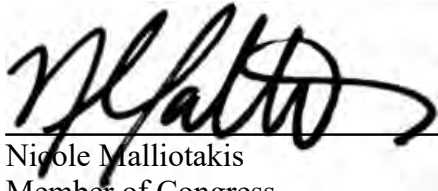
<sup>3</sup>“Remarks by Ambassador Maria L. Pagan at Virtual World Trade Organization mini-Ministerial,” USTR (December 2023),  
<https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2023/december/remarks-ambassador-maria-l-pagan-virtual-world-trade-organization-mini-ministerial?source=email>



Dwight Evans  
Member of Congress



Bradley Scott Schneider  
Member of Congress



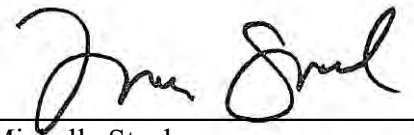
Nicole Malliotakis  
Member of Congress



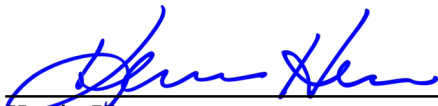
Ron Estes  
Member of Congress



Carol D. Miller  
Member of Congress



Michelle Steel  
Member of Congress



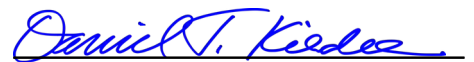
Kevin Hern  
Member of Congress



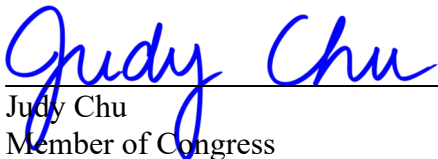
Mike Carey  
Member of Congress



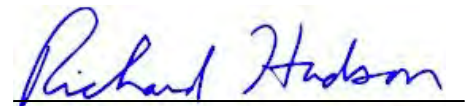
Lloyd Smucker  
Member of Congress



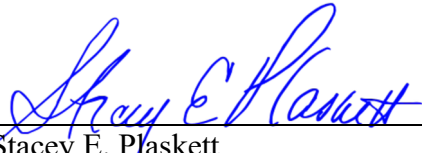
Daniel T. Kildee  
Member of Congress



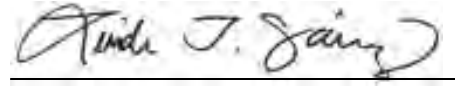
Judy Chu  
Member of Congress



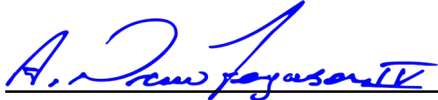
Richard Hudson  
Member of Congress



Stacey E. Plaskett  
Member of Congress



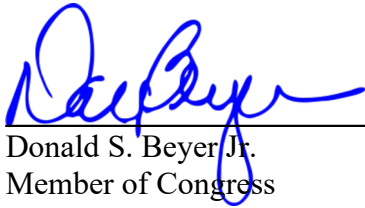
Linda T. Sánchez  
Member of Congress



A. Drew Ferguson IV  
Member of Congress



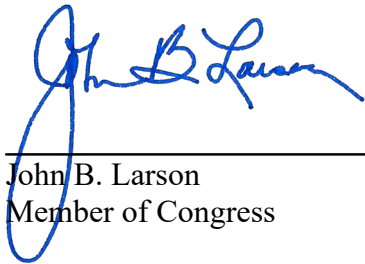
Brad R. Wenstrup, D.P.M.  
Member of Congress



Donald S. Beyer Jr.  
Member of Congress



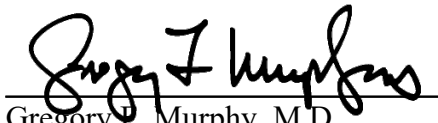
Beth Van Duyne  
Member of Congress



John B. Larson  
Member of Congress



John Rose  
Member of Congress



Gregory P. Murphy, M.D.  
Member of Congress



Vern Buchanan  
Member of Congress



Mike Kelly  
Member of Congress



Jodey C. Arrington  
Member of Congress



# EXHIBIT 99

# Congress of the United States

Washington, DC 20510

June 10, 2022

Ambassador Katherine Tai  
United States Trade Representative  
600 17<sup>th</sup> St NW  
Washington, DC 20006

Dear Ambassador Tai:

We write to express support for the World Trade Organization (WTO) Moratorium on Customs Duties on Electronic Transmissions (the Moratorium) and urge the Biden administration to make its renewal a top priority at the twelfth WTO Ministerial Conference (MC12).

Since 1998, the United States and all other WTO members have agreed to refrain from imposing tariffs on electronic transmissions. The WTO members have extended the Moratorium at subsequent WTO Ministerial Conferences. The Moratorium covers electronic transmissions of both digital goods (*e.g.*, e-books, music, movies, and video games) and digital services (*e.g.*, software, emails, and text messages), enabling a stable environment for growing digital trade and American jobs.

The international flow of digital goods and digital services has become increasingly vital to American workers and businesses of all sizes, including the countless small businesses that use digital tools to export products and services across the globe. Failing to renew the Moratorium, as we have done for more than twenty years, would undermine the strength of the American economy, jobs, and innovation.

If the Moratorium is not renewed, governments around the world would be free to impose tariffs and other trade barriers on numerous American industries that transmit products and services electronically and rely heavily on the free flow of data around the globe, including manufacturing, agriculture, entertainment, software, financial services, semiconductors, aerospace, autos, robotics, and medical devices. For example, Indonesia has already established a customs regime to impose tariffs on certain digital goods and services. Additionally, the proliferation of these trade barriers could further disrupt supply chains and increase prices for American consumers, given that digital goods and services have enabled our economy to persist through COVID-19 restrictions and lockdowns.

Although some countries have advocated for ending the Moratorium on the grounds that it deprives them of tariff revenue, studies<sup>1</sup> have found that if countries were to apply customs

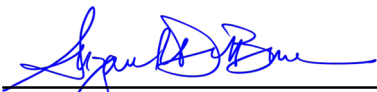
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<sup>1</sup> Andrea Andrenelli and Javier Lopez Gonzalez, “Electronic Transmissions and International Trade – Shedding New Light on the Moratorium Debate,” *OECD* (November 2019): 7; Hosuk-Lee Makiyama and Badri Narayanan, “The Economic Losses from Ending the WTO Moratorium on Electronic Transmissions,” *European Centre for International Political Economy* (August 2019): 15.

duties on electronic transmissions, they would lose considerably more in broader economic growth than they would gain in tariff revenue.

The United States has been a consistent defender of the Moratorium, and we urge your continued support and advocacy at MC12. Thank you for your attention to this important matter.

Sincerely,



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Suzan K. DelBene  
Member of Congress



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Darin LaHood  
Member of Congress



---

Earl Blumenauer  
Member of Congress  
Chairman, Subcommittee on  
Trade



---

Adrian Smith  
Member of Congress



---

Terri A. Sewell  
Member of Congress



---

Jimmy Panetta  
Member of Congress



---

Ron Kind  
Member of Congress



---

Thomas R. Suozzi  
Member of Congress



---

Brad R. Wenstrup, D.P.M.  
Member of Congress



---

Scott H. Peters  
Member of Congress



---

Ron Estes  
Member of Congress



---

Bradley Scott Schneider  
Member of Congress



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Sharice L. Davids  
Member of Congress



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Eddie Bernice Johnson  
Member of Congress



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Dwight Evans  
Member of Congress



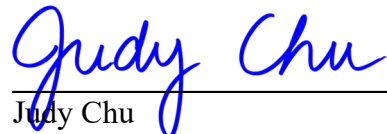
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Rick Larsen  
Member of Congress



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A. Drew Ferguson IV  
Member of Congress



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Judy Chu  
Member of Congress



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Danny K. Davis  
Member of Congress



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Susie Lee  
Member of Congress



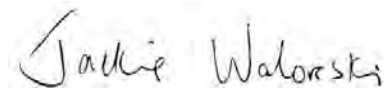
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Lloyd Smucker  
Member of Congress



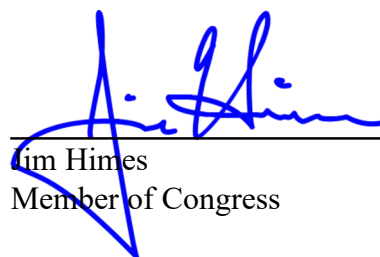
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Carol D. Miller  
Member of Congress



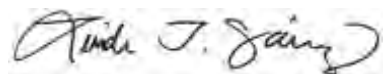
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Jackie Walorski  
Member of Congress



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Jim Himes  
Member of Congress



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Linda T. Sánchez  
Member of Congress



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Stacey E. Plaskett  
Member of Congress




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Bill Pascrell, Jr.  
Member of Congress



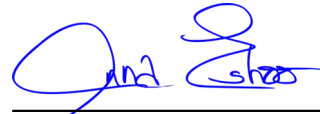
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Stephanie Murphy  
Member of Congress



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Donald S. Beyer Jr.  
Member of Congress



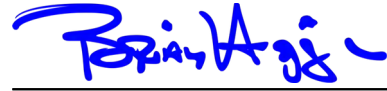
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Anna G. Eshoo  
Member of Congress



---

Zoe Lofgren  
Member of Congress



---

Brian Higgins  
Member of Congress



---

Daniel T. Kildee  
Member of Congress

/s/  
André Carson  
Member of Congress

# EXHIBIT 100

# United States Senate

WASHINGTON, DC 20510

March 19, 2023

## VIA ELECTRONIC TRANSMISSION

The Honorable Joseph R. Biden, Jr.  
President of the United States  
The White House  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

Dear President Biden:

We write today to express our opposition to the United States Trade Representative's (USTR) decision to withdraw its support for long-standing U.S. government positions on digital trade, data localization, and source code at the World Trade Organization (WTO). This decision will create uncertainty and directly harm American innovators and small businesses that rely on the free flow of data and rules-based digital trade.

Ambassador Katherine Tai claimed recently that the United States does not have a position on digital trade, but Congress has been clear on its position. In 2015, Congress passed the Bipartisan Congressional Trade Priorities and Accountability Act, which directed USTR to "ensure that governments refrain from implementing trade-related measures that impede digital trade in goods and services, restrict cross-border data flows, or require local storage or processing of data." Then in 2020, Congress passed the United States Mexico Canada Agreement Implementation Act, which preserved barrier-free treatment for digital trade, prevented data localization requirements, and banned the forced transfer of intellectual property in North America. The chapter on digital trade was meant as a model for future trade agreements and sets a strong, shared position between Congress and the executive branch on digital trade. USTR's reversal is a rebuke of bipartisan agreement on these issues since 2015.

American innovators and businesses of all sizes engage in digital trade. The free flow of data, unimpeded by tariff and non-tariff barriers, gives a mom in a rural American town with a small Etsy shop of handmade goods the ability to sell to customers around the world. It allows manufacturers to access supply chain management software from the most innovative developers and share best practices between industry partners. Every sector utilizes the digital economy and removing barriers to entry gives small businesses the chance to compete globally, reach economies of scale, and remove the impact that geography once had on trade.

Many countries have data localization requirements, meaning that data collected must be stored in that country. Data localization requirements are a direct barrier for American small businesses to operate abroad due to the immense capital required to construct or lease data storage facilities, as well as to employ people with legal expertise to comply with diverse international rules. Some countries allow for American companies to contract data storage with local businesses; however, doing so can limit oversight over the security of data, leaving

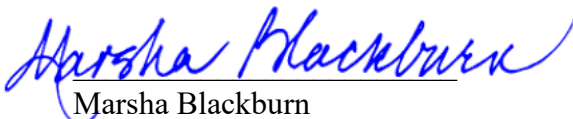


businesses and consumers potentially vulnerable to cyberattacks and data theft. Without U.S. leadership, data localization requirements will grow in adoption abroad and it will become infeasible for American companies to engage with foreign customers. Yet the large firms that are the target of this policy change will be able to afford the massive compliance costs associated with data localization.

The protection of intellectual property is the backbone of innovation in America. Our laws incentivize individuals and small businesses to create new software, goods, websites, apps, and so much more. Protecting proprietary source code for innovative technologies, especially for small businesses that rely on licensing that technology, is paramount. Many countries do not protect intellectual property in the same manner as the United States, leaving American innovators and small businesses subject to intellectual property theft by individuals abroad. By backing away from positions that ensure the protection of intellectual property rights, the U.S. government is opening the door to additional theft by adversaries like China, as well as disincentivizing future innovation by American companies.

Ambassador Tai's decision to pull American support for these protections must be reversed, as it would forfeit an area of American leadership in the world economy. Further degrading of leadership on these issues will allow for adversaries like China to write protectionist digital trade rules that undermine the rule of law, open American businesses to additional intellectual property theft, and harm the millions of small businesses that are the lifeblood of the American economy. The United States must remain a world leader in innovation and the digital economy; unfortunately, USTR's policies will undermine our ability to do just that.

Sincerely,



Marsha Blackburn  
United States Senator



Mike Crapo  
United States Senator



John Thune  
United States Senator



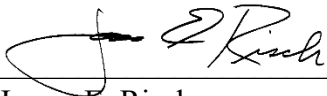
Ted Budd  
United States Senator



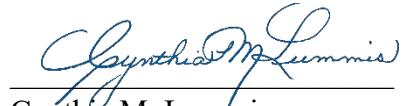
John Barrasso, M.D.  
United States Senator



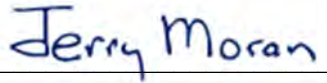
Marco Rubio  
United States Senator



James E. Risch  
United States Senator



Cynthia M. Lummis  
United States Senator



Jerry Moran  
United States Senator

CC: U.S. Trade Representative Katherine Tai

# EXHIBIT 101



#### QUESTION 1:

##### How Many Economies Have Joined Each Type of Agreement?

**Answer 1:** GATS—one of the seminal agreements signed in 1995 at the establishment of the World Trade Organization (WTO)—has 164 signatories. Type 2 agreements have been signed by 15 economies globally. Type 1 and Type 3 agreements currently have four signatories each.

#### QUESTION 2:

##### How Many Such Agreements Have Been Signed?

**Answer 2:** More Type 2 agreements have been signed than all other digital economy agreement types combined. To date, more than 10 such agreements have been signed. Three Type 3 agreements have been signed, and two Type 2 agreements have been signed.

#### QUESTION 3:

##### Is Each Agreement Type WTO GATS-Plus or GATS-Minus?

**Answer 3:** Type 1 and Type 2 agreements are both GATS-Plus, inasmuch as they contain cross-border data transfer and data localization commitments across all sectors<sup>1</sup> for all signatory countries, whereas the GATS permits WTO members to take country-specific reservations regarding the cross-border of computer and related services.

Type 3 agreements are in part GATS-Plus because they also contain commitments across sectors and for all signatories. However, Type 3 agreements also in part GATS-Minus for two reasons: (1) the affirmative data transfer commitments are drafted in a narrow way; and (2) these commitments are subject to self-judging privacy-related exceptions that substantially undermine those commitments, potentially rendering them inutile.

The self-judging privacy-related exceptions found in Type 3 agreements are GATS-Minus because GATS offers greater specificity and rigor regarding the circumstances in which a WTO Member may derogate from its obligations on grounds of privacy or personal data protection. More specifically, GATS Article XIV(c)(ii) sets out legal standards for the examination of privacy measures that may otherwise breach GATS commitments.

#### QUESTION 4:

##### Does the Agreement Safeguard the Ability to Transfer Data Across Transnational Digital Networks?

**Answer 4 (Short Answer):** Under GATS, safeguards for the ability to transfer data vary depending upon the specific commitments undertaken by the WTO member at issue. Most WTO members have not taken significant reservations from the obligation to permit the cross-border supply of computer and related services on an unrestricted and non-discriminatory basis. However, a limited number of countries have.

Type 1 and Type 2 agreements safeguard the ability to transfer data across transnational digital networks, although the extent of those safeguards differs. Type 1 agreements provide more robust safeguards for data transfers in several respects:

- All Type 1 agreements safeguard the ability to transfer financial data and to determine the location of financial data. Some type 2 agreements (e.g., AU-SG DEA) provide analogous safeguards, but other type 2 agreements (e.g., CPTPP or the SG-KR DPA) do not.
- All Type 1 agreements explicitly prohibit discrimination between cross-border data transfers and domestic data transfers that would result in less favorable treatment for non-national service providers. Type 2 agreements do not contain this explicit prohibition, although—under some legal interpretations—they may implicitly provide such safeguards.

Finally, Type 3 agreements provide a lower level of safeguards for cross-border data transfers than either Type 1 or Type 2 agreements.

#### DETAILED QUESTION 4A:

### Does GATS Safeguard the Ability to Transfer Data Across Transnational Digital Networks?

#### Detailed Answer 4A: In Part.

The answer is “Yes” to the extent that GATS obligates WTO members to allow for the cross-border (so-called Mode 1) supply of “computer and related services” over transnational digital networks. “Computer and Related Services,” are defined as services that “enable the provision of other services by electronic and other means”, and are defined to include (among other things) “data processing services (CPC 843),” “data base services (CPC 844),” and “other computer services (CPC 849).”<sup>2</sup>

Under a reasonable legal interpretation, it would be incompatible with these GATS cross-border commitments to prevent the use of offshore “computer and related services” for purposes of transferring data across borders, engaging in data processing or data storage, or offering database or other computing services. This also implies that it would be incompatible with GATS commitments to require the use of local computing infrastructure or to require that all copies of particular data sets be localized within the country.

Furthermore, GATS Article XVII obligates WTO members to treat service providers of other WTO members in a non-discriminatory manner, stating in relevant part that, “each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.”

This answer is “In Part” to the extent that some WTO members have taken reservations from the aforementioned commitments. Some WTO members negotiated significant reservations from these cross-border data commitments prior to 1995 or at the time of those members’ accession to the WTO. Nevertheless, most WTO members have not done so.

#### DETAILED QUESTION 4B:

### Do Type 1 DEAs Safeguard the Ability to Transfer Data Across Transnational Digital Networks?

#### Detailed Answer 4B: Yes.

Yes. Type 1 Agreements safeguard the ability to transfer data across digital networks. These agreements do so by prohibiting restrictions on cross-border data transfers. For example, CUSMA Article 19.12.1 provides as follows:

No Party shall prohibit or restrict the cross-border transfer of information, including personal information, by electronic means if this activity is for the conduct of the business of a covered person.

#### DETAILED QUESTION 4C:

### Do Type 2 DEAs Safeguard the Ability to Transfer Data Across Transnational Digital Networks?

#### Detailed Answer 4C: Yes.

Yes. Type 2 Agreements such as the Australia-Singapore DEA safeguard the ability to transfer data across digital networks. These agreements do so by prohibiting restrictions on cross-border data transfers. For example, AU-SG DEA Article 23.2 provides as follows:

Neither Party shall prohibit or restrict the cross-border transfer of information by electronic means, including personal information, if this activity is for the conduct of business of a covered person.

Some Type 2 Agreements, including CPTPP, contain a slightly different textual formulation, effectively requiring Parties to permit cross-border data transfers—rather than prohibiting restrictions on such transfers.



#### DETAILED QUESTION 4D:

### Do Type 3 DEAs Safeguard the Ability to Transfer Data Across Transnational Digital Networks?

**Detailed Answer 4D:** In Part.

The answer is “In Part” because Type 3 Agreements contain some disciplines on data transfer restrictions, but those disciplines are limited by specified legal conditions. (Those disciplines are also limited due to the operation of self-judging exceptions as discussed under Question 5D).

For example, Article 12.4 of the EU-NZ Agreement lists four types of measures through which the Parties “shall not . . . restrict[.]” cross-border data transfers, namely: (1) requiring the use of computing facilities or “network elements” within a Party’s territory, including by requiring that such facilities or elements are locally certified or approved; (2) requiring the localization of data in a Party’s territory for storage or processing; (3) prohibiting storage or processing of data in the territory of the other Party; or (4) making cross-border data transfers conditional on the use of computing facilities or network elements, or on other localization requirements, in the Parties’ territory.

The list of trade-restrictive measures set forth in Article 12.4 appears to be exhaustive. Thus, if a Party restricts cross-border data transfers through a measure that falls outside this list (e.g., through a restriction on certain types of investment, a restriction on certain cross-border services, a data transfer or data localization restriction associated with a standard or technical regulation), such a trade barrier may not be disciplined by this commitment.

Furthermore, the scope of the commitment is further narrowed as a result of a complex, conjunctive drafting formulation that requires both a localization element and a transfer restriction element to be present as a prerequisite for a breach. In other words, Article 12.4 only disciplines data transfer restrictions to the extent that they are also implicated by one of four specific examples of localization requirements. And conversely, Article 12.4 only disciplines these localization requirements to the extent that these requirements also involve a data transfer restriction. As a result of the closed-list of actionable measures, and as a result of requirement to prove the existence of both data localization and data transfer restrictions, the actual coverage of Article 12.4 is narrow.

#### QUESTION 5:

### Does the Agreement Protect the Right to Regulate Where Necessary or Required?

**Answer 5:** GATS, Type 1 and Type 2 agreements protect the right to regulate where necessary or required. In contrast, while Type 3 Agreements protect the right to regulate, they do not include any assessment of what is “necessary” or “required.”

#### DETAILED QUESTION 5A:

### Does GATS Protect the Right to Regulate Where Necessary or Required?

**Detailed Answer 5A:** Yes.

Yes. GATS contains provisions, entitled “General Exceptions,” that delineate the scope of permissible derogations from GATS commitments, including the above-referenced cross-border data commitments involving the supply of computer and related services. Specifically, GATS Article XIV provides as follows:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:

- (a) necessary to protect public morals or to maintain public order [Footnote text: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society];
- (b) necessary to protect human, animal or plant life or health;

- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - (iii) safety.

#### **DETAILED QUESTION 5B:**

##### **Do Type 1 DEAs Protect the Right to Regulate Where Necessary or Required?**

**Detailed Answer 5B:** Yes.

Yes. Type 1 Agreements contain exceptions delineating the scope of permissible derogations from the Agreement's cross-border data commitments. For example, CUSMA Article 19.12.2 provides as follows:

This Article does not prevent a Party from adopting or maintaining a measure inconsistent with paragraph 1 that is necessary to achieve a legitimate public policy objective, provided that the measure:

- (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
- (b) does not impose restrictions on transfers of information greater than are necessary to achieve the objective.<sup>3</sup>

#### **DETAILED QUESTION 5C:**

##### **Do Type 2 DEAs Protect the Right to Regulate Where Necessary or Required?**

**Detailed Answer 5C:** Yes.

Yes. Type 2 Agreements contain exceptions delineating the scope of permissible derogations from the Agreement's cross-border data commitments. For example, AU-SG DEA 23.3 provides as follows:

Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

- (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
- (b) does not impose restrictions on transfers of information greater than are required to achieve the objective.

#### **DETAILED QUESTION 5D:**

##### **Do Type 3 DEAs Protect the Right to Regulate Where Necessary or Required?**

**Detailed Answer 5D:** In Part.

In Part. Type 3 Agreements contain self-judging bases for derogation from the underlying commitments. Thus, while Type 3 Agreements protect the right to regulate, they do not include any assessment of what is "necessary" or "required." As such, the scope of permissible derogations is broader than under GATS or Type 1 Agreements (which assess "necessary" regulations) or Type 2 Agreements (which assess "required" regulations). In this way, Type 3 Agreements are likely to reduce regulatory predictability and certainty relative to other agreements.

For example, Article 12.5 of the EU-NZ Agreement states that that each Party may adopt and maintain whatever safeguards "it deems appropriate to ensure the protection of personal data and privacy," including through "rules for the cross-border transfer of personal data." Article 12.5 adds that "[n]othing in this agreement shall affect the protection of personal data and privacy afforded by the Parties' respective safeguards."



We offer the following additional observations on this text:

- **Self-judging exception:** Article 12.5 of the EU-NZ Agreement permits each Party to maintain privacy and data protection rules (including with respect to cross-border data transfer) “it deems appropriate.” This formulation suggests that, so long as a Party asserts that a measure’s purpose is to safeguard privacy or data protection, it is permissible irrespective of its impact on trade or whether it does in fact promote privacy or data protection. Self-declaratory exceptions of this kind are rare in the trade context and are normally reserved for measures deemed necessary to protect national security.<sup>4</sup>
- **Potentially unlimited scope of exception.** Article 12.5 also states that “[n]othing in this agreement shall affect the protection of personal data and privacy afforded by the Parties’ respective safeguards,” and that such a safeguard’s effect on cross-border data transfers is just one example of how it may permissibly impede trade. This Article makes clear this exemption from coverage or scrutiny of privacy measures applies not only to the commitments in Article 12, but also to all other commitments the Agreement, including those relating to enforcement.
- **Broad notion of personal data.** Article 12.2(i) defines “personal data” as any data relating to an identified or identifiable natural person. This definition is based in EU data protection law and has been interpreted expansively by EU regulators and courts to encompass broad categories of technical information (e.g., IP addresses, device IDs, pseudonymized data, etc.). This aspect of the proposal would bring many types of data, which are not generally regarded as personal information in other jurisdictions, within the scope of the exception.
- **Exclusion from information sharing or cooperation.** Type 3 agreements afford other immunities from scrutiny for trade-related restrictions that a Party deems appropriate on grounds of privacy.. For example, Article 12.14 excludes such restrictions from a general commitment to cooperate and exchange information.

#### QUESTION 7:

#### Does the Agreement Require Parties to Put in Place Legal Frameworks for the Protection of Personal Data or Privacy?

**Answer 7:** No for GATS and Type 3 Agreements. Yes for Type 1 and Type 2 Agreements.

On the one hand, GATS and Type 3 Agreements do not ask Parties to adopt or maintain frameworks to protect personal information. Indeed, Type 3 Agreements affirmatively exclude privacy commitments from scope. For example, Article 12.5.2 states that, “[n]othing in this Agreement shall affect the protection of personal data and privacy afforded by the Parties’ respective measures.”

On the other hand, Type 1 and Type 2 Agreements include provisions requiring each Party to “adopt or maintain a legal framework that provides for the protection of the personal information of the users of digital trade.” Type 1 and Type 2 Agreements support a high level of protection for privacy and data protection. These Agreements typically also ask Parties:

- Support standards reflected in the APEC Privacy Framework and analogous OECD privacy frameworks.
- Recognize as “key principles” the limitation on collection; choice; data quality; purpose specification; use limitation; security safeguards; transparency; individual participation; and accountability;
- Ensure that restrictions on cross-border flows of personal information be necessary and proportionate to the risks presented;
- Adopt or maintain non-discriminatory practices in protecting users of digital trade from personal information protection violations occurring within its jurisdiction;
- Publish information on the personal information protections it provides to users of digital trade, including regarding remedies for natural persons and legal compliance obligations for enterprises;
- Encourage the development of mechanisms to promote interoperability between these different national legal approach to privacy protection; and
- Recognize and promote mechanisms to facilitate cross-border information transfers while protecting personal information, such as those found in the Global Cross-Border Privacy Rules Forum.

#### QUESTION 8:

### Does the Agreement Prohibit Discrimination against Foreign Service Providers or Services?

**Answer 8:** Yes for Type 1 and Type 2 Agreements. In part for GATS and Type 3 Agreements.

Type 1 and Type 2 Agreements contain prohibitions against discrimination against foreign service providers and services. As explained in response to Question 5 above, both stipulate that any derogations from the data transfer rules must not be “applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination...” Type 1 Agreements contain additional safeguards against discrimination through provisions that explicitly prohibit discrimination between cross-border data transfers and domestic data transfers that would result in less favorable treatment for non-national service providers.

The GATS and Type 3 Agreement also prohibit the application of derogations in a manner that would “constitute a means of arbitrary or unjustifiable discrimination...” However, this non-discrimination safeguard is undermined in the GATS due to the possibility of country-specific reservations, and in Type 3 Agreements due to the existence of self-judging privacy-related exceptions and a carve-out for any privacy measures.

#### QUESTION 9:

### Do the Prohibitions on Cross-Border Data Transfer Restrictions and Localization Mandates Apply to Personal Data?

**Answer 9:** Yes for Type 1 and Type 2 Agreements. In part for GATS. No for Type 3 Agreements.

Yes for Type 1 and Type 2 Agreements: As explained in response to Questions 4B and 4C above, Type 1 and Type 2 Agreements explicitly state that, “[n]o Party shall prohibit or restrict the cross-border transfer of information, including personal information, by electronic means...” (emphasis added).

In part for GATS: As explained in response to Question 4A above, some WTO members negotiated reservations from GATS cross-border data commitments prior to 1995 or at the time of those members’ accession to the WTO. As explained in response to Question 5A above, GATS also makes clear that the treatment of personal data falls within the scope of the GATS Article XIV(c)(ii) disciplines.

No for Type 3 Agreements: As explained in response to Question 5D, Type 3 Agreement expressly exclude personal data from the scope of the cross-border data transfer commitments in those agreements.

#### QUESTION 10:

### Do the Prohibitions on Cross-Border Data Transfer Restrictions and Localization Mandates Apply to Non-Personal Data?

Yes for Type 1, Type 2 and Type 3 Agreements. In part for GATS.

In the case of Type 1–3 Agreements, the prohibitions on cross-border data restrictions apply to non-person data. In the case of GATS, these prohibitions also apply to non-personal data, except to the extent that a WTO member has taken reservations to the relevant obligations.

#### QUESTION 11:

### Do the Prohibitions on Cross-Border Data Transfer Restrictions and Localization Mandates Apply to Financial Data?

**Answer 11:** Yes, for Type 1 Agreements. Yes for some Type 2 Agreements and No for other Type 2 Agreements. In Part for GATS and Type 3 Agreements.

All Type 1 agreements apply their data transfer and data localization disciplines to financial data.

Some Type 2 agreements apply their data transfer and data localization disciplines to financial data (e.g., AU-SG DEA), while others do not do so fully (e.g., CPTPP, SG-KR DPA).

Type 3 agreements do not contain any specific exclusions for financial data, but the self-judging exclusions for privacy measures potentially remove any personal financial data from scope.

Under GATS, the extent of commitments relating to financial data depends upon the scope of the reservations taken by each WTO Member.

#### QUESTION 12:

#### Does the Agreement Allow for Other Exceptions or Reservations?

**Answer 12:** Yes, for GATS and all three types of DEAs. In all cases, exceptions in addition to those discussed above may apply, including security-related exceptions.

#### Endnotes

<sup>1</sup> However, please note that several Type 2 DEAs—namely the CPTPP, DEPA, and the Singapore-Korea Digital Partnership Agreement—contain a limited finance sector exception from data localization disciplines.

<sup>2</sup> See *e.g.*, Schedule of Specific Commitments of the European Union, GATS/SC/157 (May 7, 2019), at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/SCHD/GATS-SC/SC157.pdf&Open=True>.

<sup>3</sup> A measure does not meet the conditions of this paragraph if it accords different treatment to data transfers solely on the basis that they are cross-border in a manner that modifies the conditions of competition to the detriment of service suppliers of another Party.

<sup>4</sup> See, *e.g.*, GATT Art. XXI and GATS Art. XIV *bis*, permitting WTO members to impose measures for purposes of national security.

# EXHIBIT 102

April 12, 2024

Dear Members of the Senate Committee on Finance and House Committee on Ways and Means:

For your review, the undersigned associations and organizations have prepared a **memorandum describing our concerns with the U.S. Trade Representative's (USTR) 2024 National Trade Estimate Report**. Unlike previous years, this year, USTR significantly scaled back its coverage of digital trade barriers despite their proliferation around the world. **This decision is not aligned with USTR's statutory authority or Congressional intent**. We urge Congress to press USTR to reverse course and carry out its mandate to protect U.S. interests in digital trade and the millions of American jobs that it supports.

The undersigned associations and organizations represent every facet of the U.S. economy. Digital trade underpins our global competitiveness and leadership in every sector, including agriculture, education, healthcare, financial services, and technology. As such, it is critical that USTR return the U.S. to its traditional role as the global leader in shaping the rules of the multilateral trading system in ways that benefit American workers and businesses, align with American priorities and values, and address regulatory overreach.

As the memorandum describes, digital trade is a long-standing, bipartisan priority of the United States Congress. **USTR's neglect of digital trade barriers and global challenges facing U.S. businesses and workers amounts to policy malpractice that should be corrected by Congress immediately.**

Thank you for your attention to our views.

Sincerely,

ACT | The App Association  
Business Roundtable  
BSA | The Software Alliance  
Coalition of Services Industries  
Computer & Communications Industry Association (CCIA)  
Consumer Technology Association (CTA)  
Engine  
Global Data Alliance  
Global Innovation Forum  
Information Technology Industry Council (ITI)  
National Foreign Trade Council  
Software & Information Industry Association (SIIA)  
**TechNet**  
U.S. Chamber of Commerce  
U.S. Council for International Business

## MEMORANDUM

### **USTR's** Flawed Approach to Digital Trade in the 2024 National Trade Estimate Report Will Hurt U.S. Exports and Job Creation and Allow Others to Shape Global Trade Rules

#### I. Introduction

The concerns prompting this memo surround the 2024 National Trade Estimate Report ("**NTE Report**"), which USTR is statutorily obligated to produce and publish annually. Under the 1974 Trade Act, USTR is required to identify and analyze "**significant barriers to, or distortions of**" **U.S. goods and services** exports globally and, when possible, estimate the distortive impact they have on U.S. commerce. The NTE Report serves as a key facet **of USTR's mandate from Congress to protect U.S.** businesses from unfair treatment abroad. By chronicling the obstacles to operations and the cross-border delivery of goods and services in key foreign markets, the report lays down a marker for foreign laws, regulations, and other policies that are of concern to the United States.

Through this process, USTR signals to the countries in question that these policies are being monitored by the United States government and may be seen as potentially problematic. Further, the report signals policies that may require further investigation or action, as appropriate. This is a vital aspect of USTR's role in evaluating the global trading environment for U.S. companies, identifying potentially unfair practices against U.S. goods and services exports, and addressing these barriers. Inclusion of a barrier in the NTE Report does not necessarily mean enforcement action is forthcoming from USTR, but it does indicate that a particular measure may be impeding, or has the potential to impede, international trade and puts that country on notice.

**The problem at the heart of this year's NTE Report is that USTR has removed a** sizable collection of barriers from the 2023 NTE Report **in this year's edition**, with a targeted and concerning deprioritizing of barriers to digital trade. For example, between 2023 and 2024, USTR reduced the number of country analyses of data localization mandates by over 70 percent (from 24 countries in 2023 to seven in 2024) and removed concerns with respect to at least 80 digital trade-related measures. This is in direct contravention of **USTR's statutory obligation to "identify and analyze acts, policies, or practices of each foreign country which constitute significant barriers to, or distortions of...United States electronic commerce" through the NTE Report.** Among the harmful digital trade barriers excluded from the 2024 NTE report were measures restricting cross-border data flows, requiring data localization, forcing disclosure of source code and/or algorithms, and discriminating against U.S. firms in favor of domestic competitors.

This memo explains **why USTR's abdication** of its responsibility to promote key principles of longstanding, bipartisan U.S. digital trade policy, especially through its removal of numerous important digital trade barriers from the 2024 NTE Report, are problematic. The memo demonstrates that **USTR's approach** to the 2024 NTE is inconsistent with the governing statute and contrary to the clear will of the U.S. Congress.

## II. Legal Analysis of the 2024 NTE Report under Trade Act of 1974

The Trade Act of 1974, as amended, (“the Act”) charges USTR with producing and publishing the annual NTE Report.<sup>1</sup> In particular, the Act requires that the NTE Report:

“(A) identify and analyze acts, policies, or practices of each foreign country which constitute significant barriers to, or distortions of —

(i) United States exports of goods or services (including agricultural commodities; and property protected by trademarks, patents, and copyrights exported or licensed by United States persons),

(ii) foreign direct investment by United States persons, especially if such investment has implications for trade in goods or services; and

(iii) United States electronic commerce[.]”<sup>2</sup>

As the statutory text above makes clear, USTR is statutorily obliged to “identify and analyze” any “barriers to, or distortions of” U.S. electronic commerce. As a threshold matter, USTR disregarded this statutory instruction in the 2024 NTE Report. In particular, USTR claims that “[o]ver the years, the NTE Report expanded from its statutory purpose to include measures without regard to whether they may be valid exercises of sovereign policy authority.”<sup>3</sup> Rather, according to USTR, “the purpose of the NTE Report is to identify barriers the U.S. Government seeks to remove.”<sup>4</sup> However, the statute directs USTR to “identify and analyze” in the NTE Report *all* measures “which constitute significant barriers to” U.S. electronic commerce. This analysis may provide factual statements that a foreign government made attempting to justify the creation of a trade barrier on the basis of legitimate public policy grounds or other exceptions. However, USTR’s statutory mandate does not extend to making final judgments as to the invocation of such exceptions.

In fact, the Act provides a list of considerations that USTR must account for in its analysis of foreign measures to include in the NTE Report. These factors include, for example, “the relative impact of the act, policy, or practice on United States commerce” and “the extent to which such act, policy, or practice is subject to international agreements to which the United States is a party[.]”<sup>5</sup> Had Congress intended that the purpose of the statute was to generate a report in which USTR was directed to make final judgments as to whether a given trade barrier was a “valid exercise of sovereign policy authority,” and should therefore be excluded from the report, it would have included such a mandate in this statutory list. Consequently, USTR clearly strays from its statutory responsibilities by considering factors that are not included in the statute, while ignoring factors that under the statute it *must* consider,<sup>6</sup> as a means to exclude digital trade barriers from the NTE Report.

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<sup>1</sup> See 19 U.S.C. § 2241(b).

<sup>2</sup> 19 U.S.C. § 2241(a)(1)(A)-(B) (emphasis added).

<sup>3</sup> *Id.*

<sup>4</sup> 2024 NTE at p. 1.

<sup>5</sup> 19 U.S.C. 2241(2)(A), (C).

<sup>6</sup> The chapeau of this provision unambiguously states that “In making any analysis or estimate [in the NTE], the Trade representative shall take into account [the listed factors.]” See *id.* (emphasis added).

The statute makes clear that Congress viewed USTR's responsibility to catalogue all foreign trade barriers in the NTE Report as separate from the question of whether USTR can or should take action against a particular trade barrier. Specifically, the statute directs that, in the NTE Report, USTR must include "information with respect to any action taken (or the reasons for no action taken) to eliminate any act, policy, or practice identified" in the NTE Report. This provision demonstrates that (1) Congress recognized USTR would have to make choices about which trade barriers to act against during a given time period, and (2) that this question was separate from USTR's obligation to catalogue *all* foreign trade barriers, whether or not USTR would "seek to remove" them. Moreover, this provision was clearly intended to allow for Congressional oversight over how USTR exercised its inherent discretion to decide which barriers to act against, to protect against abuse of that discretion and ensure that Congressional prerogatives are being taken into account.

In sum, USTR's approach to the 2024 NTE Report is contrary to the unambiguous language and clear direction of the Act.

### III. **USTR's Approach is Contrary to** a Longstanding, Bipartisan Consensus on U.S. Digital Trade Policy

For decades, U.S. digital trade policy has consistently generated bipartisan support for its role in bolstering American leadership, encouraging American innovation, and leveling the playing field for U.S.-based companies and workers competing against foreign businesses, while also serving as a tool to spread democratic values abroad. **America's global economic leadership over decades has been pivotal in supporting a** level playing field for U.S. digital products and services, technology providers, and digitally-enabled small businesses around the world. During the mid-1990's, for example, the United States was a leader in securing a ban on customs duties on electronic transmissions at the World Trade Organization. Successive U.S. Administrations have promoted the development of **new trade rules to ensure America's** trading partners do not discriminate against American companies. Facilitating digital trade has also become increasingly important as a means of promoting American values as U.S. adversaries continually push for more restrictive digital trade rules. This has heightened concerns about the protection of human rights, particularly relating to freedom of expression, access to information, and privacy.

There remains a bipartisan consensus in the U.S. Congress supporting the promotion of digital trade and the removal of foreign barriers to digital trade. Congress has consistently weighed in with clear advice and ambitious negotiating objectives to guide the Administration in facilitating digital trade, enabling cross-border data flows, and protecting U.S. businesses from discrimination and violation of their intellectual property rights.

In 2015, Congress authorized President Obama to negotiate new trade agreements and directed trade negotiators to secure strong protections for American technology and intellectual property rights and fair treatment of electronically delivered goods and services under existing trade rules. It also directed **USTR "to ensure that** governments refrain from implementing trade-related measures that impede digital trade in goods and services, restrict cross-border data flows, or require local storage or



processing of data.”<sup>7</sup> During the Trump Administration, these principles were codified in U.S. law through the U.S.-Mexico-Canada Agreement (“USMCA”) Implementation Act in 2020. **The USMCA’s digital trade chapter was** lauded at the time as the model for future trade agreements. The agreement protected data flows, improved privacy and consumer protections, prohibited technology transfers and source code disclosures, and underscored the need for cooperation on cybersecurity and competition issues. Congress clearly reaffirmed its strong support for these principles in its vote to pass the USMCA, with 90 percent of the House and Senate voting in favor of the agreement.

**It is clear that USTR’s approach to digital trade is contrary to the express will of Congress.** USTR should keep in mind that, ultimately, it is Congress, not the executive branch, that the U.S. Constitution vests with authority over international trade policy and regulation.<sup>8</sup> And as Chairman of the Senate Finance Committee Ron Wyden (D-WA) has noted, **“USTR’s unilateral decision to abandon any leverage against China’s digital expansionism, and to oppose policies championed by allies like Australia, Japan, the U.K. and Korea, directly contradicts its mission as delegated by Congress.”**<sup>9</sup> The USTR is walking away from these important policies at a critical time, and the President should direct the agency to reverse course. If USTR does not intend to pursue its **stated goal to “[d]efend U.S. interests in digital trade and digitally delivered services”** that the agency outlined in its FY2025 budget request,<sup>10</sup> then Congress could consider whether funding and its delegation of responsibility to USTR to represent the U.S. on digital economy matters is appropriate.

#### **IV. USTR’s Justifications for Its Approach to Digital Trade Barriers in the 2024 NTE Report Are Conceptually Flawed**

USTR has sought to justify its retreat from advancing U.S. commercial interests and values in promoting digital free trade principles, including in the 2024 NTE Report, by claiming that **the United States needs “policy space” for new laws on privacy and other issues** before it can negotiate on digital trade. But trade rules have never prevented Congress from passing new laws, nor have they prevented agencies and departments from promulgating regulations to fulfill legitimate policy objectives, including those that could be needed in the future to address emerging technologies **like artificial intelligence (“AI”).** Trade rules have also not hamstrung states in passing laws on these matters; for example, seventeen states have enacted privacy laws to date. U.S. trade agreements, including the USMCA, include exceptions for parties to advance such objectives, such as health, safety, environment, and national security priorities, to allow for otherwise conflicting regulatory, supervisory, and judicial measures, including in the digital trade context.<sup>11</sup> Yet, USTR has not explained why

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<sup>7</sup> See 19 U.S.C. 4201(b)(6).

<sup>8</sup> United States Constitution, Article 1, Section 8, Clause 3 (“The Congress shall have the power...[t]o regulate commerce with foreign nations[.]”).

<sup>9</sup> Press Release, “Wyden Statement on Ambassador Tai’s Decision to Abandon Digital Trade Leadership to China at WTO”, United States Senate Committee on Finance (Oct. 25, 2023). The full statement is available at: <https://www.finance.senate.gov/chairmans-news/wyden-statement-on-ambassador-tais-decision-to-abandon-digital-trade-leadership-to-china-at-wto>.

<sup>10</sup> See Office of the United States Trade Representative, “Fiscal Year 2025 Budget” (March 2024) at p. 23, 59.

<sup>11</sup> See e.g., United States-Mexico-Canada Agreement, arts. 17.18(1) (“The Parties recognize that immediate, direct, complete, and ongoing access by a Party’s financial regulatory authorities to information of covered persons . . . is critical to financial regulation and supervision”); 19.11(2) (“The Article does not prevent a Party from

(Continued...)

these provisions are insufficient to provide the policy space it currently seeks. Furthermore, U.S. policy in any number of areas – e.g., environmental and labor policy – is constantly in flux, but that has not stopped this USTR or other Administration officials from engaging to try to shape global policy on related issues.

As such, the core issue with the 2024 NTE Report is that the measures USTR has excluded are problematic in a number of ways, such as through their discriminatory nature, possible infringement of intellectual property rights, and potential violation of trade agreements. **USTR can support our trading partners’ right to regulate and still stand up for the interests of U.S. businesses and workers by pushing foreign governments to implement widely-recognized good regulatory practices in crafting such regulations.** This includes ensuring that regulations are narrowly-tailored to address their intended objectives, do not discriminate against U.S. goods and services, provide adequate time for compliance, are based on the best available evidence, and are developed through a transparent process in which comments are taken into account.

## V. Policy Considerations for U.S. Engagement

As the United States is the global digital economy leader, the stakes involved in standing up against digital trade barriers around the world are enormous. In 2021, the U.S. digital economy accounted for \$3.7 trillion of gross output, \$2.41 trillion of value added (equating to 10.3 percent of U.S. gross domestic product or GDP), \$1.24 trillion of compensation, and 8 million jobs.<sup>12</sup> In 2022, digital trade played an even greater part in U.S. economic growth, with the U.S. government estimating that the digital economy brought in \$2.6 trillion in value added, again representing roughly 10 percent of U.S. GDP, and supported 8.9 million jobs that generated \$1.3 trillion in annual compensation.<sup>13</sup>

Digital products and services are also a key component of U.S. exports. In 2022, exports of digitally-enabled services brought in \$626 billion to the United States, making up 70 percent of all U.S. services exports by value, with a \$256 billion trade surplus for the sector.<sup>14</sup> This represented an increase of 5.5 percent from the \$599 billion in exports of the same services in 2021.<sup>15</sup> Digitally-enabled services exports

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adopting or maintaining a measure inconsistent with paragraph 1 that is necessary to achieve a legitimate public policy objective, provided that the measure: (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and (b) does not impose restrictions on **transfers of information greater than are necessary to achieve the objective.**"); and 19.16(2) ("This Article does not preclude a regulatory body or judicial authority of a Party from requiring a person of another Party to preserve and make available the source code of software, or an algorithm expressed in that source code, to the regulatory body for a specific investigation, inspection, examination, enforcement action, or judicial proceeding, subject to **safeguards against unauthorized disclosure.**")

<sup>12</sup> See Tina Highfill and Christopher Surfield, "New and Revised Statistics of the U.S. Digital Economy, 2005–2021", U.S. Department of Commerce Bureau of Economic Analysis (November 2022). Full report available at: <https://www.bea.gov/system/files/2022-11/new-and-revised-statistics-of-the-us-digital-economy-2005-2021.pdf>.

<sup>13</sup> See "How Big is the Digital Economy?", U.S. Department of Commerce Bureau of Economic Analysis. Available at: <https://www.bea.gov/sites/default/files/2023-12/digital-economy-infographic-2022.pdf>.

<sup>14</sup> See U.S. Department of Commerce Bureau of Economic Analysis, U.S. Trade in Potentially-ICT Services. Available at:

<https://apps.bea.gov/iTable/?reqid=62&step=9&isuri=1&product=4#eyJhcHBpZCI6NjlsInN0ZXZlIjpbMSw5LDZdLkJKYXRhIjpbWyJwcm9kdWN0IiwNCjdlFsiVGFibGVMaXN0IiwMzU5I11dfQ==>.

<sup>15</sup> See Amir Nasr, "New Data Showcase the Strength of Digital Services Exports to Overall U.S. Economy", Disruptive Competition Project (July 26, 2023). Available at: <https://www.project-disco.org/uncategorized/strength-of-digital-services-exports-to-u-s-economy/>.

made up 2.5 percent of U.S. GDP in 2022<sup>16</sup> and, in the last five years, digitally-enabled services exports increased by 27.8 percent from the \$489.7 billion generated in 2017.<sup>17</sup> Furthermore, digital trade exports, coming from every U.S. state, supported more than 3 million direct and indirect U.S. jobs in 2022.<sup>18</sup>

It is also important to recognize that a diverse range of sectors not traditionally seen as actors in the digital economy are producing and benefiting from digital goods and services, including transportation and warehousing, arts and entertainment, and agriculture and mining. Moreover, the digital economy is expanding nearly three times as rapidly as the economy writ large. And digital economy jobs are proliferating across the U.S. Jobs tied to the digital economy can be found in nearly every sector, and their number has grown at a faster rate than that of overall job growth over the last decade. These jobs pay well, and compensation growth for digital jobs exceeds that for all jobs generally.<sup>19</sup> In short, digitally-enabled products and services are not confined to a **handful of “big” companies, let alone the “tech” sector.**

Digital market access barriers also harm the ability of many U.S. service providers to reach consumers abroad. Any services supplier operating in a foreign market relies on the ability to transfer data to and from that jurisdiction, and would benefit from the free and open flow of data powered by any digital trade agreements. The data localization requirements and other restrictions on data flows that have proliferated globally harm U.S. strength in the cloud services industry and often give preferential treatment to local players or those from rival markets.

The effects of digital trade barriers also extend into production of physical goods. Companies that produce physical goods would also be negatively impacted by digital trade barriers. For instance, automotive and pharmaceutical companies depend on data flows both to operate abroad as well as to conduct testing to ensure safety standards are met. So not only is incorporation of digital technologies into product offerings a key driver of competitiveness, but it is also crucial to supporting objectives such as consumer safety.

A strong digital trade landscape that supports inclusive trade is also vital to the success of small businesses in the international marketplace. Small businesses rely on digital tools from U.S. companies for all aspects of their operations. U.S. micro, small, and medium-sized enterprises (“SMEs”) in every sector, from medical professionals and services providers to farmers and manufacturers, rely on data flows and digital services to reach customers, conduct research and development, maintain supply chains, and otherwise facilitate daily operations. Digital trade enables companies to reach customers in the global marketplace, and it provides access to technologies that facilitate trade and enhance productivity, such as the digitalization of business operations and customs procedures, that benefit all exporters.

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See “The Digital Trade Revolution: How U.S. Workers and Companies Benefit from Digital Trade”, U.S. Chamber of Commerce (2024). Full report available at: [https://www.uschamber.com/assets/documents/USCC\\_Digital-Trade-Report.pdf](https://www.uschamber.com/assets/documents/USCC_Digital-Trade-Report.pdf).

<sup>19</sup> See “The Digital Trade Revolution: How U.S. Workers and Companies Benefit from Digital Trade”, U.S. Chamber of Commerce (2024). Full report available at: [https://www.uschamber.com/assets/documents/USCC\\_Digital-Trade-Report.pdf](https://www.uschamber.com/assets/documents/USCC_Digital-Trade-Report.pdf).

Moreover, U.S. SMEs can benefit greatly from **USTR's** strong enforcement of digital trade rules. Small firms have fewer products, service lines, and resources than large ones, so it is more difficult for them to carry increased costs of data localization, forced tech transfers, and arbitrary application of regulations. Consequently, digital trade restrictions that undermine market access commitments disproportionately hurt SMEs (and their workers) that export digital services or connected goods. According to one estimate, cross-border data flows lead to an 82 percent decrease in export costs for SMEs.<sup>20</sup> And a U.S. Chamber of Commerce study estimated that if U.S. small businesses had better access to global markets, their sales would increase by 14 percent and U.S. economic output would rise by \$81 billion, creating 900,000 U.S. jobs.<sup>21</sup>

Global competition in the digital sector is real. Foreign competitors also see opportunities to increase exports of digitally-enabled services and other technology products. Global digital trade barriers undermine the competitiveness of U.S. firms in many sectors against competitors from the EU, India, and China. Export opportunities for digitally-enabled services are expanding rapidly, and the U.S. is well positioned to build on its formidable advantages in these areas. However, these opportunities are endangered by the spread of digital protectionism and the accumulation of discriminatory digital rules that often target American firms. In particular, digital trade barriers such as forced technology transfers and disclosure of source code and/or algorithms threaten to undermine U.S. innovation and potentially infringe on the intellectual property rights of U.S. firms. **USTR's** failure to address these challenges or recognize the consequences to U.S. companies and workers risks hundreds of billions of dollars to the U.S. economy, impacting businesses both large and small.

In addition to the significant economic harms to U.S. interests that would result from a USTR retreat from engaging on digital market access barriers, the U.S. has a critical geopolitical interest in engaging with other nations to shape global rules governing the digital economy, which are still in their nascency. As this is a pivotal moment for the U.S. to demonstrate leadership and work to shape the emerging rules and norms that will govern the global digital economy for years to come, U.S. engagement is **not only crucial to America's future economic prosperity, but also in** ensuring that U.S. values are embedded in the global rules of the digital economy. If the U.S. retreats from its traditional leadership role, U.S. adversaries who do not share our values will be the ultimate beneficiaries. This could lead to the entrenchment of rules and norms that facilitate state surveillance and censorship and raise other human rights concerns. It is both an economic and moral imperative that the U.S. show leadership in working with allies to cultivate global rules for the digital economy that are consistent with American values.

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<sup>20</sup> See Amir Nasr, "New Data Showcase the Strength of Digital Services Exports to Overall U.S. Economy", Disruptive Competition Project (July 26, 2023). Available at: <https://www.project-disco.org/uncategorized/strength-of-digital-services-exports-to-u-s-economy/>.

<sup>21</sup> See "Growing Small Business Exports: How Technology Strengthens American Trade" U.S. Chamber of Commerce Technology Engagement Center, <https://americaninnovators.com/small-business-exports/>.

# EXHIBIT 103

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 Senate<sup>1</sup>, 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

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<sup>1</sup><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.”<sup>2</sup>

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”<sup>3</sup>;
- Small and medium-sized businesses noted that USTR’s decision “weakens the global competitiveness of U.S. startups”<sup>4</sup>; 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.”<sup>5</sup>

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

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

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

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

<sup>5</sup> [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.<sup>6</sup>

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,

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<sup>6</sup> 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 Chemistry Council  
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

# EXHIBIT 104

November 7, 2023

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:

On behalf of the undersigned associations, we wish to express our profound concern and disappointment that the Office of the United States Trade Representative (USTR) has withdrawn its support for proposed World Trade Organization (WTO) disciplines that protect cross-border data flows; prohibit data localization mandates; preclude discrimination against American made digital products; and safeguard sensitive source code from forced disclosure mandates that enable malicious cyberactivity.

These are core disciplines that 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. They also form a breakwall against the rising tide of global digital protectionism, particularly the egregious digital measures imposed by authoritarian regimes.

U.S. leadership in the digital economy has for decades:

- Facilitated more effective access to international markets for American farmers, ranchers, service providers, and manufacturers, who rely on the global reach of a range of U.S. services and technology providers to succeed;
- Acted as a critical tool for startups and small and medium-sized businesses to launch, grow, scale up, and access new markets;
- Enhanced collective efforts to include women and underserved communities in the global marketplace;
- Advanced the export of digital services, which as of 2022, accounted for more than 67% of all U.S. services exports and 20% of all U.S. exports; and
- Supported efforts to simplify customs procedures and make education and health care more available to underserved communities.

Indeed, strong digital trade rules have been U.S. law for several years after they won overwhelming support in Congress upon passage of the U.S.-Mexico-Canada Agreement (USMCA), which includes these high-standard rules.

USTR has historically been a strong, consistent voice demanding the highest standards and accountability from our trading partners. This was true as recently as May 2022 when the Administration launched the Indo-Pacific Economic Framework (IPEF) negotiations. At the time, the White House made clear that it would “pursue high-standard rules of the road in the digital economy, including standards on cross-border data flows and data localization.”

USTR’s October 25, 2023 announcement is a complete reversal. It signals to U.S. trading partners worldwide that the Administration will not confront measures that discriminate against American companies and their workers. It will further legitimize digital protectionism across the globe and advance the interests of our adversaries, harming American companies of all sizes and across sectors.

When trading partners restrict cross-border digital access to American-made books, films, music, software, machinery, aircraft, and vehicles, they hurt American workers. When they restrict cross-border access to knowledge and information, they undermine human rights, freedom of expression, scientific progress, and the ability to solve shared health, climate, and economic challenges.

On behalf of our collective memberships, the undersigned organizations urge the Administration to reverse this harmful decision. We further implore you take steps that would return the U.S. to its traditional role as the global leader in writing rules for the rules-based trading system that benefit American workers and business, align with American priorities and values, and will empower the government to push back on the regulatory overreach of authoritarian regimes.

Sincerely,

ACT | The App Association  
AdvaMed  
American Apparel & Footwear Association  
American Chemistry Council  
American Council of Life Insurers  
American Property Casualty Insurance Association (APCIA)  
Association of American Publishers (AAP)  
Autos Drive America  
Biotechnology Innovation Organization (BIO)  
Business Roundtable

BSA | The Software Alliance  
Chamber of Progress  
Coalition of Service Industries (CSI)  
Computer & Communications Industry Association (CCIA)  
Consumer Technology Association (CTA)  
CTIA – The Wireless Association  
E-Merchants Trade Council  
Entertainment Software Association  
Enterprise Cloud Coalition  
Express Association of America (EAA)  
Global Business Alliance  
Independent Film & Television Alliance  
Information Technology Industry Council (ITI)  
International Intellectual Property Alliance  
Motion Picture Association  
National Association of Manufacturers  
National Foreign Trade Council (NFTC)  
National Retail Federation  
NetChoice  
PASS Coalition (Protect America's Small Sellers)  
Pharmaceutical Research and Manufacturers of America (PhRMA)  
Recording Industry Association of America  
Reinsurance Association of America  
Retail Industry Leaders Association  
Securities Industry & Financial Markets Association (SIFMA)  
Semiconductor Industry Association (SIA)  
Small Business and Entrepreneurship Council  
Software and Information Industry Association  
TechNet  
Technology Trade Regulation Alliance (TTRA)  
Telecommunications Industry Association (TIA)  
The Global Data Alliance  
The Global Innovation Forum  
U.S. Chamber of Commerce  
US 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

# EXHIBIT 105



# USTR Upends U.S. Negotiating Position on Cross-Border Data Flows

Photo: Robert Hradil/Getty Images

Critical Questions by **Meredith Broadbent**

Published December 12, 2023

On October 29, 2023, the Office of the U.S. Trade Representative (USTR) withdrew United States support for U.S. digital trade negotiating objectives in a meeting of the Joint Statement Initiative (JSI) on Electronic Commerce at the World Trade Organization (WTO). These long-standing objectives include achieving international disciplines that protect cross-border data flows, prohibit data localization mandates, and safeguard U.S.-owned source code from forced disclosure to foreign governments.

Set out in Trade Promotion Authority and negotiated most recently by the USTR in the United States-Japan Digital Trade Agreement, these objectives for digital trade were

approved by Congress by (385-41) in the House and by (89-10) in the Senate in the United States-Mexico-Canada Agreement in 2019. The USTR had once touted these agreements as “most comprehensive and high-standard trade agreements addressing digital trade barriers ever negotiated,” and Congress agrees. Now, basic pillars in U.S. trade policy are being undone.

**Q1: What are the fair-trade rules for e-commerce and digital trade under negotiation in the WTO?**

**A1:** From the standpoint of safeguarding U.S. economic interests in the future, the Joint Initiative on E-Commerce is arguably the most important plurilateral negotiating group for the United States at the WTO. Over 80 member states are participating in the talks, including the European Union, China, Brazil, the United Kingdom, and Canada. The negotiations are led by close U.S. allies and trading partners—Japan, Australia, and Singapore—and cover a wide variety of cutting-edge issues fundamental to the smooth functioning of the global digital economy. Language in the draft text, while heavily bracketed, with options for provisions addressing difficult issues, nevertheless reflects the impact of effective U.S. leadership exercised in concert with like-minded allies.

Countries in the JSI have been relatively productive, hashing out language to address less controversial issues, such as harmonized rules for e-signatures, e-contracts, open government data, consumer protection, and unsolicited commercial messages. Despite the slow churn of trade negotiations, bringing along a majority of members of the WTO in a direction compatible with the eventual establishment of new rules for the digital economy marks important progress.

Areas where the United States is historically at loggerheads with Europe, such as data privacy and the definition of personal information, remain outstanding in the JSI negotiation, as they are in other U.S.-EU negotiations. Nevertheless, given the breadth of the JSI WTO negotiations and the profound variations in members’ interests, the totality of progress represented by the JSI text represents a strong win for the United States that now looks to be in jeopardy. U.S. negotiating capital, built up over years of forthright intentions and coalition building with allies in the WTO, has been diminished.

**Q2: Where does the WTO stand in the fight to allow duties on exports sold over the internet?**

**A2:** A big-ticket item, with formidable implications for U.S. exporters of digital products and services, is the question of extending the moratorium on duties on electronic transmissions—an issue that will be front and center (in standalone form) at the 13th ministerial being held February 24, 2024, in Abu Dhabi. The majority of JSI participants, including the United States, have avored making the current moratorium permanent. Countries more traditionally opposed to rules for open markets such as South Africa, India, and Indonesia, resist extending the moratorium.

**Q3: How have different stakeholders responded to the USTR's decision to pull back?**

**A3:** The progressive wing of the Democratic party backs the move. Senator Elizabeth Warren (D-MA), a Senate Finance Committee member, praised the USTR's decision: "Big Tech lobbyists are trying to use trade deals to undermine the Biden administration's efforts to promote competition, and it's welcome news that [USTR] Ambassador Tai is rejecting that effort at the WTO. . . . We need to make clear that digital rules favoring Big Tech monopolies are a non-starter for the U.S. in any trade agreement, including IPEF." Progressives have contended that United States' technology champions are using U.S. trade agreements to bend domestic and international digital commerce rules in their favor. Progressives will need to say more about what they mean here.

Other members of Congress from both sides of the aisle have expressed opposition. Senator Ron Wyden (D-OR), Chairman of the Senate Finance Committee, said that the USTR's decision contradicted the agency's mandate from Congress and amounted to a "win for China" as it left a negotiating power vacuum that the People's Republic of China can now fill. Senate Finance Committee Republicans, led by ranking member Mike Crapo (R-ID), stated the USTR "not only failed to consult with Congress before reversing its policy on free data flows, but misled it." House Ways and Means chairman Jason Smith (R-MO) agreed, adding that "there is absolutely nothing in the Biden Administration's decision that will benefit American workers." A National

Security Council press gaggle also seemed to reveal interagency disagreement on the USTR's decision.

Business representatives have been harshly critical of the Biden administration's decision. The U.S. Chamber of Commerce argued that pulling the United States' support for data flows will harm both U.S. workers and national competitiveness by unduly burdening technology companies. The chamber emphasized that the digital trade revolution has benefited U.S. businesses "of all sizes and sectors," and that current digital trade rules stand against a growing trend of worldwide digital protectionism and have inspired landmark U.S. trade deals such as the USMCA and the U.S.-Japan Digital Trade Agreement. Former trade negotiators now working in the technology industry have outlined the potential diplomatic fallout from the Biden administration's decision, as the U.S. government "now finds itself at odds with allies including the European Union, Japan, the Republic of Korea, Canada, Mexico, Australia and Singapore."

#### **Q4: How did USTR reach its decision on the pullback?**

**A4:** When USTR made the decision to upend the WTO JSI negotiations, there were no indications that any other agencies with legal authority over trade policy (except perhaps the Justice Department) were consulted. The USTR told Capitol Hill leaders that it was removing its support for the WTO digital trade proposals in order to "provide enough policy space" for debate in the United States. "The United States will withdraw our proposal on non-discriminatory treatment of digital products," a USTR official said. "It is essential that our approach to digital trade policy is grounded in how it affects our people, both as workers and consumers. We also must ensure that our policy takes into account these regulatory objectives, balancing the right to regulate in the public interest and the need to address anticompetitive behavior in the digital economy." The fact that a complete turnaround in economically significant trade policy negotiating objectives was executed by a lower-level USTR official in Geneva is not standard procedure.

Curiously, three days later, on October 29, 2023, at the G7 Trade Ministers meeting in Osaka-Sakai, the United States agreed to strong language in support of free data flows: "We reiterate our commitment to the G7 Digital Trade Principles, our support for

open digital markets and our opposition to digital protectionism. . . . We recognize the significance of the WTO JSI on E-Commerce negotiations in international rule-making. We are committed to working towards substantial conclusion by the end of 2023. . . . We recognize that unjustified data localization measures have a negative impact on cross-border data flows, by increasing data management costs for businesses, particularly Micro, Small and Medium-Sized Enterprises (MSMEs) and heightening cybersecurity risks.” However, the administration may be turning away from other digital trade negotiations. In a letter to President Biden signed by Senate Finance Committee member Elizabeth Warren (D-MA), Senate Commerce Committee member Amy Klobuchar (D-MN) and others praise the administration for “suspending negotiations on aspects of the Indo-Pacific Economic Framework (IPEF) digital text, that can be used to frustrate privacy, [artificial intelligence], civil rights and liberties, anti-monopoly, gig worker and other digital safeguards that Congress and the administration seek.” To date the USTR has not made a formal statement with regard to digital provisions in the IPEF, although there have been rumors in the press over the last several months that the Biden administration pause digital trade negotiations in IPEF.

Speaking at the Aspen Security Forum on December 7, Ambassador Tai discussed the reasoning behind her position in the WTO. Her decision to withdraw support for key digital trade provisions, she said, was taken in order not to get ahead of the debate regarding more regulation for technology companies and that innovations in artificial intelligence had been a wake-up call for her.

## **Conclusion**

The United States is a world leader in digital trade and e-commerce, not only because of digital champions such as Microsoft, Apple, Google, and Amazon. Many MSMEs vault to success by connecting directly with enthusiastic customers in foreign markets. The USTR’s decision to effectively side with foreign governments, companies and NGO groups seeking to encumber the digital lane to economic growth with regulatory “policy space,” is a setback for U.S. economic interests.

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# EXHIBIT 106

## **China Gains as U.S. Abandons Digital Policy Negotiations**

Nigel Cory, Samm Sacks

Wednesday, November 15, 2023, 4:28 PM

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The United States Trade Representative just handed a victory to China on digital sovereignty.

The future of U.S. global digital policy hangs in the balance following a shock decision by the office of the United States Trade Representative (USTR) that the United States no longer supports provisions that protect cross-border data flows, prohibit forced data localization, safeguard source code, and prohibit countries from discriminating against digital products in the World Trade Organization (WTO). The USTR's previous position allows data to flow freely, with restrictions as the exception, in contrast to China's position that seeks stricter control and oversight based on local law and regulation before allowing data to flow. While the difference between the two positions may have seemed rather technical, it served as the foundation for U.S. government support for an open internet and digital economy. That foundation is now gone.

The announcement took many members of Congress, other parts of the Biden administration, and many of the United States' closest trading and digital policy partners—like Australia, Japan, Chile, the United Kingdom, and the European Union—by surprise. In an indication that the USTR's decision may not have been coordinated in an interagency process, National Security Council spokesperson John Kirby clarified that the United States maintains its long-standing support for trusted cross-border data flows, suggesting that “robust interagency discussion” among “multiple perspectives” will continue. Consistent with the USTR retreat, media reports suggest that digital trade won't be among the outcomes announced at this week's Indo-Pacific Economic Framework (IPEF) talks in San Francisco.

The announcement has sparked a fierce bipartisan response. Senate Finance Committee Chairman Ron Wyden (D-Ore.) blasted the move, stating, “In addition to abandoning our democratic allies in these negotiations, USTR is leaving a vacuum that China—an active participant in these negotiations—will be more than pleased to fill.” Eleven Democrats in the House called on President Biden to “[d]efend American values” at the WTO “against ‘digital sovereignty’ campaigns by China.” Senate Finance Ranking Member Mike Crapo (R-Idaho) and Republican colleagues condemned the policy and said the USTR failed to consult Congress: “We have warned for years that either the United States would write the rules for digital trade or China would. Now, the Biden Administration has decided to give China the pen.”

U.S. lawmakers often invoke China to tilt domestic policy debates toward their desired outcomes. Countering China is one of the few areas of bipartisan support in Congress, so framing issues in the context of U.S.-China competition has become a popular way to draw attention to, and get potential action on, an issue in Washington. Often, the connections to China are tenuous or misplaced. But in this case, it's legitimate for Congress to use the China card as China is a clear beneficiary of the USTR's decision. The USTR's retreat undermines the United States' long-standing support for a free and open global internet, which involves



many U.S. government agencies and initiatives across trade, national security, cybersecurity, privacy, law enforcement, human rights, diplomacy, and many others.

The rationale articulated by the USTR—that the United States requires more space to address domestic policy issues—reveals a similarity with Beijing’s own vision for cyber sovereignty. In effect, the USTR’s decision supports China’s restrictive approach to digital governance. USTR spokesman Sam Michel said the United States “removed its support for proposals that might prejudice or hinder ... domestic policy considerations.” A Chinese technology expert noted in a WeChat post that the USTR decision reflects “the need to be able to address legitimate public policy objectives in the digital trade area” and that “the so-called ‘legitimate public policy objectives’ are ... very important words in international trade agreements such as CPTPP .... To put it bluntly, it refers to the extent to which congressional legislation and government supervision can break through the core rules of cross-border data flow in trade agreements.”

The USTR’s decision helps Beijing advocate for the broad, self-judging exception for national security in trade agreements to justify rules that require data to be stored on local servers. By contrast, Australia, Japan, Singapore, the United Kingdom, and many other U.S. trading partners are negotiating rules so that data flows are the norm and any restrictions to it the exception. For example, members of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (like Australia, Japan, and Singapore) advocate for language at the WTO that protects data flows and ensures that any exceptions to this rule are necessary, not arbitrary, and proportionate. These U.S. allies want WTO negotiations to narrow the scope for domestic “policy space” exceptions to legitimate privacy, cybersecurity, and other policies. While policy space may sound appealing in principle, in practice countries like China have misused this concept in existing WTO agreements, such as on services trade, to enact restrictions that make its trade commitments—whether on data flows, digital goods and services, or other issues—essentially meaningless.

Paradoxically, at the same moment the United States is walking back its stance on free data flows, Beijing has taken significant steps to ease controls over cross-border data transfers. Driven by a slowing economy and declining foreign investment, China’s cyber regulator issued a landmark new draft regulation in September that exempts many companies from a mandatory security assessment required to send data out of the country. Beijing is revising long-standing restrictions on data flows, in part, to make the business environment more favorable to businesses, while the United States is sending signals that it intends to do the opposite. That said, implementation of China’s policy shift remains unclear.

And even if it were to go into place as written, Beijing could still deem a company's data as linked to national security and, therefore, subject to localization requirements at any moment—consistent with its cyber sovereignty position.

It's important to emphasize that digital trade rules that foster data flows and nondiscrimination don't stop fair and legitimate laws and regulations addressing digital issues. The U.S.-Mexico-Canada Agreement (USMCA) didn't stop California's Consumer Privacy Act. And it wouldn't stop the proposed American Data Privacy and Protection Act, or any hypothetical new U.S. competition law, as long as these laws treat all firms the same. Likewise, Australia, New Zealand, and Singapore's many digital trade agreements and partnerships haven't stopped them from updating privacy, cybersecurity, and digital content laws. More specifically, the European Union-United Kingdom Trade and Cooperation Agreement's source code provisions did not stop the EU from enacting related provisions in its AI Act.

To the extent the U.S. retreats from its position of defending free data flows, data localization measures are likely to accelerate around the world, with economic and human rights consequences.

Without U.S. support for trade commitments against data localization, U.S. policymakers and companies will have a harder time pushing back on localization requirements in countries where U.S. and Chinese firms are in fierce competition for market share. Data localization is a central feature of this competition, as policymakers in many countries use it to unfairly advantage local firms and data centers and disadvantage foreign firms that otherwise rely on centralized information technology systems to enter markets around the world.

For the past few years, some countries had begun to shift away from support for data localization, in part due to trade pressure from the U.S. and its allies. For example, both India and Indonesia recently enacted comprehensive data privacy bills without data localization requirements. However, data localization remains part of the debate in both countries and could well gain greater support now that the USTR's position has changed. An Indian think tank, the Global Trade Research Initiative, notes that the USTR's decision will help ensure that future digital trade agreements provide "policy space" for data sovereignty, stating, "given the US' dominant role in the global digital landscape," this decision "is poised to spark a worldwide reassessment of national e-commerce policies." India's concerns about data sovereignty led it to not join the IPEF's trade pillar and to avoid the WTO e-commerce negotiations. The absence of U.S. advocacy on data flows will inevitably have implications for digital trade policy in other countries in the future.

While U.S. policymakers and firms have historically advocated against data localization, Chinese firms like AliCloud have supported data localization. These firms gain a competitive advantage from data localization, as they are willing to build local data centers to gain trust, and submit to government requests for data

and censorship. U.S. firms, by contrast, are more likely to oppose data localization on legal and human rights grounds as they assess each request for data on its merits. (For example, who in government is making the request and under what legal authority? And is fulfilling the request in line with international human rights principles?) U.S. firms also prefer to use regional instead of local data centers for efficiency to reduce costs and improve performance. Regional data centers help companies optimize for the expense of maintaining and building additional data centers while also having data near customers.

Data localization can enable political oppression in some countries. Physical access to data centers makes it easier for security authorities to force firms located in country—whether foreign or domestic—to comply with illegitimate government requests for access to data and content. Sometimes this occurs when local authorities intimidate or threaten local staff. Localization is the cudgel governments use to enforce compliance—either agree to demands, get out, or have your services blocked. Beyond China and Russia, data localization is central to Vietnam's and Pakistan's evolving online censorship and surveillance regimes. For the past decade, U.S. firms could rely on the U.S. government to help push back against localization due to economic and human rights concerns. But no longer.

The USTR's decision also undermines U.S. ambitions for global leadership in artificial intelligence (AI). AI firms in the U.S. and in other countries depend on access to large, diverse international data sets. If U.S. firms cannot send data out of countries in which they operate overseas, this significantly limits AI researchers and developers who use cross-border data to build applications that work across a variety of geographies, languages, cultures, and demographics. As the technology competition between Washington and Beijing continues to play out less in the U.S. and China and more in other countries around the world, encouraging trusted data flows among allies and partners is vital to advancing U.S. technological leadership. Although China's large domestic population creates a data advantage, the U.S. and its partners can offset this by using data flows from around the world, but this relies on continued access to global data sources.

The USTR wanted policy space on data, source code, and digital products so that potential laws and regulations could create provisions that target U.S. Big Tech. Ironically, large U.S. (and Chinese) social media, cloud, and other tech firms have the resources and expertise to adjust to digital restrictions. For example, these firms can set up expensive, albeit duplicative, data centers and operations in countries with restrictions on data transfers. By contrast, small companies in sectors from finance to health care will be hit the hardest because they can't afford the costs and complications associated with adjusting to barriers to data flows and digital trade. These firms will simply be shut out of foreign markets.

Restrictions on data flows also undermine a broad set of other U.S. government priorities: foreign development assistance, financial inclusion for the unbanked, and efforts to combat money laundering, among many others. Data localization laws weaken cybersecurity by making integrated cybersecurity management more challenging as well as by impeding the provision of cybersecurity services and cooperation on cyber defense—including information sharing.

The USTR’s decision has far-reaching implications for the future of governing the internet and data that will reverberate beyond the WTO and IPEF. The absence of U.S. advocacy for data flows sends the message to other countries that they can enact restrictions that will discriminate against U.S. firms—which undermines the U.S. economy and leadership in governing digital technologies. According to a fact sheet accompanying the June 2021 executive order on protecting Americans’ data, “[t]he Biden Administration is committed to promoting an open, interoperable, reliable and secure Internet; protecting human rights online and offline; and supporting a vibrant, global digital economy.” With the USTR abandoning a central pillar of these goals, Beijing and other countries seeking to advance a closed vision for the governance of the internet will have a great deal of freedom to lead the world down their preferred path.

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## **Nigel Cory**

[Read More](#)

Nigel Cory is an associate director covering trade policy at the Information Technology and Innovation Foundation. He focuses on cross-border data flows, data governance, intellectual property, and how they each relate to digital trade and the broader digital economy. Nigel is a member of the United Kingdom’s International Data Transfer Expert Council. Nigel previously worked for eight years in Australia’s Department of Foreign Affairs and Trade, which included positions working on G20 global economic and trade issues and the Doha Development Round.

## **Samm Sacks**

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# EXHIBIT 107

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NOVEMBER 15, 2023

Image Credit

## CNAS Responds: APEC Summit

By: Emily Kilcrease, and Jacob Stokes

**T**oday, the Asia-Pacific Economic Cooperation (APEC) Summit commenced in San Francisco, California, kicking off with a four-hour meeting between U.S. President Joe Biden and General Secretary Xi Jinping. CNAS experts Emily Kilcrease and Jacob Stokes weigh in on the implications of the summit and offer insights into the anticipated meeting.

*All quotes may be used with attribution. To arrange an interview, email Alexa Whaley at [awhaley@cnas.org](mailto:awhaley@cnas.org).*

**Emily Kilcrease, Senior Fellow and Director, Energy, Economics, and Security**

**Program:**

Is U.S. trade policy hitting rock bottom? With the failure to reach agreement on the Indo-Pacific Economic Framework (IPEF) in time to announce outcomes at this week's APEC Summit, it appears so. The IPEF disappointment comes on the heels of the United States needlessly gutting its own position on key digital trade provisions at the World Trade Organization. The administration has been clear that it wants to make a decisive break with what it views as the broken trade policies of the past, yet recent events show there is no persuasive vision for what comes next. And time is running out to do so.

The United States has touted IPEF as its signature initiative to transform U.S. trade policy and deepen economic integration with the massively important Indo-Pacific region, which accounts for 40 percent of global trade. Yet, IPEF was always a gamble. It was designed to be a looser form of coordination, and certain areas of U.S. commitments (such as market access) that previously were used to induce other countries to sign up to hard commitments were off the table. With this week's bust, it is becoming increasingly clear that the United States will not be able to convince negotiating partners to make meaningful commitments in U.S. priority areas, such as labor and environment, without offering something meaningful in return. Outcomes like the agreement to enhance coordination on supply chain resiliency are solid wins, but too small to overcome this fundamental flaw in the IPEF strategy. This challenge will only get harder as the United States approaches the presidential elections, as negotiating partners will become more hesitant to make hard concessions in advance of a possible political transition.

The administration is not wrong in its assessment that U.S. trade policy needs a revamp. For too long, the United States did a poor job in accounting for the losses that can come from trade. Recent events, such as the pandemic and the increasing geopolitical challenges presented by China, rightly demand a rethink of whether U.S. trade policy—and the current structure of the global trading system—is fit for

purpose. But there is a danger of letting the pendulum swing too far to the other side and retreating within our own economic borders. Predictable and open markets, paired with guardrails to allow the United States to regulate in its national interest, have always been and will always be a competitive advantage for the United States. IPEF tried a new way to achieve this, but in the aftermath of its likely failure, the United States needs to think hard about what is next and how it can incentivize partners to join in its (to-be-defined) vision of a new global economic order. Trade rules need a rewrite and the United States should be the lead author, but it cannot dictate its terms to the rest of the world. Trade discussions are always a give and take based on each nation's political priorities, and the United States needs to reconsider what it can put back on the table to achieve the bigger strategic goal of resetting the global economic order.

**Jacob Stokes, Senior Fellow, Indo-Pacific Security Program:**

The first meeting in a year between President Joe Biden and General Secretary Xi Jinping provides an opportunity for the world's two most powerful countries to manage their deepening geopolitical competition. Biden comes into the meeting with a strong hand, having spent years revitalizing Indo-Pacific alliances and partnerships.

This in-person interaction will allow Biden to send clear signals of both deterrence and reassurance to Xi across a range of issues, from Taiwan to semiconductor controls. Conveying those messages is particularly important given upcoming presidential elections in Taiwan in January and the United States next November. Both are likely to spike U.S.-China tensions. Talking face-to-face also matters given Xi's personalization of power at home, which has likely left him operating in an information bubble that distorts his perceptions of world events.

No matter what outcomes are listed in the readout, it will not be immediately clear whether the meeting produces sustainable progress. Beijing's actions over the coming weeks and months will ultimately prove the value of this engagement one way



# EXHIBIT 108



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# USTR's Disastrous 180 on Digital Trade



**Christopher Padilla**

Vice President, Government and Regulatory Affairs at IBM

5 articles

✓ Following

November 8, 2023

Open Immersive Reader

On October 26, the Office of the U.S. Trade Representative (USTR) made an announcement that sent shockwaves through the American business community and halls of Congress. In one fell swoop, USTR unilaterally jettisoned over a decade of bipartisan consensus on digital trade and abandoned American leadership on a matter essential to our nation's economic prosperity.

The proximate issue is U.S. participation in World Trade Organization negotiations for an e-commerce agreement. USTR announced that it was ending support for proposals related to cross-border data flows, data localization, and source code protection, critical provisions of these negotiations. The agency justified the decision by saying the U.S. needs "policy space" for potential regulatory actions against technology companies. This is a euphemism long used by the most recalcitrant trade ministries to excuse blatant protectionism; now, USTR has

joined them. Influenced by progressive groups, USTR contends that trade rules on data flows and source code go too far to constrain U.S. domestic regulatory oversight.

As President Biden might say, this is malarkey. The United States carefully developed these rules over more than ten years to ensure they protect the government's ability to regulate the digital economy to address privacy, equity, competition, and other policy concerns. *Nothing* in these rules, which are already incorporated in US trade agreements with Canada, Mexico, and Japan, place any limits on legitimate actions by U.S. regulators or law enforcement bodies.

USTR contends that trade rules on data flows and source code go too far to constrain U.S. domestic regulatory oversight. As President Biden might say, this is malarkey.

USTR's decision is a stunning and unjustified reversal of longstanding U.S. policy. For decades, through Democratic and Republican administrations, America has been the standard-bearer for rules enabling cross-border data flows subject to appropriate safeguards, ensuring non-discrimination, and promoting America's digital leadership.

America stood for digital trade, not because of the "influence of big tech" – the slogan used by anti-trade campaigners to conjure up fear. Rather, trade policymakers (until now) understood that data flows are the lifeblood of *all* business, from autos, industrial machinery, agriculture, pharmaceuticals, medical devices, and aerospace manufacturing to services like audiovisual, energy, finance, insurance, IT, logistics, and telecommunications. Airplane engines transmit data across borders during flight to ensure safety and proper maintenance. Banks transmit data across borders to facilitate credit card transactions.

Logistics carriers need real-time international data flows to ensure the package you ordered arrives at the right place on time. And small- and medium-sized enterprises disproportionately rely on the Internet and digital commerce.

How will leading American businesses compete if forced to build or lease local data centers in foreign markets with data localization requirements? And how will Americans' data be protected when foreign countries arbitrarily demand that everything -- down to the last megabyte of a company's data -- be needlessly replicated on servers in every country that feels like it? USTR's short-sighted decision has failed to recognize a basic economic truth: In the 21st Century, digital trade *is* trade, because virtually all businesses are now digital businesses.

Stepping back from longstanding US positions on digital trade policy issues not only gives the green light to other governments to impose restrictions that discriminate against US businesses, it actually *encourages* them to do so. As Senate Finance Committee Chairman Ron Wyden warned, "USTR's decision to walk away from the negotiating table in Geneva is a win for China, plain and simple." He's right.

In the 21st Century, digital trade *is* trade, because virtually all businesses are now digital businesses.

The Administration's decision is especially confounding because it came just ahead of the release of its Executive Order on AI, an area where it is actively seeking an international leadership role. But how can AI work without cross-border data flows? If your company's AI chatbot cannot readily access information because some foreign bureaucrat has put an arbitrary wall around your business

data, it won't work as intended or might even feed you misinformation. The United States has stepped squarely on its AI message, abandoning its advocacy for trusted data flows at the moment it is most needed.

The collateral damage extends further. Many U.S. companies were early supporters of the launch of the Indo-Pacific Economic Framework Agreement (IPEF). They believed an IPEF agreement that included binding and enforceable digital trade rules, modeled on the US-Mexico-Canada Agreement, would advance U.S. competitiveness in this strategic and fast-growing region. But USTR's poorly judged decision to take digital trade off the table further reveals IPEF as the empty vessel many partner countries already believe it to be. America cannot build strategic economic partnerships in the Pacific with just smiles and handshakes; substance is needed, but USTR apparently isn't interested.

How can AI work without cross-border data flows? The U.S. has stepped squarely on its own AI message.

Few pay attention to the inner workings of the WTO's e-commerce agenda. But the impact of USTR's decision to abandon digital trade will be wide-ranging: it will harm a wide swath of American industries far beyond the tech sector, will hamstring American leadership on AI at a crucial moment, and will enfeeble America's economic diplomacy in the Indo-Pacific. It is a profoundly bad decision that should be reversed, and quickly.

# EXHIBIT 109

DIGITAL TRADE

# Katherine Tai's struggles over the USTR trade agenda



Deborah Elms

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Published 23 April 2024

**Katherine Tai, who got a free pass from Congress for most of the last three years, has been facing an escalating storm of criticism in recent months over her office's willy-nilly shifts in US data policy, unprecedented omissions in the USTR's annual trade report to Congress, and her private communications with antitrade groups.**

US Trade Representative Katherine Tai has had a rough few weeks in Washington. After three years of largely *pro forma* hearings and otherwise limited interaction between Congress and the agency, rising discontent with President Joe Biden's trade agenda erupted during a pair of legislative meetings. Tai was called to the carpet to account for a wide range of issues by members of both parties:

- USTR's turnaround from longstanding US policy supporting digital trade, which has jeopardized talks at the World Trade Organization (WTO) to advance digital trade governance;
- Disclosures under the Freedom of Information Act that showed USTR's voluminous communications with antitrade special interest groups;
- USTR's lack of interest in seeking more market access abroad for US trade;
- USTR's lack of progress in fleshing out its "worker-centered trade policy."

Rep. Carol Miller (R-WV) called Tai's trade agenda "feckless." An even more heated exchange took place with Rep. Beth Van Duyne (R-TX) as the lawmaker accused the White House of lacking a trade agenda and said she saw instead "...a laundry list of toothless proposals that do nothing and have not had the approval of Congress." Tai replied, "Congresswoman, I disagree with almost everything that you've just said, and I think it's actually it's a tremendous line of disrespect that you don't see the trade agenda that is so clearly before you."<sup>1</sup>

Tai's April 17 hearing in front of the Senate Finance Committee the following day had fewer fireworks, but the questioning from members on both sides of the aisle was still pointed. Members asked about trade policy enforcement, the administration's position on digital trade, and the lack of interest within USTR in pursuing market liberalization abroad.

Biden catapulted Tai into the role as US Trade Representative in March 2021. Tai was at the time Chief Trade Counsel and Trade Subcommittee Staff Director for the House Ways and Means Committee. She was mostly known for her ability to shepherd the revised North American Free Trade Agreement (NAFTA), which became the United States-Mexico-Canada Agreement, through a reluctant Congress. As a reflection of her support from the Hill at the time, Tai's nomination to serve as USTR sailed through unanimously.

Although Tai had previous experience at USTR, eventually serving as Chief Counsel for China Trade Enforcement, prior to her selection by Biden, she was not widely seen as a leading candidate for the role of USTR. She did not have strong personal

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Joseph Whitlock  
16 April 2024

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connections to the President, but her ability to get things done with Congress was seen as an important qualification.

Under her predecessor, Robert Lighthizer marginalized Congress' traditional purview over US commerce, running trade policy largely directly from the White House. Tai's arrival was therefore seen as an opportunity to reconnect with the legislative branch.

On taking up her post, Tai stressed the importance of Biden's newly emerging "worker-centered" trade policy. This new approach, she argued, was a repudiation of everything that had gone before, particularly the quest to negotiate and sign comprehensive free trade agreements (FTAs).

A new approach was needed, Tai said, because the benefits of FTAs had been overstated and the alleged damage by trade to worker interests required a radical shift in approach.<sup>2</sup> Given the relative upheaval in US trade policy during the previous administration, for the most part Congress and the business community were prepared to give Tai time to flesh out the details of worker-centered policies.

The most obvious attempt to build out the meaning of a new trade policy was the launch of the Indo-Pacific Economic Framework for Prosperity (IPEF). USTR ran the trade pillar of the framework, which included labor, environment, digital, and competition policies. The US Department of Commerce led and concluded the other three pillars, but the trade pillar was not closed in time for the Asia-Pacific Economic Cooperation summit hosted by the US in November 2023. Talks are supposedly

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ongoing, though no schedule for 2024 has been released.

Even so, Congress and the business community were largely willing to let USTR be. However, a policy decision taken by Tai in October 2023 sharply changed the calculus in Washington. USTR suddenly announced that month, with almost no warning and apparently no interagency process or meaningful consultation with affected businesses, that it would withdraw US support for key data-related provisions of the WTO's ongoing Joint Statement Initiative (JSI) talks on e-commerce, a key group at the multilateral body working to advance digital trade governance.

Tai's three-sentence statement in October read: "Many countries, including the United States, are examining their approaches to data and source code, and the impact of trade rules in these areas. In order to provide enough policy space for those debates to unfold, the United States has removed its support for proposals that might prejudice or hinder those domestic policy considerations. The JSI continues to be an important initiative and the United States intends to remain an active participant in those talks."<sup>3</sup>

In the wake of this bombshell, the US Chamber of Commerce decided to investigate USTR's decision-making. The Chamber filed a Freedom of Information Act (FOIA) request, forcing the disclosure in January 2024 of hundreds of pages of communications between USTR and a handful of activist groups widely viewed as antitrade, including Rethink Trade, Open Markets Institute, and Public Citizen.<sup>4</sup>

Members of Congress began to weigh in on the abrupt policy shift and FOIA revelations. In January, 50 members sent a letter to Tai, Federal Trade Commission Chair Lina Khan, and

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Assistant Attorney General for the Antitrust Division Jonathan Kanter, expressing concern over US digital trade policy.<sup>5</sup> Eighty-eight other members countered a month later by expressing support for Tai.<sup>6</sup>

But it was too late to stem the tide of congressional discontent. By 4 March 2024, the Committee on Oversight and Accountability wrote to Tai to ask for her explanation for the information obtained from the FOIA disclosures and written answers to a series of questions they raised over the released documents.<sup>7</sup>

Support for Tai was already eroding on the Hill before Tai's next debacle: the USTR's March release of the 2024 National Trade Estimate Report on Foreign Trade Barriers (NTE Report).<sup>8</sup> This document, required annually by Congress, typically runs to hundreds of pages and provides a comprehensive list of trade barriers identified for US trade partners by the American business community as well as through an interagency process of soliciting feedback.

The 2024 edition of NTE, however, was quickly identified as missing at least two key types of information compared to past publications. First, as the team at the Washington think tank Center for Strategic and International Studies (CSIS) quickly noted, while previous NTE reports consistently included foreign digital trade rules, especially data localization mandates and ex ante competition regulations, the 2024 edition either removed these points entirely or significantly restructured the language that highlighted such barriers.<sup>9</sup> Second, the NTE also reduced its opposition to import substitution policies.

While Tai claimed that her office was merely returning the NTE to its congressionally mandated roots, the response across Washington was harsh. Once again, members of Congress began exchanging letters with Tai and USTR on the content of NTE.<sup>10</sup> The business community was equally vocal in protesting Tai's NTE revisions.

USTR released a statement highlighting the work done across three years of promoting a worker-centered trade policy.<sup>11</sup> However, last week's hearings in the

House and Senate on the US trade agenda clearly indicated that the USTR's efforts to smooth over relations has not resolved rising discontent.

After more than three years in office, patience with Tai has worn thin. William Reinsch, Scholl Chair in International Business at CSIS, summed it up: "Our policy is best when it focuses on how to grow the benefits of trade. Instead, we seem to be spending time rearranging the deck chairs, hopefully not on the Titanic."<sup>12</sup>

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[1] [Tensions flare between Tai, GOP at Ways & Means trade hearing | InsideTrade.com](#)

[2] See an early Tai speech at an AFL-CIO event in June 2021, at <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2021/june/remarks-ambassador-katherine-tai-outlining-biden-harris-administrations-worker-centered-trade-policy>

[3] <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/october/ustr-statement-wto-e-commerce-negotiations>

[4] The requests were filed on 11 December 2023. Details can be found at:

<https://www.uschamber.com/international/trade-agreements/u-s-chamber-foia-requests-on-u-s-digital-trade-policy> Lori Wallach, a key figure in the FOIA document releases, was featured in an earlier Hinrich Foundation article, [Lori Wallach speaks up](#)

[5] <https://jeffduncan.house.gov/sites/evo-subsites/jeffduncan.house.gov/files/evo-media-document/duncan-joyce-letter-to-biden-admin-on-wto-digital-trade-principles.pdf>

[6] <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/february/icymi-88-house-members-applaud-administrations-approach-digital-trade-policy>

[7] <https://www.politico.com/f/?id=0000018e-0b89-d469-afbe-db8f16570000>

[8] <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/march/ustr-releases-2024-national-trade-estimate-report-foreign-trade-barriers>

[9] <https://www.csis.org/analysis/trade-winds-are-turning-insights-2024-national-trade-estimate>

[10] See, for example, 12 Republican complaints at <https://drive.google.com/file/d/1IDJrHtHz-JSB2qWw7UJrCNPryDOG0yAp/view>

[11] <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/april/fact-sheet-third-year-ambassador-katherine-tai-delivers-biden-harris-administrations-worker-centered> and [https://insidetrade.com/sites/insidetrade.com/files/documents/2024/apr/wto2024\\_0442a.pdf](https://insidetrade.com/sites/insidetrade.com/files/documents/2024/apr/wto2024_0442a.pdf)

[12] <https://www.csis.org/analysis/finding-trade-policy>

# EXHIBIT 110

TRADE AND TECHNOLOGY

# Maintaining robust digital trade monitoring and enforcement: Recommendations for the Biden administration



Joseph Whitlock

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Published 16 April 2024

The USTR's shift towards antitrade activism, neglect of public engagement, and prioritization of political messaging over evidence-based policymaking undermine US trade priorities, pointing to a larger failure of Katherine Tai's tenure. The Biden administration must realign the USTR's focus to advance US economic and geopolitical interests, fulfill the office's obligations, and uphold US democratic values.

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In many areas of US trade policy – from securing America's cross-border information access to protecting US export interests in digitally-enabled agriculture, manufacturing, and services – the Office of the United States Trade Representative (USTR) has retreated from its statutorily mandated trade monitoring and enforcement role. The most recent evidence of this trend is seen in the March 29, 2024 release of the [National Trade Estimate Report on Foreign Trade Barriers](#) (NTE).<sup>1</sup>

## NTE reporting process

The [2024 NTE Report](#) falls short of congressional mandates in [section 181 of the Trade Act of 1974](#) to "identify and analyze" significant foreign trade barriers to: (1) "United States exports of goods and services (including agricultural commodities and property protected by [IP rights])...; (2) foreign direct investment by United States persons...; and (3) [United States electronic commerce](#)."<sup>2</sup>

Section 181 of the Trade Act also requires USTR to "make an estimate of the [trade-distorting impact](#)" of these barriers and to [quantify the lost or foregone value](#) of "additional of [US] goods and services, foreign direct investment, and electronic commerce ... if each of such acts, policies, and practices of such country did not exist."

- Unfortunately, the 2024 NTE Report breaks with longstanding US trade monitoring and enforcement practice, omitting discussion of many non-tariff trade barriers – from data localization mandates to cross-border data restrictions to local content requirements – that the statute requires USTR to identify, analyze, and quantify. For example, between 2023 and 2024, USTR reduced the country analyses of data localization mandates by over 70% (from 24 countries in 2023 to seven in 2024). USTR's decreasing focus on data localization mandates and similar restrictions is all the more difficult to understand at a time when such restrictions are rapidly increasing.<sup>3</sup>

Inattention under Section 181 of the Trade Act to these and other digital trade barriers undermines efforts: (1) to secure future US cross-border access to data; (2) to preclude discrimination against the digital goods and services that Americans produce; and (3) to protect Americans from malicious cyberactivity and IP theft

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associated with adversary governmental mandates to transfer sensitive source code.

## USTR's rationalization of policy reversals does not withstand scrutiny

Katherine Tai, the Biden Administration cabinet member who leads USTR, has defended this surprising retreat from trade monitoring and enforcement with a range of arguments against trade liberalization and economic efficiency. For example, in respect of USTR's tacit support for many foreign data localization mandates, USTR has implied that such mandates promote competition and help workers. Both suggestions are unsupported by evidence, as discussed below.

The USTR's suggestion that data localization mandates promote competition is misplaced. First, there is no conflict between antitrust and legal norms that facilitate cross-border data transfers. Nothing in these norms impedes new antitrust legislation or enforcement. On the contrary, USTR's surprise policy reversals have greatly distracted from competition concerns and US legislative proposals relating to gatekeeper platforms and the app economy. Second, data localization mandates have the most severe impacts on smaller firms, which do not wield the resources to develop in-country data centers that larger firms do. Third, allowing trading partners to arbitrarily mandate data localization and restrict data transfers will raise new barriers to entry and increase the power of incumbent firms and "foreign monopolies and firms that are state-owned [or] state sponsored"—contrary

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to the President's [Executive Order on Competition](#).<sup>4</sup> Finally, allowing foreign governments to impose undue restrictions on US cross-border access to data from abroad will only amplify the market power of those that have developed massive data sets. USTR's tacit support for data localization mandates will harm—not help—competition.

Likewise, the USTR is wrong to suggest that data localization benefits workers. In fact, the digital trade barriers that the USTR has chosen to disregard in the 2024 NTE Report are particularly harmful to the 32.5 million US small businesses that account for 99.9% of all US businesses, 48% of all US workers (61.2 million workers), 90% of all US business openings (exceeding 9 million new jobs each year), and 95% of all US exporting enterprises.<sup>5</sup> The USTR's neglect of digital trade barriers in the 2024 NTE Report also means less US government attention on the impact of such barriers on US job growth in sectors that depend on cross-border data and digital trade. This includes:

- The 67% of new US science, technology, engineering, and mathematics (STEM) jobs that are in computing and software<sup>6</sup>; and
- The nearly 16 million workers employed in software jobs in the United States, and the over 1 million new software positions remaining open to applicants.

Simply put, when other governments erect barriers to US digitally enabled exports — such as aircraft, vehicles, semiconductors, creative content, and financial and other services — they hurt workers that design, produce, and deliver them. Allowing other governments to force US companies to localize operations abroad costs jobs at home<sup>7</sup> and undermines the US tax base.<sup>8</sup>

Finally, in tacitly supporting data localization mandates, the USTR also fails to account for the importance of data transfers to many other policy

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objectives of the United States and its allies,<sup>9</sup> including policy objectives relating to the protection of cybersecurity,<sup>10</sup> economic development,<sup>11</sup> environmental sustainability,<sup>12</sup> innovation/intellectual property,<sup>13</sup> privacy/personal data protection,<sup>14</sup> regulatory compliance,<sup>15</sup> and small business promotion.<sup>16</sup> The ability to transfer data across transnational digital networks is also critical to many governmental functions in the United States and abroad, including in relation to agriculture,<sup>17</sup> clean energy,<sup>18</sup> finance,<sup>19</sup> and health<sup>20</sup> <sup>21</sup>. Scientific and technological progress require the exchange of information and ideas across borders<sup>22</sup>: As the World Trade Organization (WTO) has stated, "for data to flourish as an input to innovation, it benefits from flowing as freely as possible, given necessary privacy protection policies."<sup>23</sup>

Given the overwhelming evidence of the harmful effects of data localization mandates and similar restrictions – as reaffirmed by economic development experts at the United Nations, World Bank, WTO, and Organisation for Economic Co-operation and Development<sup>24</sup> – it is difficult to comprehend how the USTR could have gotten so off-track. The conflict between the effects of USTR's actions and its stated objectives is indicative of a policy development process that is neither factually nor legally rigorous.

**USTR's policy reversals under 2024 NTE are part of larger failure at monitoring and enforcement**

## **APEC digital economy and trade**



Joshua P. Meltzer

12 March 2024

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The treatment of data localization mandates in the 2024 NTE Report – which represents just one of many policy reversals in that report – is part of a larger pattern of inadequate monitoring and enforcement under the Trade Act. For example, the USTR:

- Stated that the US agricultural trade deficit "**should not be a cause for alarm**"<sup>25</sup>;
- Expressed a willingness to turn a blind eye to foreign trade barriers even if it "**look[s] like they have a discriminatory effect**"<sup>26</sup>;
- Opposes efforts in the WTO to protect Americans from foreign digital trade discrimination or to secure America's cross-border access to information. The stated rationale is to afford other "**countries ... policy space**" to do as they wish.<sup>27</sup>
- Asserted that it would be "**massive malpractice**" or "**policy suicide**" for the United States to commit in trade agreements to core norms of due process that are already based in US law.<sup>28</sup>
- Suggested – incorrectly – that strong digital trade rules that benefit the entire economy favor only a "**very small number** of extremely powerful and dominant companies."<sup>29</sup>

The USTR's trade policy is increasingly unpopular. While anti-trade activists have **loudly applauded**,<sup>30</sup> the USTR's actions have engendered criticism from nearly 100 Senators and House representatives,<sup>31</sup> sparked congressional inquiries re **small business impacts** <sup>32</sup> and **competition** ,<sup>33</sup> and raised alarms among **academics**,<sup>34</sup> **civil society**,<sup>35</sup> **think-tanks**,<sup>36</sup> **human rights**<sup>37</sup> and **civil rights groups**,<sup>38</sup> **strategic**,<sup>39</sup> **cybersecurity**<sup>40</sup> and **national security experts**,<sup>41</sup> **small**

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businesses<sup>42</sup>; individual enterprises;<sup>43</sup> economy-wide<sup>44</sup> and sectoral associations;<sup>45</sup> CEOs;<sup>46</sup> and some 50 business groups<sup>47</sup> that represent thousands of companies and millions of workers across the country. This reaction is hardly surprising given that 40 million American jobs are supported by international trade.<sup>48</sup>

## Three recommendations for the Biden administration

The current trajectory is not sustainable. Going forward, the Biden Administration should consider reforms in the following areas:

- **Protect the United States from digital and other measures with discriminatory effect.** Section 181 of the Trade Act requires USTR to address foreign trade barriers that impact US products, services, and electronic commerce. Whether a foreign trade barrier is motivated by discriminatory intent is a relevant consideration. However, it is not the only consideration. To protect American enterprises and workers, USTR should also examine the actual effect of such measures on the economic interests of American enterprises and workers, as required by US trade agreements and by various other US trade laws, such as Sections 182, 301, and 503 of the Trade Act.
  - o *Recommendation: Comprehensively assess USTR's compliance with its statutory obligations to defend US interests from trade discrimination; ensure a course correction.*
- **Examine relevant evidence.** Section 181 of the Trade Act requires USTR to "identify and analyze" trade barriers and "estimate" and quantify their impacts.

The 2024 NTE Report fails to meet this standard. Indeed, in arguing that it no longer needs to attend to digital trade barriers, the USTR has repeated and relied on factually or legally inaccurate statements, necessitating the issuance of public corrections to forestall damage to US interests.<sup>49</sup> For example, the USTR's inaccurate statements that the US legal system affords no privacy

protections<sup>50</sup> belie the basics of US federal and state privacy law and threaten US interests in ongoing litigation over the US-EU Data Privacy Framework<sup>51</sup> and in other contexts<sup>52</sup>.

- *Recommendation: Develop a process to ensure that the USTR's statements and actions are based on accurate information and substantial evidence.*
- **Consult with Congress and the public.** Section 181 of the Trade Act mandates that the USTR "shall keep the [Senate Finance and House Ways & Means] committees ... informed with respect to trade policy priorities for the purposes of expanding market opportunities, [and] shall also consult periodically with, and take into account the views of, the committees ... to address the foreign trade barriers identified in the report." See also Section 242 of the Trade Expansion Act of 1962, which stresses that USTR "shall take into account the advice of the congressional advisers and private sector advisory committees."

Broadly speaking, the USTR has afforded Congress, the public, and affected US companies and workers little – if any – prior notice of its sudden policy shifts,<sup>53</sup> reinforcing the impression of an institutional disregard for Congress' role in trade policy. It is not an unreasonable criticism that this USTR has sought to align the agency– on issue after issue – with antitrade groups. The USTR's narrow approach has unnecessarily alienated many of the Biden Administration's allies in Congress and the private sector. It is an unforced error – and at this juncture – a potentially costly one.

- *Recommendation: Ensure that USTR's public and congressional consultation processes are robust and aligned with legal requirements.*

## Conclusion

The United States' trade monitoring and enforcement priorities – and its trade policy priorities more broadly – are jeopardized by the USTR's push for ever greater alignment with antitrade activists; a relative lack of engagement with Congress and the public; and a de-prioritization of legally rigorous, evidence-based trade policymaking in favor of political sloganeering. In short, a penchant for politicking over substantive policy has created unnecessary controversy, overshadowing the

agency's other accomplishments and broadly hollowing out support for the Administration at a critical juncture.

We urge the Biden Administration to increase its oversight over USTR and to ensure that it acts in a manner that advances US economic and geopolitical interests; that duly respects the prerogatives of Congress and other US government agencies; that is consistent with USTR's statutory obligations; and that is representative of American democratic values of governmental transparency, accountability, and responsiveness.

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[1] [National Trade Estimate Report on Foreign Trade Barriers](#)

[2] [section 181 of the Trade Act of 1974](#)

[3] From 2013 to 2019, data flow restrictions across APAC economies increased by 600%. See Joshua Meltzer, "The Rush to Regulate Data in the Indo-Pacific," in ed. Filippo Fasulo, *The EU Indo-Pacific Bid: Sailing Through Economic and Security Competition* (2023), <https://www.ispionline.it/wp-content/uploads/2023/05/ISPI-Report2023-EUs-Indo-Pacific-Bid-web.pdf> ; The average cumulative increase in cross-border services trade restrictiveness was five times higher in 2022 than in the year before. OECD, *OECD Services Trade Restrictiveness Index: Policy Trends up to 2023* (2023), [https://issuu.com/oecd.publishing/docs/stri\\_policy\\_trends\\_up\\_to\\_2023\\_final](https://issuu.com/oecd.publishing/docs/stri_policy_trends_up_to_2023_final). See generally, Global Data Alliance, *Cross-Border Data Restrictiveness Index* (2023), <https://globaldataalliance.org/wp-content/uploads/2023/07/07192023gdaindex.pdf>

[4] [Executive Order on Competition](#), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>

[5] Global Data Alliance, *Cross-Border Data & Small Business* (2023), <https://globaldataalliance.org/issues/small-businesses/>

[6] Global Data Alliance, *Comments to USTR on Worker-Centric Trade Policy* (2023), <https://globaldataalliance.org/wp-content/uploads/2023/09/09252023gdaworktradepolicy.pdf>

[7] BSA | The Software Alliance, *Advancing a Jobs-Centric Digital Trade Policy* (2021), at: <https://www.bsa.org/files/policy-filings/11132021jobscentricdigitrade.pdf>

[8] Mindy Hertzfeld, *How to Protect the US Tax Base: Don't Give it Away*, *Tax Notes* (2023), at: [https://www.taxnotes.com/content-viewer?](https://www.taxnotes.com/content-viewer?rid=7j572&type=saa&str=am9zZXBod0Bic2Eub3Jn&token=2917b57f-a920-46b6-a274-51b48660873f&utm_campaign=Weekly%20Newsletter&utm_medium=email&_hsenc=p2ANqzt-9s8oXIKch3bh8BYWBqIivJ56A6bcSLEhK6iyDK8_zJWSYgpB0Rr15V7EX3CjvY2yeW-VDPla7MJzHNta1UJExlIdRng&_hsmi=258093040&utm_content=258093040&utm_source=hs_automation)

[rid=7j572&type=saa&str=am9zZXBod0Bic2Eub3Jn&token=2917b57f-a920-46b6-a274-](https://www.taxnotes.com/content-viewer?rid=7j572&type=saa&str=am9zZXBod0Bic2Eub3Jn&token=2917b57f-a920-46b6-a274-51b48660873f&utm_campaign=Weekly%20Newsletter&utm_medium=email&_hsenc=p2ANqzt-9s8oXIKch3bh8BYWBqIivJ56A6bcSLEhK6iyDK8_zJWSYgpB0Rr15V7EX3CjvY2yeW-VDPla7MJzHNta1UJExlIdRng&_hsmi=258093040&utm_content=258093040&utm_source=hs_automation)

[51b48660873f&utm\\_campaign=Weekly%20Newsletter&utm\\_medium=email&\\_hsenc=p2ANqzt-](https://www.taxnotes.com/content-viewer?rid=7j572&type=saa&str=am9zZXBod0Bic2Eub3Jn&token=2917b57f-a920-46b6-a274-51b48660873f&utm_campaign=Weekly%20Newsletter&utm_medium=email&_hsenc=p2ANqzt-9s8oXIKch3bh8BYWBqIivJ56A6bcSLEhK6iyDK8_zJWSYgpB0Rr15V7EX3CjvY2yeW-VDPla7MJzHNta1UJExlIdRng&_hsmi=258093040&utm_content=258093040&utm_source=hs_automation)

[9s8oXIKch3bh8BYWBqIivJ56A6bcSLEhK6iyDK8\\_zJWSYgpB0Rr15V7EX3CjvY2yeW-](https://www.taxnotes.com/content-viewer?rid=7j572&type=saa&str=am9zZXBod0Bic2Eub3Jn&token=2917b57f-a920-46b6-a274-51b48660873f&utm_campaign=Weekly%20Newsletter&utm_medium=email&_hsenc=p2ANqzt-9s8oXIKch3bh8BYWBqIivJ56A6bcSLEhK6iyDK8_zJWSYgpB0Rr15V7EX3CjvY2yeW-VDPla7MJzHNta1UJExlIdRng&_hsmi=258093040&utm_content=258093040&utm_source=hs_automation)

[VDPla7MJzHNta1UJExlIdRng&\\_hsmi=258093040&utm\\_content=258093040&utm\\_source=hs\\_automation](https://www.taxnotes.com/content-viewer?rid=7j572&type=saa&str=am9zZXBod0Bic2Eub3Jn&token=2917b57f-a920-46b6-a274-51b48660873f&utm_campaign=Weekly%20Newsletter&utm_medium=email&_hsenc=p2ANqzt-9s8oXIKch3bh8BYWBqIivJ56A6bcSLEhK6iyDK8_zJWSYgpB0Rr15V7EX3CjvY2yeW-VDPla7MJzHNta1UJExlIdRng&_hsmi=258093040&utm_content=258093040&utm_source=hs_automation)

[9] Global Data Alliance, *The Impact of the USTR's October 25 Action on Biden Administration Priorities and US*

*Interests* (2023), <https://globaldataalliance.org/wp-content/uploads/2023/11/11212023gdaustrmemo.pdf> ;  
Global Data Alliance, *Cross-Border Access to Information and Data Transfers Support US Government Priorities* (2023), at: <https://globaldataalliance.org/wp-content/uploads/2023/11/11212023gdaustrback.pdf>

[10] Global Data Alliance, *Cross-Border Data & Cybersecurity* (2023),  
<https://globaldataalliance.org/issues/cybersecurity/>

[11] Global Data Alliance, *Cross-Border Data & Economic Development* (2023),  
<https://globaldataalliance.org/issues/economic-development/>

[12] Global Data Alliance, *Cross-Border Data & Environmental Sustainability* (2023),  
<https://globaldataalliance.org/issues/environmental-sustainability/>

[13] Global Data Alliance, *Cross-Border Data & Innovation* (2023),  
<https://globaldataalliance.org/issues/innovation/>

[14] Global Data Alliance, *Cross-Border Data & Privacy* (2023), <https://globaldataalliance.org/issues/privacy/>

[15] Global Data Alliance, *Cross-Border Data & Regulatory Compliance* (2023),  
<https://globaldataalliance.org/issues/regulatory-compliance/>

[16] Global Data Alliance, *Cross-Border Data & Small Business* (2023), <https://globaldataalliance.org/issues/small-businesses/>

[17] Global Data Alliance, *Cross-Border Data & Agriculture* (2022), at:  
<https://globaldataalliance.org/sectors/agriculture/>

[18] Global Data Alliance, *Cross-Border Data & Energy* (2022), at: <https://globaldataalliance.org/sectors/energy/>

[19] Global Data Alliance, *Cross-Border Data & Finance* (2022), <https://globaldataalliance.org/sectors/finance/>

[20] Global Data Alliance, *Cross-Border Data & Medical Technologies* (2023),  
<https://globaldataalliance.org/sectors/medical-technology/>

[21] Global Data Alliance, *Cross-Border Data & Biopharmaceutical R&D* (2022),  
<https://globaldataalliance.org/sectors/biopharmaceutical-rd/>

[22] Global Data Alliance, *Cross-Border Data Transfers & Innovation* (2020) ,  
<https://globaldataalliance.org/wp-content/uploads/2021/07/04012021cbdtinnovation.pdf>

[23] WTO, *Government Policies to Promote Innovation in the Digital Age*, 2020 World Trade Report (2020), at:  
[https://www.wto.org/english/res\\_e/booksp\\_e/wtr20\\_e/wtr20-0\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/wtr20_e/wtr20-0_e.pdf)

[24] *See generally*, Global Data Alliance, *Cross-Border Data Policy Index* (2023), at:  
<https://globaldataalliance.org/resource/cross-border-data-policy-index/> (internal citations omitted).

[25] *Remarks by Ambassador Katherine Tai at the U.S. Department of Agriculture’s 100th Annual Agriculture Outlook Forum | United States Trade Representative (ustr.gov)*, <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2024/february/remarks-ambassador-katherine-tai-us-department-agricultures-100th-annual-agriculture-outlook-forum>

[26] *NFTC president: Tai’s comments on EU digital policies a ‘deviation’; USTR disagrees | InsideTrade.com*, <https://insidetrade.com/trade/nftc-president-tai-s-comments-eu-digital-policies-deviation-ustr-disagrees>

[27] *USTR Statement on WTO E-Commerce Negotiations | United States Trade Representative*,

<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/october/ustr-statement-wto-e-commerce-negotiations>

[28] 2023 ASF Videos (aspensecurityforum.org), <https://www.aspensecurityforum.org/dc-2023-videos>

[29] 2023 ASF Videos (aspensecurityforum.org), <https://www.aspensecurityforum.org/dc-2023-videos>

[30] LETTER: Orgs send letter to Katherine Tai on expected changes to the upcoming NTE report | Rethink Trade, <https://rethinktrade.org/letters-filings/letter-to-katherine-tai-on-expected-changes-to-the-upcoming-nte-report/>

[31] Congressional Statements on USTR's WTO JSI Action (globaldataalliance.org) , <https://globaldataalliance.org/wp-content/uploads/2023/11/11212023gdaustrcomp.pdf>

[32] 02.26.2024\_-\_letter\_to\_ustr.pdf (house.gov)

[33] duncan\_joyce-digital-trade-letter\_final.pdf (house.gov)

[34] Trusted Cross-Border Data Flows: A National Security Priority | Lawfare (lawfaremedia.org)

[35] Reversal of US Trade Policy Threatens the Free and Open Internet | TechPolicy.Press

[36] China Gains as U.S. Abandons Digital Policy Negotiations | Lawfare (lawfaremedia.org)

[37] The Human Rights Costs of Data Localization Around the World | TechPolicy.Press

[38] Coalition Letter Urging Biden Administration to Protect Free and Open Internet | American Civil Liberties Union (aclu.org)

[39] USTR Upends U.S. Negotiating Position on Cross-Border Data Flows (csis.org)

[40] Unraveling the Impact of USTR's WTO Reversal on Cybersecurity and Global Trade — CR2 (crx2.org)

[41] CNAS Responds: APEC Summit | Center for a New American Security (en-US)

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

[43] (25) USTR's Disastrous 180 on Digital Trade | LinkedIn

[44] How the USTR Reversal on Digital Trade Could Affect U.S. Companies, Workers | U.S. Chamber of Commerce (uschamber.com)

[45] BSA and GDA: USTR Decision Undermines US Economic and Democratic Interests | BSA | The Software Alliance

[46] Business Roundtable Calls for Reset on Trade Following IPEF Ministerial Meeting | Business Roundtable

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

[48] New Study: Trade Supported Over 40 Million American Jobs | Business Roundtable

[49] Myths Vs. Facts: Cross-Border Data and Access to Information (globaldataalliance.org)

[50] C. Peter McColough Series on International Economics with Katherine Tai | Council on Foreign Relations (cfr.org)

[51] CURIA - Documents (europa.eu), <https://curia.europa.eu/juris/document/document.jsf?docid=279601&doclang=EN>

[52] Importance of Cross-Border Data for US Government Interests (globaldataalliance.org)

[53] Bipartisan resentment grows as Biden pursues new trade talks - POLITICO