

## Congressional Statements on USTR's October 25, 2023 Action

### Bipartisan House Statements

Arrington, Bera, Beyer, Buchanan, Carey, Connolly, Correa, DelBene, Estes, Feenstra, Ferguson, Fischbach, Fitzpatrick, Fletcher, Gottheimer, Himes, Kelly, Kuster, LaHood, Larsen, Meeks, Miller, Moore, Panetta, Plaskett, Peters, Quigley, Schneider, Schrier, Schweikert, Sewell, Smith, Smucker, Stanton, Steel, Strickland, Swalwell, Tenney, Van Duvne, Wenstrup

November 15, 2023: “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.

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.”

## **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."

## **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. @USTRTradeRep 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 @USTRTradeRep accountable.

### **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.”

## **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](#))