# GLOBAL DATA ALLIANCE
## TRUST ACROSS BORDERS

# 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 The US Trade Representative (USTR) has publicly withdrawn its support for that practice.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 |
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| **Cross-border access to data doesn't benefit US workers.** | 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 supported 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 hurt workers that design, produce, and deliver them. Allowing other governments to force US companies to localize operations abroad also undermines the US tax base. |
| **Trade rules on cross-border data undermine democracy and human rights.** | The ACLU, the Center for Democracy and Technology, and Freedom House 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 protect human rights and counter digital authoritarianism, consistent with the Presidential Initiative for Democratic Renewal, the National Security Strategy, the National Cybersecurity Strategy, and the Declaration for the Future of the Internet. |
| **Trade rules on cross-border data prevent Congress from legislating on AI or privacy.** | 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 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 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 "massive malpractice" or "policy suicide" to commit to basic norms of good governance in the digital environment.<br><br>Indeed, the US itself maintains stringent federal privacy rules on health data, children's data, and financial data; over a dozen US states 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. |
| **Trade rules on cross-border data only benefit "Big Tech."** | The importance of data transfer rules extends far beyond the technology sector. These rules help promote millions of US jobs, including in the agriculture, automotive, clean energy, finance and insurance, healthcare and medical technology, logistics, media, pharmaceutical, and telecommunications sectors.<br><br>Small- and medium-sized businesses (SMEs) are key beneficiaries of cross-border data transfers; they are also most vulnerable to digital barriers. As stated in a letter to USTR from the House Committee on Small Business, "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 |
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| **Trade rules on cross-border data undermine competition in the digital economy.** | It has been suggested that USTR's refusal to support rules that benefit the entire economy stems from a competition policy concern about "[a] very small number 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.

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 state-owned [or] state sponsored"–contrary to the President's Executive Order on Competition. 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. |
| **Trade rules on cross-border data undermine US leadership on artificial intelligence.** | Without cross-border access to data, the US and its allies will not be able to maintain their edge in innovation and artificial intelligence. 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 Executive Order on Artificial Intelligence. 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 Cross-Border Data Policy Index will now be in a better position to write digital trade rules and lead on AI. |
| **Trade rules on cross-border data harm national security and the public interest.** | 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 Executive Order to Protect Americans' Sensitive Personal Data. Moreover, US agreements provide broad latitude to regulate in the public interest.

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. |
| **US leadership on cross-border trade rules is a relic of the Trump Administration.** | 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; 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 transparency, fairness, and accountability 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. |
| **USTR's action has received broad support.** | USTR's policy reversal has provoked bipartisan criticism from nearly 100 Senators and House representatives; sparked congressional inquiries on small business impacts and competition; and raised alarms among academics; civil society; think-tanks; human rights advocates; strategic, cybersecurity and national security experts; small businesses; individual enterprises; economy-wide and sectoral associations; CEOs; and some 50 business groups that represent thousands of companies and millions of workers across the country.

As expressed in a bipartisan letter 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." |