



GLOBAL DATA ALLIANCE

TRUST ACROSS BORDERS

GDA POST-HEARING WRITTEN COMMENTS

USTR INQUIRY INTO *PROMOTING SUPPLY CHAIN RESILIENCE*

June 1, 2024

The Global Data Alliance (GDA)¹ appreciates the opportunity to submit the following post-hearing written comments to the Office of the US Trade Representative (USTR) in relation to supply chain resilience.²

INTRODUCTION

The GDA focused its pre-hearing comments on how US cross-border access to knowledge and information protect US supply chain resilience. See Ex. 1. Our post-hearing comments call for the restart of negotiations with allies to secure America's future access to data. This access is a key to resilient US supply chains that support US jobs. It also helps protect us from knowledge deficits or blind spots that impede our capacity to detect and recover from supply chain risks.³ Without reliable cross-border data access, US supply chains are neither resilient nor secure.

Continued failure to negotiate with allies on cross-border data access undermines supply chain resilience, as reflected in concerns from: (1) US allies; (2) other USG agencies; (3) the private sector; and (4) Congress.

First, US allies – including Australia, Canada, Japan, Korea, and Singapore – have called for the United States to re-engage with allies to advance democratic norms of due process on cross-border data access. A resilient US-Allied supply chain requires shared commitments not to improperly restrict each other's cross-border access to information – *i.e.*, for reasons that are arbitrary, discriminatory, disguised, or unnecessary.

Second, the Departments of [Agriculture](#), [Commerce](#), [Defense](#), [Energy](#), [Health & Human Services](#), [Justice](#), [State](#), [Transportation](#), and [Treasury](#) have highlighted the need to promote cross-border data access and information exchange with US allies in furtherance of supply chain resilience and/or priorities relating to [artificial intelligence](#), [cybersecurity](#), [data privacy](#), [democracy](#), [development](#), [financial stability](#), [foreign policy](#), [military readiness](#), [national security](#), and our [global alliances](#).⁴ See Ex. 2-6. For example:

- In 2022-2023, under the [White House's EO 14017](#), many US agencies issued “supply chain resilience” reports that stressed how cross-border access to data promotes “friend-shoring” with allies and helps agencies anticipate and “understand emerging supply chain threats, risks, vulnerabilities, and opportunities.”⁵
- In November 2023, the Commerce Department launched the [Supply Chain Center](#) under the [President's Supply Chain Initiative](#), and is exploring “actions to improve data flows.”
- In May 2024, the State Department issued the [International Cyberspace and Data Policy Strategy](#), calling for greater “[digital solidarity](#)” with US allies via “support for the trusted [flow of data](#)” as part of a comprehensive approach to advance US interests across “[supply chains](#) spanning telecommunication networks, undersea cables, cloud computing, ... and satellite ... and other critical and emerging technologies.” Ex. 9.
- In March 2024, the Justice Department – under the [President's Executive Order](#) on Americans' Sensitive Personal Data – published an Advanced Notice of Proposed Rulemaking ([ANPRM](#)) that underscored that:

“The United States remains committed to promoting an open, global, interoperable, reliable, and secure internet; promoting open, responsible scientific collaboration to drive innovation; protecting human rights online and offline; supporting a vibrant, global economy by [promoting cross-border data flows to enable international commerce and trade](#); and facilitating open investment ... [consistent with our] longstanding support for the concept of ‘Data Free Flow with Trust.’”⁶

Third, many outside groups have called for USTR to negotiate with US allies on cross-border data. This includes human and civil rights groups (including the [ACLU](#), [Freedom House](#), and the [Center for Democracy & Technology](#)); think tanks (including the [American Leadership Initiative](#), [Asia Society](#), [Atlantic Council](#), [Brookings](#), [CSIS](#), [Progressive Policy Institute](#), [Third Way](#), and [Wilson Center](#)); academics; small businesses; and other industry groups. Cross-border data rules protect US supply chain resilience, human rights, and US jobs that depend on digitally-delivered or digitally-enabled exports. Ex. 140. Foreign cross-border data restrictions – which have risen by 600% in APAC alone⁷ – undermine supply chain resilience, human rights, and US jobs. Ex. 16.

Fourth, over 100 lawmakers in Congress have called for USTR to reengage with its allies to secure future US cross-border access to data – noting the potential of digital trade barriers to “disrupt supply chains” (Ex. 98); calling for better “coordination with allies on supply chains” (Ex. 96); and highlighting that “strong digital ... rules are critical to ensuring strong and resilient supply chains” based on USTR’s own analysis showing, “numerous industries reliant on data flows, which encompass sectors like mining, automotive manufacturing, aviation, accounting, medical diagnostics, security services, healthcare, research, and agriculture.” (Ex. 94). Thirty-two Senators state:

The United States [in the past] supported proposals to ... encourage free expression and access to information, ... while also allowing countries to address concerns regarding security, privacy, surveillance, and competition. These negotiations are crucial to ... outcompeting our adversaries: 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 US competitiveness...

With [its] ... abrupt change in policy, USTR has not only turned its back on our democratic allies and undermined US 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... (Ex. 91).

Fifth, US inaction threatens resilient US-Allied supply chains by creating a void for adversaries to fill.⁸ In April, China announced [pilot projects with US allies on cross-border data transfers](#) (including Chile, New Zealand, Singapore and Korea). China also plans to “accelerate the establishment of mechanisms for [cooperation regarding cross-border data transfers](#) with” US allies, and to promote a “multi-level global [digital cooperation partnership network](#)” with US allies and others. China also calls for the “active promotion of [accession to the CPTPP and DEPA](#)”, and agreements “with more countries and regions.”⁹ Ex. 18A –18C.

In sum, the void produced by US inaction risks our national and economic security, including US-Allied supply chains. Ex. 19A – 19E.

President Biden has stated: “[America’s alliances are our greatest asset](#), and leading with diplomacy means standing shoulder to shoulder with our allies and key partners once again.”¹⁰ His National Security Strategy states:

[T]he United States [must] ... work in common cause with those who share our vision of a world that is free, open, secure, and prosperous. This means that the foundational principles of self-determination, territorial integrity, and political independence must be respected, ... [information must be allowed to flow freely](#), universal human rights must be upheld, and the global economy must operate on a level playing field and provide opportunity for all. See Ex. 3.

The President is right. The United States must work with its allies to secure future cross-border data sources. There is no greater threat to America’s supply chain resilience than foreign governmental denial of US access to critical sources of knowledge, information and data, and foreign interference with US supply chain visibility and situational awareness. Securing and maintaining cross-border data access is essential to protecting our line-of-sight into the supply chain, our access to critical information and inputs, and our jobs, among many other core US national economic and security priorities.

It is not too late to correct course. The United States can still counter adversaries’ efforts to replace cross-border data rules that advance US values, US law, and US interests with new rules that do the opposite.¹¹ The United States must take action to secure US cross-border access to data and thereby engineer a more resilient and security supply chain.

DISCUSSION

This post-hearing submission provides an overview of the evidence supporting trade rules to protect US supply chain resilience from the threat of cross-border data restrictions, data localization mandates, and other improper barriers to US access to critical sources of knowledge, information, and data. This submission addresses:

- A. The questions posed in the Federal Register notice via short-form answers.
- B. How cross-border access to information supports supply chain resilience by:
 1. Growing the resilience of the US workforce in the supply chain
 2. Safeguarding cybersecurity and data security for a more resilient supply chain
 3. Promoting competition for a more resilient supply chain
 4. Combatting illicit finance and promoting regulatory compliance across the supply chain
 5. Supporting human and labor rights for supply chain resilience
 6. Building resilient supply chains through innovation
 7. Building resilient supply chains with artificial intelligence
 8. Fostering a more resilient supply chain to protect health
 9. Carbon tracking for greater supply chain resilience
 10. Improving supply chain resiliency through equitable economic opportunity
 11. Improving supply chain resiliency by fostering small businesses participation
 12. Facilitating trade to support supply chain resilience and agility
 13. Supporting US industrial competitiveness in every sector¹² in the supply chain
 14. Supporting the economic foundations of a resilient supply chain
 15. Respecting US strategic interests in a resilient supply chain
 16. Respecting other US government agency interests in a resilient supply chain
- C. The stated concern that it would undermine US administrative and legislative “policy space” if the United States and its allies sought to agree on cross-border data policy matters.
- D. Procedural and substantive legal requirements that govern USTR’s supply chain resilience review.

A. Short Answers to Questions Posed in Federal Register Notice

This section offers short answers to the questions posed in the Federal Register Notice, as well as a roadmap to the rest of the GDA’s submission.

1. How can US trade and investment policy, in conjunction with relevant domestic incentive measures, better support growth and investment in domestic manufacturing and services?

US trade and investment policy can better support growth and investment in domestic manufacturing and services by recognizing and valuing the importance of cross-border access to knowledge, information, and data for purposes of commercial activities throughout the value chain from US-based product design and market development to US-based manufacturing to US-based post-sale service, as well as the cross-border export of US-based services and the identification and development of overseas exports markets. For more details, see discussion in the Introduction, Sections B.1, B.3, B.5, B.6, B.8, and B.10-B.14, and the associated exhibits.

2. What existing or new tools could help ensure growth in domestic manufacturing and services does not undergo the same offshoring that we have experienced over the past few decades?

To build out tools to promote domestic manufacturing and services, we urge USTR to recommence negotiations with US allies to secure future US cross-border access to data and technologies, as well as access to overseas

markets for the sale of products and services made by American workers. For more details, see discussion in the Introduction, Sections B.1-B.4 and B.8-B.13, as well as associated exhibits.¹³

3. How can U.S. trade and investment policy promote a virtuous cycle and “race to the top” through stronger coordination and alignment on labor and environmental protections within trusted networks among regional and like-minded trading partners and allies?

To promote a virtuous cycle and “race to the top” through stronger coordination and alignment on labor and environmental protections with US allies, it is necessary - first and foremost - to agree on the terms of cross-border informational coordination and data sharing with those allies. Among other things, this means agreeing to refrain from blocking or impeding such coordination for reasons that are arbitrary, disguised, discriminatory, or unnecessary. For a discussion of the nexus between these issues and improved coordination and alignment on labor and environmental protections with US allies, see discussion in the Introduction, Sections B.4 - B.8, B.15, as well as associated exhibits.

4. What are examples of trade and investment policy tools that potentially could be deployed in the [listed] sectors to enhance supply chain resilience? In these sectors, what features of the current policy landscape are working well, or less well, to advance resilience?

We offer sector-specific explanations for how cross-border access to information and data transfers promote supply chain resilience and US-based economic activity in the Introduction, Sections B.1, B.3, and B.12-B.13, as well as associated exhibits.

5. What additional sectors may need dedicated trade and investment policy approaches to advance supply chain resilience? What should such approaches entail? With respect to those sectors, what features of the current policy landscape are working well, or less well, to advance resilience?

See overall discussion for comments on importance of cross-border data access and data transfers to US government and private sector interests relating to artificial intelligence, cybersecurity, data security, and emerging technologies.

6. Across sectors, how does access to capital equipment, manufacturing equipment, and technology support supply chain resilience for U.S. producers, and is there a role for trade and investment policy?

See overall discussion and exhibits for the importance of cross-border access to information and digital tools to promote the supply chain resilience of US producers. US trade and investment policy should seek to actively secure future US cross-border access to information and technology from US allies via mutual commitments vis-a-vis US allies not to block or restrict that access on grounds that are arbitrary, disguised, discriminatory, or unnecessary.

8. What factors are driving supply chain and sourcing decisions, and how does trade and investment policy impact them? How do companies factor geopolitical risk into their global and domestic manufacturing and sourcing decisions? How do companies take into account traceability and transparency considerations in supply chain and sourcing decisions?

Legal predictability and the rule of law, as well as cross-border access to information and technology, play a critical role in driving supply chain and sourcing decisions. The United States will enhance its attractiveness as a locus for manufacturing and service jobs if commits to refrain from treating its allies in ways that are arbitrary, disguised, discriminatory, or unnecessary in relation to the cross-border movement of data and cross-border access to information. Such commitments are based in US doctrines of substantive and procedural due process, the Administrative Procedures Act, and various subsidiary domestic measures, including Executive Order 14094 and Circular A-4 (discussed below). As such, there appears to be no fundamental legal impediment to the United States making such commitments.

Conversely, US refusal to make such commitments undermines confidence in the United States as a locus for investment, manufacturing, and servicing activities for several reasons:

- A perceived higher risk of future *ultra vires* conduct by the US government;

- A concern that certain elements within the US government are indifferent to the interests of - and unwilling to defend the rights of - US workers and enterprises that depend on the ability to export digitally enabled products and services to allied economies;
- A concern that certain elements within the US government are unwilling to consider the extensive economic evidence regarding the importance (to both US supply chain resilience and to US jobs) of US technological competitiveness and US cross-border access to information and data;
- A perception that the United States faces a higher degree of geopolitical risk today than was the case prior to 2016 given a volatile trade policy environment and a lack of receptivity to the interests of many US-headquartered enterprises and their US-based workers. See discussion in Introduction, Sections B., C., and B.1 and B.12-15, associated exhibits.

11. How can supply chain resilience be measured, including the costs of insufficient resilience, and the impacts of trade and investment policy on resilience? What are appropriate quantitative or qualitative data to consider?

Please see discussion at Section D and Sections B.12-B.15, as well as other sections of this response and the associated exhibits, that provide such quantitative and qualitative information.

12. How can U.S. trade and investment policy support supply chains that are inclusive of small disadvantaged businesses and underserved businesses, including minority-owned and women-owned businesses, veteran-owned businesses, service-disabled veteran owned small businesses, and HUBZone businesses, and promote trade opportunities in underserved communities?

Please see discussion in the Introduction, Section B.5 and B.10-11, and associated exhibits.

B. Cross-border access to information supports supply chain resilience

Cross-border access to information supports supply chain resilience in the respects below, among others.

1. Cross-Border Data: Growing the Resilience of the US Workforce in the Supply Chain

First, cross-border access to data supports the resilience of the US workforce and the US supply chain, which increasingly depends on the integration of AI- and other software-based tools necessary to compete globally and support well-paid jobs in advanced manufacturing, precision agriculture, and skilled services. These tools – used in sectors including the automotive, aerospace, clean energy, civil engineering, construction, farming, film production, telecom, transport, and many other sectors – depend upon cross-border access to information used to enhance US-based R&D, market forecasting, manufacturing, sourcing, logistics, sales, and service processes. For example, so-called “Digital Twins” technology, which is particularly cross-border data-dependent, allows US companies to build, simulate, and measure performance in a virtual setting of their US factories, products, and services. In this and many other contexts, without reliable cross-border access to data, the US workforce will be a significant competitive disadvantage vis-à-vis overseas peers, frustrating efforts to grow American manufacturing and service jobs.

Second, foreign cross-border data restrictions hurt US workers (and their families and communities) that depend upon digitally-enabled or digitally-delivered exports from the United States.¹⁴ Some 40 million US jobs depend on international trade; 16 million US jobs are in software-related fields; and roughly 4 million new US manufacturing jobs are anticipated in the coming years.¹⁵ US supply chain resilience is also threatened by trading partner imposition of customs duties on US digital exports. (*Please see more detailed discussion of customs duties in Section B.13 below*). The impacts of such restrictions would be borne not only by American workers in semiconductors, pharmaceuticals, and other integrated supply chains, but also by artists, musicians, performers, writers, photographers, software coders, and many other creators in the graphic arts, film, music, publishing, and software sectors.¹⁶

Third, such restrictions also undermine efforts to increase diversity in resilient supply chains – harming diverse communities across the United States and beyond. As the United Nations has stated, “regulatory fragmentation in the digital landscape...is most likely to adversely impact ... less well-off individuals, and marginalized communities the world over, as well as worsen structural discrimination against women.”¹⁷

Increasing the adaptability, diversity, training opportunities, and economic prospects of the US workforce is integral to US supply chain resilience. To promote a resilient US supply chain that benefits the US workforce, the United States should reengage with allies to agree on due process norms on cross-border data transfers, localization, and related matters. For more information, please see Ex 20 – 26.

2. Cross-Border Data: Safeguarding Cybersecurity and Data Security in the Supply Chain

US supply chain resilience depends heavily on ensuring cybersecurity. The ability to locate and transfer data in the most functionally and technically secure manner is a cybersecurity risk management best practice. This is in part because cross-border visibility into cyber-related data allows cybersecurity tools to monitor traffic patterns, identify anomalies, and divert potential threats in ways that depend on global access to real-time data. Additionally, companies may choose to store data at geographically diverse locations to obscure the location of data, to mitigate risks from *force majeure* events, to enable companies to reduce network latency, and to maintain redundancy and resilience for critical data in the wake of physical damage to a storage location. Conversely, when governments mandate localization or restrict the ability to transfer and analyze data in real-time, they create unintended vulnerabilities. Such vulnerabilities undermine US supply chain resilience.

To promote cybersecurity and supply chain resilience, the United States should reengage with allies to agree on due process norms on cross-border data transfers, localization, and related matters. For more information, please see Exhibit 27 – 28.

3. Cross-Border Data: Promoting Competition for a More Resilient Supply Chain

US supply chain resilience depends on competitive market conditions, characterized by open competition and low barriers to entry. As the DoJ Antitrust Division states in its submission in this same review, USTR should advance “trade policy [that] promotes competitive, diversified, resilient, and innovative supply chains.”¹⁸ Such diversified and competitive supply chains depend, first and foremost, on cross-border access to knowledge, information, and data by enterprises and workers in the United States and abroad. The converse is also true: when foreign governments improperly block or impede data transfers and access to information, they distort the marketplace in ways that raise barriers to entry, undermine healthy competition, and negatively affect virtually all enterprises and workers across the supply chain.

First, cross-border data restrictions and data localization mandates are particularly harmful to competition because they severely impact 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. We respectfully submit that this outcome does not promote US supply chain resilience.

Second, 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 already amassed massive data sets. Ironically, USTR’s refusal to negotiate with allies on cross-border data policy, which the USTR has premised on her stated desire to disfavor a “very small number of extremely powerful and dominant companies,” could foreseeably have the opposite effect.

Third, there is no conflict between antitrust and cross-border data norms at issue here. Nothing in these US trade rules on cross-border data (which are based in US law) would impede new antitrust legislation or enforcement in the United States. Rather, by refusing to take actions that would benefit the entire economy, the USTR created unnecessary controversy that distracted from efforts to legislate solutions to new competition challenges relating to gatekeeper platforms and the app economy.

To promote “competitive, diversified, resilient, and innovative supply chains,” the United States should reengage with allies to agree on due process norms on cross-border data transfers, localization, and related matters. For more information, please see Exhibit 29.

4. *Cross-Border Data: Combatting Illicit Finance and Promoting Regulatory Compliance Across the Supply Chain*

US supply chain resilience is directly threatened by a range of illegal activity – often associated with transnational criminal enterprises, private- or nation state-sponsored cyber-attackers, rogue states, and terrorist groups – that increase both economic and national security risks to the United States. US supply chain resilience (and financial stability) is also threatened by a lack of transparency regarding the true performance of firms or economies abroad.

First, data transfers and cross-border access to data for forensic or investigatory purposes are critical to combatting such criminal activity across the supply chain. Data transfers and information access support compliance with governmental rules designed to prevent consumer fraud, securities and financial crimes (e.g., insider trading), money laundering, and corrupt practices. For example, fraud detection models are typically built on global transaction data or transaction data collected from multiple countries because fraud patterns are not limited by national boundaries.

Second, data transfers and cross-border access to data are also essential to ensuring financial accountability, stability, and transparency that are critical to US supply chain and economic resilience. The ability to anticipate, manage, and respond to financial and economic shocks depends upon maintaining access to accurate and reliable sources of firm- and microeconomic-level data, as well as sources of sectoral-, market- and economy-wide data. Being denied cross-border access to such economic data is highly destabilizing to supply chains, securities exchanges, and other financial markets. It is particularly important to our own economic stability to maintain ready and immediate access to such data from around the world.

To make the US supply chain more resilient against financial criminal activity, and to promote the type of financial transparency upon which our supply chain and economy depend, the United States should reengage with allies to agree on due process norms on cross-border data transfers, localization, and related matters. For more information, please see Ex. 30-31.

5. *Cross-Border Data: Supporting Human and Labor Rights in the Supply Chain*

US supply chain resilience is directly impacted by the actions of non-democratic or authoritarian states to limit access to truthful and accurate information, freedom of expression, religious freedoms, or the ability to share information across digital networks for purposes of collective bargaining or other protected labor rights. These actions, which impair human and/or labor rights, are often effectuated by blocking, restricting, filtering, and monitoring data that is transferred across borders to democracy advocates, political dissidents, labor leaders, and even religious leaders. Similarly, digitally authoritarian states may use data localization mandates as a means of maximizing coercive state control and visibility into sensitive personal data of these or other citizens. Such states may also use cross-border data restrictions as a means of depriving populations to accurate information, censoring news reporting, and stifling public debate.

As the American Civil Liberties Union (ACLU), Center for Democracy and Technology (CDT), Freedom House, and other human rights organizations stated to USTR in a February 2024 letter,

The United States' withdrawal of its [WTO digital trade] commitments may be read to signal an abandonment of ... principles of openness, freedom, and non-discrimination. ... Data localization requirements may be abused to disfavor foreign companies and speakers and undermine the functioning of a global, interoperable internet by upending the ways in which data can flow across borders. Data localization places personal data 'firmly within reach of governments,' creating unique risks for people's privacy, free expression, access to information, and other fundamental freedoms. Data localization efforts can also exacerbate cybersecurity concerns, [which] may make data more vulnerable to foreign surveillance and privacy breaches, while failing to address sophisticated attacks that do not rely on the foreign transfer of data. See Ex. 32.

To make the US supply chain more resilient against efforts by digitally authoritarian regimes to compromise human and labor rights by imposing data localization mandates and data transfer restrictions, the United States should reengage with allies to agree on due process norms on cross-border data transfers, localization, and related matters. For more information, please see Ex. 32-37.

6. Cross-Border Data: Promoting Innovation Across the Supply Chain

Cross-border data transfers are critical to research and development (R&D) and other innovative endeavors in today's connected economy. Indeed, technological innovation today is inherently transnational. As the World Trade Organization has stated, "for data to flourish as an input to innovation, it benefits from flowing as freely as possible..." Governments can foster innovation with a mix of policy tools that includes greater cross-border access to technology; the ability to share knowledge, ideas, and information across global digital networks; and improved international digital connectivity. Cross-border data transfers are integral to every stage of the innovation life cycle.

To promote supply chain resilience through innovation, the United States should reengage with allies to agree on due process norms on cross-border data transfers, localization, and related matters. For more information, please see Ex. 38-39.

7. Cross-Border Data: Fostering A More Resilient Supply Chain to Protect Health

Cross-border access to scientific and health data in allied nations, as well as data transfers, are essential to all actors in the US healthcare system – from gathering information on needed medical supplies, to conducting transnational R&D, to delivering services and monitoring patients. Data transfers are critical at every stage of the research, development, and delivery process for new biopharmaceutical medicines. Data transfers are also essential for medical technology companies to detect, monitor, and treat medical conditions in a safe, effective, precise, and timely manner. Such data transfers help support the real-time monitoring of patient health conditions at the request of patients and their clinicians, offering benefits from the perspectives of patient comfort and care, remote analysis and treatment, monitoring for safety and efficacy of deployed technologies, refinements to treatment pathways and clinician education, and researching and engineering therapy improvements and innovations.

To safeguard good healthcare outcomes for all Americans, the United States should reengage with allies to agree on due process norms on cross-border data transfers, localization, and related matters. For more information, please see Ex. 40-42.

8. Cross-Border Data: Powering Carbon Tracking Tools for an Environmentally Resilient Supply Chain

The cross-border movement of data, cross-border exchange of knowledge and experience, and cross-border access to computing resources, data analytics tools, and climate mitigation technologies is a fundamental element of the global effort to address climate change. Some of the most powerful tools for combating climate change—carbon emissions tracking, predictive climate modeling, and less energy-intensive computing resources—depend on the ability to freely access cross-border data transfers. By contrast, restricting the ability to share knowledge, information, and data across transnational IT networks, and mandating the localization of computing resources in particular regions, undermines the ability to address climate challenges. In many cases, such mandates may actually produce increases – rather than decreases – in emissions.

To meet the challenge of climate change using carbon tracking and other data analytics tools, the United States should reengage with allies to agree on due process norms on cross-border data transfers, localization, and related matters. For more information, please see Ex. 43.

9. Cross-Border Data: Building a More Resilient Supply Chain with Artificial Intelligence

Cross-border data transfers are critical to meeting the goals of President Biden's [EO on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence](#) - both to promote AI-driven R&D in life sciences and climate mitigation technologies, but also to assess the safety and security of AI technologies themselves. Science- and innovation-oriented organizations at the international and national levels make clear that these activities depend on the application of AI and data analytics techniques to data sourced globally.

From developing predictive models to deploying and using analytical solutions, AI and data analytics systems are "trained" by ingesting large data sets to identify underlying patterns, relationships, and trends that are then transformed into mathematical models that can make predictions based on new data inputs. These data sets often

originate from geographically dispersed sources across transnational digital networks, making it imperative that data can move seamlessly and securely across borders. To secure the insights and other benefits that data analytics can provide, it is important to permit access and consolidation of data sets across borders.

Smart and responsible deployment of data analytics solutions, supported by data inputs from across the globe, can help advance improvements in healthcare, modernize education, expand accessibility tools, strengthen cybersecurity, and increase business productivity and competitiveness. For example, analytical techniques applied to health data transferred across transnational digital networks helped fast-track COVID-19 vaccine development, cutting timelines from years to months, as researchers analyzed data from around the world to quickly identify potential treatments.

To promote a more resilient supply chain through AI and data analytics, the United States should reengage with allies to agree on due process norms on cross-border data transfers, localization, and related matters. For more information, please see Ex. 44-45.

10. Cross-Border Data: Supporting Equity & Opportunity Across the Supply Chain

Cross-border data transfers and digital connectivity are critical to sustainable economic development – both at home and abroad – helping support marginalized communities, including by improving access to global markets, finance, food, and healthcare. Integrating underserved communities into economic systems helps promote more resilient supply chains for all, while promoting US foreign aid and assistance programs.

First, the ability of micro-, small-, and medium-sized enterprises (MSMEs) from developing countries to access global markets where they can offer and sell their services and products depends on cross-border access to information and cloud-enabled technologies. As USAID has explained,

Digital ecosystems have the potential to equip informal merchants, women entrepreneurs, smallholder farmers, and MSMEs engaged in cross-border trade with access to markets, information, and finance. These diverse users require trustworthy services that reflect their needs....[D]igital trade that spans borders depends on free data flows, digitized customs, and innovations in trade finance made possible by new approaches to lending.¹⁹

Second, advances in financial inclusiveness, financial transparency, and financial security across developing countries also depend on cross-border access to data and cloud-enabled technologies. There remain more than 2.5 billion unbanked people worldwide, many living on remote and isolated locations lacking in banks or other on-the-ground financial service providers. Technologies that leverage data transfers can increase access to financial services—particularly as 95 percent of the world’s population is already covered by mobile broadband networks.

Third, the World Bank estimates that agriculture accounts for up to 25 percent of gross domestic product (GDP) and 65 percent of the lower income population in some developing countries, and that growth in the agriculture sector is two to four times more effective in raising incomes among those populations. Cross-border data transfers can also help farmers reduce transaction costs and arbitrage by middlemen, given that up to 70 percent of smallholder production value is captured by different intermediaries.

Finally, remote health services for medically underserved populations and the search for tomorrow’s medical treatments also depend on cross-border access to information, such as through: (1) the online healthcare education efforts of international health and development agencies; (2) cross-border access to aid in the treatment of diseases, including tropical, rare, and neglected diseases; and (3) cross-border digital humanitarian assistance.

To promote a more resilient and secure supply chain that involves America’s allies in developing and least developing countries, the United States should reengage with those allies to agree on due process norms on cross-border data transfers, localization, and related matters. For more information, please see Exhibit 46-47.

11. Cross-Border Data: Supporting Small Businesses Across the Supply Chain

Cross-border data transfers can help small businesses by (1) increasing access to digital knowledge resources and overseas markets and leveling the playing field vis-à-vis larger enterprises; (2) allowing small businesses to use cross-border digital tools to seize economic opportunity with agility; and (3) reducing digital barriers that disproportionately impact small businesses.

Small businesses face knowledge and access barriers that larger enterprises can more easily overcome. Data transfers and cross-border access to technology and markets help level the playing field. As the OECD has explained, cross-border data flows are especially important for small businesses....Better and faster access to critical knowledge and information also helps small businesses overcome informational disadvantages, notably with respect to larger firms, reducing barriers to engaging in international trade and allowing them more readily to compete with larger firms. One recent study estimates that digital tools helped small businesses reduce export costs by 82 percent and transaction times by 29 percent. Data localization and transfer restrictions make it harder to achieve these benefits, in part because they produce a fragmented Internet that reduces market opportunities for domestic small businesses to reach worldwide markets, which may instead be confined to some local or regional markets.

Unfortunately, the number and variety of digital trade barriers affecting small businesses has increased in recent years, and today include data localization mandates; unnecessary data transfer restrictions; customs duties on electronic transmissions; or other discriminatory digital measures. These types of digital barriers fall particularly heavily on small businesses, which lack the resources that larger companies can draw upon to comply with onerous mandates. In a recent CSIS study, small businesses highlighted divergent data privacy rules (40–60 percent of SME survey respondents) and data localization rules (30–40 percent of SME respondents) as key challenges. Conversely, with greater cross-border connectivity, small businesses estimate that they could increase sales by 15–40 percent and hire between 10–50 new employees each. (Please see additional discussion of small business impacts in Section B.13 below).

To promote a more resilient supply chain for American small businesses, the United States should reengage with those allies to agree on due process norms on cross-border data transfers, localization, and related matters. For more information, please see Ex. 48-54.

12. Cross-Border Data: Facilitating Trade to Support Supply Chain Resilience and Agility

Resilient supply chains run on cross-border data. Indeed, international trade, customs clearance, shipping, and logistics likely depend on cross-border access to data and digital tools as much as any business process in any other sector. From a process standpoint, a typical supply chain workflow includes the preparation and completion of contracts, invoices, receipts, bills of lading, shipping manifests, customs declarations, and various import licensing or regulatory certifications (e.g., for IP, health and safety purposes). Today, all of these supply chain data elements are typically prepared, stored, and submitted as cross-border data transmissions.

In the United States, the Department of Homeland Security and US Customs & Border Protection pioneered this cross-border data driven transformation through the so-called the Automated Commercial Environment (ACE), significantly enhancing US supply chain resilience in the process. In 2021, the ACE platform reportedly “reduced transaction processing by 795,000 hours for private actors, assisted process automation for 269 forms/document types, and led to \$2.7 billion in efficiencies.”²⁰ Among other benefits, the ACE platform allows DHS and CBP to improve revenue collection, auditing for customs compliance, and enforcement (e.g., against circumvention of anti-dumping or countervailing duty orders, or of labor- or environmental safeguards). Without reliable cross-border data transfers and access to information and technology, many of these benefits would not have been achievable.

The adoption of similar paperless trading technologies by other countries – particularly developing countries – have helped to democratize and spread these benefits to many more people around the world. The widespread adoption of such cross-border data-driven systems also benefits American workers, whose products and services can more easily reach potential buyers globally. For more information, please see Ex. 55 - 56.

However, US supply chain resilience faces a significant threat as some economies consider imposing wholly unprecedented new cross-border data barriers in the form of customs duties and restrictions on a wide array of

digital goods and services produced by American workers and exported across electronic networks to those economies.²¹

These new duties and restrictions would be highly disruptive to the US-allied supply chain: They would inject additional unpredictability and cost into the supply chain, cutting off US exports from barrier-free access to large and growing allied markets – potentially including Bangladesh, India, Indonesia, Malaysia, and Thailand (among others that have expressed an interest in imposing such barriers). These restrictions would directly harm American workers in digitally intensive export sectors, including semiconductors,²² film, music, software, and publishing, as well as 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 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. Most at risk are American workers employed by small businesses that would be unable to absorb the additional costs imposed by these measures. Accounting for 95% of all US exporting enterprises, American small businesses and their workers are particularly vulnerable to this new type of digital trade barrier. If USTR allows foreign countries to impose customs restrictions across these US export sectors, the disruption to trade will be paid for in lost American jobs, innovation, and economic opportunity.²³ For more information on the risks presented to the US supply chain from foreign customs duties on electronic transmissions, please see Ex. 57 - 64.

13. Cross-Border Data: Supporting US Industrial Competitiveness in Every Sector

Cross-border data is necessary to building resilient supply chains at every stage of the value chain²⁴ across every sector,²⁵ including the agriculture,²⁶ automotive,²⁷ clean energy,²⁸ finance and insurance,²⁹ healthcare³⁰ and medical technology,³¹ logistics,³² media,³³ pharmaceutical,³⁴ and telecommunications sectors.³⁵ Foreign cross-border data restrictions hurt US workers (and families and communities) in all of these sectors that depend upon digitally-enabled or digitally-delivered exports from the United States.³⁶

To promote a more resilient supply chain for American enterprises and their employees in every sector, the United States should reengage with those allies to agree on due process norms on cross-border data transfers, localization, and related matters. For more information, please see Exhibit 66 - 75.

14. Cross-Border Data: Supporting the Economic Foundations of a Resilient Supply Chain

Macro- and micro-economic analyses performed by the WTO, World Bank, IMF, OECD, and independent economists show that foreign cross-border data restrictions also harm GDP (minus 0.7-1.7%); investment flows (minus 4%); productivity (4.5% loss); small business (up to 80% higher trade costs); and the US tax base.³⁷ As the World Bank has noted, “[r]estrictions on data flows have large negative consequences on the productivity of local companies.”

Foreign direct investment (FDI) into the United States represents a pillar of US supply chain resilience. In 2023, FDI in the United States totaled \$5.25 trillion, with most of those funds coming from Japan, the United Kingdom, Germany, the Netherlands, and Canada (in that order).³⁸ Regrettably, USTR’s cross-border data policy stance indicates to our closest allies that the United States may – in the future – block those countries’ access to information out of (or into) the United States for reasons that are arbitrary, discriminatory, disguised, or unnecessary.

This policy stance risks undermining foreign investor confidence in the United States. The US government should consider China’s experience in this regard, given the severe impact that China’s arbitrary and capricious cross-border data policies have had on FDI into that country. The United States is currently a beneficiary of significant foreign FDI. It should not risk losing that privileged position due to the adoption vis-à-vis its own allies of arbitrary, discriminatory, disguised, or unnecessary cross-border data policy positions.

To support healthy, long-term resilient economic growth across the American supply chain, the United States should reengage with those allies to agree on due process norms on cross-border data transfers, localization, and related matters. For more information, please see Exhibit 76 - 86.

15. Cross-Border Data: Supporting US Strategic Interests in a Resilient Allied Supply Chain

US supply chain resilience requires communicating, cooperating, and collaborating with allies. To that end, the United States must not abandon the pro-democracy, pro-economic opportunity, and pro-science cross-border data disciplines that have helped it assemble a coalition of democracies across APAC, EMEA, and the Western Hemisphere to resist the challenge of digitally authoritarian policies. The US should not isolate itself from its allies, nor should it disregard the longstanding US-Allied efforts to bring greater predictability – consistent with democratic values – to cross-border data access and data transfers throughout the supply chain.

US government efforts to promote cross-border access to information across the supply chain have spanned decades. The United States drafted the relevant trade law disciplines based on US legal principles – helping ensure that US values and legal norms remain at the foundation of international economic law. These efforts have also served US geopolitical goals (keeping alliances strong, overseas markets open, and promoting US-based norms of transparency, due process, and procedural fairness among allies). And these efforts were integral to supporting democracy around the world, given that the United States always understood that access to knowledge and information is critical to civil and economic freedoms. The disciplines at issue serve to [protect human rights](#) and [counter digital authoritarianism](#), consistent with the [Presidential Initiative for Democratic Renewal](#).

From a supply chain resilience perspective, a continued failure to agree with allies on future democratic norms of cross-border data access will undermine specific calls for the promotion of US-Allied cross-border data access in the [National Security Strategy](#), the [National Cybersecurity Strategy](#), the [Indo-Pacific Strategy](#), the [Declaration for the Future of the Internet](#), the [International Cyberspace and Digital Policy Strategy](#); the [Data Privacy Framework](#), the [Global CBPR Forum](#), the [USAID Digital Strategy](#), and the [Joint Statement on Financial Services Data Connectivity](#). More specifically that continued failure is at odds with:

- The Biden-Harris [Executive Order on Artificial Intelligence \(AI\)](#) and US leadership in AI, which require reliable cross-border access to information from abroad.
- 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 [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.”
- The [National Cybersecurity Strategy](#) call to “rally like-minded countries, the international business community, and other stakeholders 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.”
- The call in the [Declaration for the Future of the Internet](#) to “realize the benefits of data free flows with trust based on our shared values as like-minded, democratic, open and outward looking partners.”
- The call in the [International Cyberspace and Data Policy Strategy](#), calling for greater “[digital solidarity](#)” with US allies via “[support for the trusted flow of data](#)” and “mutual recognition of rights-respecting approaches to data governance and digital trade”
- The call in the Statement on [Financial Services Data Connectivity](#) to oppose “measures that restrict where data can be stored and processed for financial service suppliers as long as financial regulators have full and timely access to data needed to fulfill their regulatory and supervisory mandate.”
- The call in the [USAID Digital Strategy](#) to support “digital trade that spans borders depends on free data flows, digitized customs, and innovations in trade finance.” and to allow digital technology to fulfill its “potential to democratize the flow of data and enhance the ability of governments to respond to citizens’ needs efficiently and effectively.”

To support US strategic interests in a resilient and secure supply chain in which the United States and its allies support one another, the United States should reengage with those allies to agree on due process norms on cross-border data transfers, localization, and related matters. For more information, please see Ex. 87.

16. Cross-Border Data: Supporting Other US Government Agency Interests in a Resilient Allied Supply Chain

In the Executive Order on America's Supply Chains, [EO 14017](#), the President highlighted the importance of undertaking "diplomatic, economic, security, trade policy, informational, and other actions that can successfully engage allies and partners to strengthen supply chains jointly or in coordination" as well as "ongoing data gathering and supply chain monitoring." The reports submitted in response to this EO and subsequent thereto underscore the importance of cross-border access to data for many US government agencies and departments. This includes (among others)³⁹:

- **Department of Agriculture**, *USDA Agri-Food Supply Chain Assessment: Program and Policy Options for Strengthening Resilience* (2022). This report stresses that cross-border access to "economic information and market intelligence form a critical knowledge base for anticipating both urgent and longer-term supply chain vulnerabilities as well as conducting real-time monitoring when supply chain challenges are experienced. Numerous information sources currently exist and are summarized below. Moving forward, enhancing the connection and real-time monitoring of these varied data sources will provide a more holistic and actionable picture of food and agriculture supply chains..."⁴⁰
- **Department of Defense**, *Securing Defense-Critical Supply Chains: An action plan developed in response to President Biden's Executive Order 14017* (2022). This report underscores DoD's need for cross-border access to data from US allies. For example, the report states, "DoD will continue to build on previous efforts to expand its supply chain visibility. This effort will begin with evaluating the data needed to inform real-time supply chain management decisions. Collecting and organizing key data will position the Department to maximize the use of analytic tools and mitigation strategies to proactively identify and address trends, vulnerabilities, and disruptions."⁴¹
- **Department of Energy**, *America's Strategy to Secure the Supply Chain for a Robust Clean Energy Transition* (2022). This report underscored that DoE faced "limitations in current data and analytical tools to assess and understand holistic and interdependent supply chains. To understand emerging supply chain threats, risks, vulnerabilities, and opportunities, it is important to have access to supply chain data and analytical tools to inform thinking and support decision making in building and maintaining resilient energy sector supply chains."⁴²
- **Department of Health & Human Services**, *Public Health Supply Chain and Industrial Base* (2022). This report underscores the importance of cross-border access to data from allied nations in several contexts. First, in the re-shoring and friend-shoring context, cross-border data from allied nations is necessary to sustain a "reliable manufacturing base, leveraging partnerships with industry and international neighbors and allies, and reviewing domestic sourcing and international procurement commitments to ensure they support US supply chain capacity and resiliency." Second, HHS underscores that for public-private partnerships to enhance supply chain resilience, it is critical to have "transparent, real-time dialogue and data sharing between government and industry partners," including in an international setting. Third, cross-border data access is also important to HHS' goals of "building and improving end-to-end visibility of the supply chain, including through the Supply Chain Control Tower(SCCT). FDA's Resilient Supply Chain and Shortages Prevention Program will enhance Center for Devices and Radiological Health's capacity to enable rapid intervention to prevent and mitigate supply chain interruptions." HHS underscores that, "enhancing supply chain surveillance and monitoring will enable earlier identification of concerns, issues, and challenges and help bring this information to leadership and relevant agencies sooner than might have been possible before."⁴³

As reflected in the foregoing detailed analyses in Sections B.1 – B.16, any strategy developed by USTR to advance supply chain resilience should recognize the importance of securing America's future cross-border access to data.

C. Asserted “Policy Space” Concerns

In the April US Trade Agenda hearings before the [House Committee on Ways & Means](#) and the [Senate Finance Committee](#), the USTR asserted that pending legislative and administrative actions prevent the US government from taking steps to safeguard US access to cross-border data in the future. In support of this claim, the USTR invoked 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](#) (hereinafter “Data Broker legislation”). 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.”

This exchange illustrates a false premise that threatens long-term US supply chain resilience – *i.e.*, that targeted restrictions on bulk data broker sales to six US adversary nations necessarily **prevent** the United States from negotiating with US allies to broadly protect US supply chain resilience through agreements with allied nations on cross-border data.⁴⁴

As discussed in greater detail in Exhibits 88-89, this premise is incorrect for several reasons.

First, President Biden’s own Executive Order and the ANPRM directly contradict the claim that the United States must choose between: (1) prohibiting bulk data broker sales to adversary nations; and (2) the United States strategic interest in entering into cross-border data agreements with allied nations. The ANPRM states in relevant part:

As the President affirmed in the [Executive] Order, the United States remains committed to promoting an open, global, interoperable, reliable, and secure internet; promoting open, responsible scientific collaboration to drive innovation; protecting human rights online and offline; supporting a vibrant, global economy by promoting cross-border data flows to enable international commerce and trade; and facilitating open investment. Accordingly, the Order authorizes the Attorney General to take specific, carefully calibrated actions to minimize [national security] risks [involving] countries of concern..., while minimizing disruption to commercial activity. ... [T]his ANPRM does not propose generalized data-localization requirements either to store Americans’ bulk sensitive personal data or government-related data within the United States or to locate computing facilities used to process Americans’ bulk sensitive personal data or government-related data within the United States. Nor does it seek to broadly prohibit U.S. persons from conducting commercial transactions with entities and individuals located in countries of concern or impose measures aimed at a broader decoupling of the substantial consumer, economic, scientific, and trade relationships that the United States has with other countries. This carefully calibrated action instead reflects the U.S. Government’s longstanding support for the concept of “Data Free Flow with Trust,” in recognition of its importance to the economy and human rights online.⁴⁵

As reflected in the excerpt above, the EO and ANPRM on their face contradict the claim that the EO precludes the United States from engaging in cross-border data negotiations with US allies.

Second, DoJ, the National Security Council (NSC), and the Department of Homeland Security (HHS) have emphasized that the EO and ANPRM (like the *Protecting Americans’ Data from Foreign Adversaries Act*, HR7520) 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.⁴⁶ Simply put, national security actions do not preempt the United States from standing up for US allies, US economic interests, US legal standards, and US democratic norms on cross-border data. Senator Ron Wyden (D-OR) summed the issue up succinctly in comments immediately after the aforementioned 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.⁴⁷ Ex. 90.

Third, over 100 US Senators and Representatives – many of them leaders in digital governance matters – disagree with USTR’s claim that domestic legislative debates prevent USTR from following congressional guidance on cross-border data transfers. In fact, scores of lawmakers have issued dozens of statements and letters, expressing deep frustration with USTR’s surprise reversal of longstanding US economic and digital trade policy. These statements and letters emphasize that USTR’s actions: (1) contradict Congress’ express legislative guidance; (2) are factually and legally unsupported; (3) harm US national economic, security, and strategic interests; and (4) are not justified by USTR’s “policy space” arguments. See Ex. 90-100.

As noted in a [bipartisan letter signed by dozens of Senators](#):

[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. Ex. 91.

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. Ex. 92.

The foregoing letters are just two out of dozens of congressional statements and letters critiquing USTR’s actions as contrary to express congressional direction and/or unsupported by substantial evidence or the law.

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, the 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.

Fourth, nothing in longstanding US trade rules on cross-border data would prevent Congress from creating new AI or consumer privacy rules as a general matter. 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.⁴⁸

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 at issue. For an overview of some of these agreements, see Ex 101.

Certainly, no minister in these allied economies has suggested that it would be “[policy suicide](#)” to commit vis-à-vis its own allies to basic norms of good governance that are already found in that country’s own law.

In sum, 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 that undermine US supply visibility, security, and resilience.⁴⁹

D. Executive Order 14094 and Circular A-4 Govern USTR’s Supply Chain Resilience Review

On April 6, 2023, President Biden issued [Executive Order \(EO\) No. 14094](#), entitled Modernizing Regulatory Review. This EO, which updates EO 12866 (1993) and EO 13563 (2011), was followed by several consequential guidance documents from the Office of Management and Budget (OMB), including the first update to [Circular A-4](#) in over two decades.⁵⁰ The Biden Administration has also issued a [Memorandum for Regulatory Policy Officers at Executive Departments and Agencies](#).⁵¹

These Biden Administration legal authorities govern USTR’s supply chain resilience review. USTR should scrupulously adhere to the aforementioned administrative legal requirements. This includes affording the public, other government agencies, US states, and labor and industry advisory committees advance notice and opportunity to comment on any future recommendations that this review may produce.

Failure to meet these requirements increases the risk that USTR’s action could subsequently be found to be *ultra vires*, unsupported by substantial evidence or law. USTR’s conduct is likely to be subject to significant scrutiny given the extraordinary public reaction to its digital trade policy reversal. Beyond the congressional reaction (described above), USTR’s conduct has 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. See Ex. 88-130.

Under EO 14094, USTR’s actions appear to meet the definition of “significant regulatory action” – a class of administrative conduct that may:

- (1) have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; ...
- (4) raise legal or policy issues for which centralized review would meaningfully further the President’s priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.”

In relation to cross-border data and supply chain resilience, USTR’s continuing refusal to take steps to protect US cross-border access to data:

- (1) Will have an adverse and material effect on the economy, competition, jobs, the environment, and public health: Maintaining US cross-border access to data and information is critical to US supply chain resilience specifically and the US economy, competition, jobs, the environment and public health more broadly. USTR's willingness to countenance US allies' imposition of arbitrary, disguised, discriminatory, or unnecessary cross-border data barriers vis-à-vis the United States impedes the ability of the US supply chain to gain resilience through data-enabled AI and digital transformation. Given the importance of cross-border data in today's economy, the adverse and materials impacts of USTR's actions are far-reaching.
- (2) Creates serious inconsistency or interference with another government agency's action: This factor is implicated because of the impact of USTR's cross-border data policy stance on the equities of other White House offices and other US government agencies, including the Departments of Commerce, Defense, Health & Human Services, Homeland Security, Justice, and Treasury.
- (3) Raises issues for which centralized review is necessary: In the context of its supply chain review, USTR's stance prejudices other government agency equities and hurts US economic and security interests. We recognize that the National Security Council and the National Economic Council have already commenced a centralized review of USTR's policy- and decision-making processes in this regard. This ongoing White House review is further evidence that USTR's action here qualifies as "significant regulatory action."
- (4) Has an economic impact likely in excess of \$200 million. We discuss six different ways of measuring the potential economic impact of USTR's refusal to negotiate for future US cross-border access to data. By any of these six measures, USTR's inaction likely has an economic impact exceeding \$200 million per year:⁵²

- a. **Economic Analysis by the World Bank:** First, as stated by the World Bank, "restrictions on data flows have large negative consequences on the productivity of local companies using digital technologies and especially on trade in services. Studies show that countries would gain on average about 4.5 percent in productivity if they removed their restrictive data policies, whereas the benefits of reducing data restrictions on trade in services would on average be about 5 percent."⁵³

Applying the World Bank's framework to US GDP produces an expected net benefit \$1.26 trillion – \$1.4 trillion from the removal of cross-border data restrictions.⁵⁴

- b. **Economic Analysis by the US Bureau of Economic Analysis (BEA):** Second, according to the BEA, the digital economy added \$2.6 trillion to US GDP in 2022.⁵⁵

The value of data transfers to the US economy can be estimated at \$650 billion - \$1.04 trillion per year based on this BEA data, coupled with data suggesting (conservatively) that cross-border data transactions approximate 25%-40% of the digital economy.⁵⁶

- c. **Economic Analysis by the McKinsey Institute:** Third, the McKinsey Institute estimates that data transfers will add over \$11 trillion to global GDP by 2025.⁵⁷ The United States accounts for roughly 15% of global GDP.⁵⁸

The value of data transfers to the US economy can be estimated at \$1.65 trillion based on this McKinsey analysis and the US share of global GDP.

By any of the foregoing measures, the potential economic impact of USTR's failure to take action to secure future US cross-border access to data and future US ability to engage in data transfers exceeds \$200 million.⁵⁹

- (5) Other economic measures also suggest that the potential economic impact of USTR's cross-border data policy stance is very high.
 - a. **Trade-Based Metrics:** One potential metric would be based on the value of digitally-enabled goods and services exports from the United States. In 2022, US digitally-enabled services exports were valued at \$626 billion, while US-digitally-enabled good exports exceeded \$500 billion (combining

exports of computing and ICT equipment, aircraft, and vehicles). This combined figure – which does not even account for import-related impacts – exceeds \$200 million per year.

- b. **AI-Based Metrics:** Another metric focuses on potential lost economic opportunities associated with AI. As discussed above, AI is only able to reach its full potential if there is access to a high quantity of high quality data from around the world. In that regard, the McKinsey Institute estimates that AI is likely to add \$13 trillion dollars to GDP by 2030.⁶⁰ Thus, the United States' ability to realize these economic and other benefits of AI requires predictable, reliable, and stable US cross-border access to data from allied nations. USTR's refusal to engage in negotiations with US allies to that end would likely impair those potential economic gains. Even a tiny fractional impact would exceed \$200 million.
- c. **Jobs-Based Metrics:** A final potential metric focuses on sectors and jobs that are heavily dependent on digital exports. What follows is a small fraction of the sectors impacted by USTR's refusal to negotiate on cross-border data with US allies. In any one of these sectors, the potential impact of USTR's inaction exceeds \$200 million per year. This includes the following sectors:
 - Aerospace: 2.1 million US jobs and \$90.6 billion in US exports in the aerospace sector;⁶¹ Ex. 131.
 - Automotive: 9.6 million US jobs and \$105 billion in US exports in the automotive sector;⁶² Ex. 132.
 - Finance: 6.3 million US jobs and \$151.9 billion in US exports in the insurance and financial sector;⁶³ Ex. 133.
 - Film: 2.7 million US jobs and \$17.3 billion in US exports in the motion picture industry;⁶⁴ Ex. 134.
 - Medical Devices & Pharmaceuticals: 3 million US jobs and \$135 billion in US exports;⁶⁵ Ex. 135-36.
 - Semiconductors: 1.6 million US jobs and \$49 billion in US exports in the semiconductor industry;⁶⁶ Ex. 137
 - Software: 16 million US software-related jobs, including 12 million outside of the technology sector;⁶⁷
 - Small Business: Over 6 million US jobs created by US small businesses, which account for 95% of all US exporting enterprises and 25% of all US exports.

Unfortunately, with foreign cross-border data restrictions increasing by 600% in the Asia-Pacific region alone and with the incidence of such restrictions accelerating over time even in allied nations,⁶⁸ USTR's policy stance of allowing foreign governments to mandate localization and restrict data transfers (even on arbitrary, disguised, discriminatory, and unnecessary grounds) increases the likelihood of such barriers being imposed vis-à-vis the United States – jeopardizing the anticipated economic gains noted above. See Ex. 131-140.

Given that the supply chain review meets the threshold for significant regulatory action, USTR must follow each of the required elements of EO 12866, EO 13563, EO 14094, and Circular A-4.

CONCLUSION

For the foregoing reasons, it is critical to US supply chain resilience that the United States reengage with its allies to – among other things – safeguard US and allied cross-border exchange and mutual access to knowledge, information, and data.

¹ The GDA is a cross-industry coalition of companies, headquartered in the United States and allied nations, that are committed to high standards of data responsibility and that rely on the ability to access and transfer information across borders to innovate and create jobs in the United States. GDA member companies are active in the accounting, agriculture, automotive, aerospace and aviation, biopharmaceutical, consumer goods, energy, film and television, finance, healthcare, hospitality, insurance, manufacturing, medical device, natural resources, publishing, semiconductor, software, supply chain, telecommunications, and transportation sectors. GDA member companies have operations and support millions of jobs across all 50 US states. For more information, see <https://www.globaldataalliance.org>

² Office of the US Trade Representative, *Request for Comments on Promoting Supply Chain Resilience*, 89 Fed. Reg. 16608 (March 7, 2024) at: <https://www.federalregister.gov/documents/2024/03/07/2024-04869/request-for-comments-on-promoting-supply-chain-resilience>

³ See generally Global Data Alliance, *Cross-Border Data & Supply Chain Logistics* (2021), <https://globaldataalliance.org/wp-content/uploads/2021/07/03182021gdaprimersupplychain.pdf> (“Supply-chain operators depend on data transfers and on cross-border access to industrial cloud infrastructure for sourcing, logistics, financial operations, and productivity enhancement, among other business software-driven applications. In every sector of the economy, cross-border information is helping to streamline supply-chain processes in a variety of ways. Digital technologies such as data analytics, artificial intelligence (AI), and blockchain support freight scheduling, sourcing, and inventory management; promote safety and fight counterfeiting; increase efficiency and resilience; reduce costs; and minimize disruption. For instance, AI solutions help predict demand along supply chains more accurately. Companies also use blockchain to quickly trace goods when they need to recall products.”)

⁴ See discussion *infra* Sections B.14-B.15.

⁵ See *id.*

⁶ See <https://www.federalregister.gov/documents/2024/03/05/2024-04594/national-security-division-provisions-regarding-access-to-americans-bulk-sensitive-personal-data-and>

⁷ See generally, Global Data Alliance, *Cross-Border Data Policy Index* (2023), at: <https://globaldataalliance.org/resource/cross-border-data-policy-index/>

⁸ These initiatives build upon the negotiation of cross-border data policies in the Regional Comprehensive Economic Partnership (RCEP) that broadly support an authoritarian digital governance model. This RCEP model adopts a self-judging approach to governmental conduct in the digital environment, giving license for Parties to the Agreement to impose arbitrary, discriminatory, disguised, or unnecessary cross-border data restrictions at will. See https://www.gov.cn/zhengce/content/202403/content_6940154.htm

⁹ Ministry of Commerce of the People's Republic of China, *Notice of the Ministry of Commerce Publishing the Three-Year Action Plan for Digital Commerce* (2024-2026), at: <http://www.mofcom.gov.cn/zfxxgk/article/gkml/202404/20240403506347.shtml>

¹⁰ The White House, Remarks by President Biden on America's Place in the World (Feb. 4, 2021), at: <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/04/remarks-by-president-biden-on-americas-place-in-the-world/>

¹¹ See e.g., Tech Times, *China, France Forge Consensus on AI Regulation: Here's What They Agreed On* | Tech Times (May 7, 2024), at: <https://www.techtimes.com/articles/304383/20240507/china-france-forge-consensus-ai-regulation.htm>; Cryptopolitan, *France and China Announce Joint Declaration on AI Governance, Vow for Closer Collaboration* (May 7, 2024), at: <https://www.msn.com/en-us/news/world/france-and-china-announce-joint-declaration-on-ai-governance-vow-for-closer-collaboration/ar-BB1m1xHg?ocid=BingNewsSerp>; China Daily, *China, France to enhance global governance cooperation on artificial intelligence* (May 7, 2024), at: <https://www.chinadaily.com.cn/a/202405/07/WS6639f223a31082fc043c5be5.html>

¹² See generally, Global Data Alliance website, *GDA Issue Briefs on Cybersecurity, Data Analytics, Economic Development, Environmental Sustainability, Innovation, Regulatory Compliance, Privacy, and Small Business* (2024), at: <https://globaldataalliance.org/issues/>; See also Global Data Alliance website, *GDA Sector Briefs on Agriculture, Automotive, Biopharmaceutical R&D, Energy, Finance, Healthcare, Media & Publishing, Medical Technology, Supply Chain, and Telecommunications* (2024), at: <https://globaldataalliance.org/issues/>, at: <https://globaldataalliance.org/sectors/>; 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>

¹³ GDA does not agree with the implicit premise of this question – i.e., that current and former USTR staff advanced trade policies that promoted the offshoring of US jobs in recent decades. USTR staff has always worked to defend the US public interest, including the interests of US workers.

¹⁴ See generally, Global Data Alliance, *GDA Comments on Worker-Centered Trade Policy* (2023), <https://globaldataalliance.org/wp-content/uploads/2023/09/09252023gdaworktradepolicy.pdf>

¹⁵ See e.g., Business Roundtable, *Trade Supports over 40 Million American Jobs* (2020), at: <https://www.businessroundtable.org/new-study-trade-supported-over-40-million-american-jobs>; National Association of Manufacturers, *US Manufacturing Could Need up to 3.8 million workers* (2024), at: <https://nam.org/study-manufacturing-in-u-s-could-need-up-to-3-8-million-workers-30626/>; US Chamber of Commerce, *How US Workers and Companies Benefit from Digital Trade* (2024), at: https://www.uschamber.com/assets/documents/USCC_Digital-Trade-Report.pdf; US Chamber of Commerce, *International Trade Opens Doors for American Workers* (2023), <https://www.uschamber.com/international/international-trade-opens-doors-for-american-workers>; International Trade Administration, *SELECTUSA Sector Overview: Software and Information Technology Association* (2020), <https://www.trade.gov/selectusa-software-and-information-technology-industry>

¹⁶ See Global Data Alliance, *WTO Moratorium on Customs Duties on Electronic Transmissions – Statistical Summary* (2024), at: <https://globaldataalliance.org/wp-content/uploads/2024/02/02222024gdawtostatsum.pdf> ; BSA | The Software Alliance, *Customs Duties on Software and Other US Digital Exports – A Threat to Growth & Innovation* (2019), at: <https://www.bsa.org/files/policy-filings/10182019wtomoratoriumus.pdf>

¹⁷ See *id.*

¹⁸ <https://www.regulations.gov/comment/USTR-2024-0002-0152>

¹⁹ USAID, *Digital Ecosystem Framework* (2022), at: https://www.usaid.gov/sites/default/files/2022-05/Digital_Strategy_Digital_Ecosystem_Final.pdf

²⁰ <https://www.tradeready.ca/2024/featured-stories/simplifying-international-trade-with-single-windows/>

²¹ 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.”

²² For example, 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 United States allowed other countries to impose such customs duties, 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. 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 seeks to boost US manufacturing competitiveness under the CHIPS Act and the Inflation Reduction 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.

²³ Allowing the imposition of such customs duties and restrictions by trading partners – or the imposition by the United States of such measures – would be deeply likely 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. Global Data Alliance, *Cross-Border Data Transfers – Facts & Figures* (2020), at: <https://globaldataalliance.org/wp-content/uploads/2021/07/gdafactsandfigures.pdf> This would suggest that the application of customs duties to such data flows would be magnified across industries.

²⁴ Global Data Alliance, *Jobs in All Sectors Depend Upon Data Flows* (2020), at: <https://globaldataalliance.org/wp-content/uploads/2021/07/infographicgda.pdf>

²⁵ Global Data Alliance, *The Cross-Border Movement of Data: Creating Jobs and Trust Across Borders in Every Sector* (2020), at: <https://globaldataalliance.org/wp-content/uploads/2021/07/GDAeverysector.pdf>

²⁶ Global Data Alliance, *GDA Website – Agriculture* (2022), at: <https://globaldataalliance.org/sectors/agriculture/>

²⁷ Global Data Alliance, *GDA Website – Automotive* (2022), at: <https://globaldataalliance.org/sectors/automotive/>

²⁸ Global Data Alliance, *GDA Website – Energy* (2022), at: <https://globaldataalliance.org/sectors/energy/>

²⁹ Global Data Alliance, *GDA Website – Finance* (2022), <https://globaldataalliance.org/sectors/finance/>

³⁰ Global Data Alliance, *GDA Website – Healthcare* (2022), <https://globaldataalliance.org/sectors/healthcare/>

³¹ Global Data Alliance, *GDA Website – Medical Technologies* (2023), <https://globaldataalliance.org/sectors/medical-technology/>

³² Global Data Alliance, *GDA Website – Supply Chain Logistics* (2022), <https://globaldataalliance.org/sectors/supply-chain-logistics/>

³³ Global Data Alliance, *GDA Website – Media and Publishing* (2022), <https://globaldataalliance.org/sectors/media-publishing/>

³⁴ Global Data Alliance, *GDA Website – Biopharmaceutical R&D* (2022), <https://globaldataalliance.org/sectors/biopharmaceutical-rd/>

³⁵ Global Data Alliance, *GDA Website – Telecommunications* (2022), <https://globaldataalliance.org/sectors/telecommunications/>

³⁶ See generally, Global Data Alliance, *GDA Comments on Worker-Centered Trade Policy* (2023), <https://globaldataalliance.org/wp-content/uploads/2023/09/09252023gdaworktradepolicy.pdf>

³⁷ See generally, Global Data Alliance, *Cross-Border Data Policy Index* (2023), at: <https://globaldataalliance.org/resource/cross-border-data-policy-index/>

³⁸ Bureau of Economic Analysis, *Direct Investment by Country and Industry* (2022), at: <https://www.bea.gov/news/2023/direct-investment-country-and-industry-2022#:~:text=The%20foreign%20direct%20investment%20in%20the%20United%20States,from%20%245.04%20trillion%20at%20the%20end%20of%202021.>

³⁹ Other examples of agency reports highlighting the importance of cross-border data include:

- **Department of Commerce, 2023 Annual Performance Report.** This report underscores the criticality of US-Allied cross-border data access to the security and resilience of US supply chains and economic opportunity, including in its discussion of data transfer frameworks with the EU and Switzerland and with other US allies, and in its discussion of supporting "US company resilience to foreign economic and geopolitical coercion and policies and practices of malign actors and their sponsored entities in third country markets as well as promote US standards and business practices worldwide. See US Department of Commerce, *2023 Annual Performance Report* (2024), at: <https://www.commerce.gov/sites/default/files/2024-03/FY2023-2025-APPR.pdf>
- **Department of Defense** commissioned report, [US Alliance and Partner Networks – A Network Analysis of their Health & Strength](#). That report stresses the role that cross-border access to information and integrated allied supply chains play in protecting US national security, particularly in times of conflict. The report also stresses the gravity of the present situation, noting that, "as China rose to become an international trading power, displacing the United States, US centrality to the economic network layer fell by more than two-thirds (69 percent), [placing]... the United States as the greatest loser of network depth." Office of the Secretary of Defense, Report Commissioned through RAND Corporation, *US Alliance and Partner Networks – A Network Analysis of Their Health and Strength* (2024), at https://www.rand.org/content/dam/rand/pubs/research_reports/RRA1000/RRA1066-1/RAND_RRA1066-1.pdf

⁴⁰ Department of Agriculture, *USDA Agri-Food Supply Chain Assessment: Program and Policy Options for Strengthening Resilience* (2022), at: <https://www.ams.usda.gov/sites/default/files/media/USDAAgriFoodSupplyChainReport.pdf>

⁴¹ Department of Defense, *Securing Defense-Critical Supply Chains: An action plan developed in response to President Biden's Executive Order 14017* (2022), at <https://media.defense.gov/2022/Feb/24/2002944158/-1/-1/1/DOD-EO-14017-REPORT-SECURING-DEFENSE-CRITICAL-SUPPLY-CHAINS.PDF>

⁴² Department of Energy, *America's Strategy to Secure the Supply Chain for a Robust Clean Energy Transition* (2022), at: <https://www.energy.gov/policy/articles/americas-strategy-secure-supply-chain-robust-clean-energy-transition.>

⁴³ See Department of Health & Human Services, *Public Health Supply Chain and Industrial Base* (2022), at: <https://aspr.hhs.gov/MCM/IBx/2022Report/Documents/Public-Health-Supply-Chain-and-Industrial-Base%20One-Year-Report-Feb2022.pdf>

⁴⁴ The USTR lays out this false choice clearly in an April 16 letter sent to Senator Blackburn. In that letter, the USTR states:

On February 28, 2024, President Biden signed an executive order on preventing access to Americans' bulk sensitive personal data and United States government-related data by countries of concern. The House of Representatives also recently passed the Protecting Americans' Data from Foreign Adversaries Act (H.R. 7520) by a vote of 414-0, which prevents data brokers from transferring personal data to foreign adversaries such as the People's Republic of China (PRC). In response to concerns that the PRC could force TikTok to provide access to Americans' data, the House of Representatives passed bipartisan legislation compelling TikTok's parent company, ByteDance to divest or face prohibitions on operating in the United States. The House of Representatives and the Biden Administration have demonstrated that the government has a responsibility to act to protect the American people from harms associated with certain data flows. I am proud that my decision to withdraw support for certain attributions put forward by the previous Administration is helping create space for Congress and the Administration to act. (emphasis added).

See ReThink Trade, *Letter from USTR Katherine Tai to Senator Marsha Blackburn* (April 16, 2024), at: <https://rethinktrade.org/external-voices/letter-ustr-tai-to-senator-marsha-blackburn-on-digital-trade/>

⁴⁵ US Department of Justice, ANPRM on Americans' Sensitive Personal Data (March 2024).

⁴⁶ US trade agreements contain a blanket exception that allows for national security-based data restrictions, such as those contained in the EO. Below is the relevant language from USMCA Art. 32.2.1:

Nothing in this Agreement shall be construed to ... preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests. (emphasis added).⁴⁶

As reflected above, this exception is framed in terms that are absolute and self-judging. The exception is drafted to give the United States (or any Party that invokes it) complete and unquestioned authority to take any action it considers necessary to protect its essential security interests.

⁴⁷ <https://www.finance.senate.gov/hearings/the-presidents-2024-trade-policy-agenda>

⁴⁸ To further illustrate the fallacy in USTR's reasoning, the GDA – like many other civil society and industry groups – supports prohibitions on bulk data broker transactions vis-à-vis China and other countries of concern. At the same time, the GDA – like many other civil society and industry groups – is deeply concerned with USTR's continued refusal to negotiate with US allies to safeguard the US national interest by ensuring future cross-border access to data from our closest allies. See Global Data Alliance, Response to Department of Justice on Americans' Sensitive Personal Data (2024), <https://globaldataalliance.org/wp-content/uploads/2024/04/04192024gdaussensdata.pdf>

⁴⁹ There are several factual and legal aspects features that highlight the false choice that USTR presents:

- The countries and measures at issue in the ANPRM and data broker legislation are wholly distinct from those US allies seeking greater cross-border data policy engagement. The former involves narrow data brokerage transaction vis-à-vis US adversaries, while the latter involves a range of beneficial science, technology, and commercial engagements between the US and its closest allies. USTR's active frustration of agreements regarding the latter subject matter creates serious risks for US alliances, technology leadership, and national security.
- USTR has aligned itself with antitrade activists who claim that US trade agreement disciplines will undermine US discretion to regulate in the public interest. This assertion is incorrect on two grounds: (1) The United States—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; and (2) US agreements provide broad latitude to regulate in the public interest.

⁵⁰ As explained by the White House, "[r]evising Circular A-4 is part of a larger effort to modernize regulatory review, [including in relation to] ... public participation in the regulatory process..., benefit-cost analysis, [and] competition." <https://www.whitehouse.gov/omb/briefing-room/2023/11/09/biden-harris-administration-releases-final-guidance-to-improve-regulatory-analysis/>

⁵¹ See generally, Executive Order 14094 (April 6, 2023), published at 88 Fed. Reg. 21879 (April 11, 2023), at: <https://www.govinfo.gov/content/pkg/FR-2023-04-11/pdf/2023-07760.pdf>; Office of Management and Budget, Circular No. A-4, Guidance to Federal Agencies on the Development of Regulatory Analysis under Section 6(a)(3)(C) of Executive Order 12866 of September 30, 1993 (Nov. 9, 2023), at: <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>; Office of Information and Regulatory Affairs, Implementation of Modernizing Regulatory Review Executive Order, Memorandum for Regulatory Policy Officers at Executive Departments and Agencies (April 6, 2023), at: <https://www.whitehouse.gov/wp-content/uploads/2023/04/ModernizingEOImplementation.pdf>; White House, Biden-Harris Administration Releases Final Guidance to Improve Regulatory Analysis (Nov. 9, 2023), at: <https://www.whitehouse.gov/omb/briefing-room/2023/11/09/biden-harris-administration-releases-final-guidance-to-improve-regulatory-analysis/>

⁵² Global Data Alliance, *Cross-Border Data Policy Index* (2024), at: <https://globaldataalliance.org/resource/cross-border-data-policy-index/>. Please see the Index for additional details regarding WTO, World Bank, OECD, and UN analyses that have produced these data.

⁵³ See The World Bank, *World Development Report* (2020), <https://www.worldbank.org/en/publication/wdr2020>.

⁵⁴ These figures are derived from a calculation of 4.5% - 5% of \$27.9 trillion, which is the Bureau of Economic Analysis (BEA)'s estimate of 2023 US GDP. See Bureau of Economic Analysis, Gross Domestic Product, Fourth Quarter and Year 2023 (Advance Estimate) (Feb. 2024), at: <https://www.bea.gov/news/2024/gross-domestic-product-fourth-quarter-and-year-2023-advance-estimate>

⁵⁵ Bureau of Economic Analysis, US Digital Economy – New and Revised Estimates (2017-2022) (2023), at: <https://apps.bea.gov/scb/issues/2023/12-december/pdf/1223-digital-economy.pdf>; See also Bureau of Economic Analysis,

Measuring the Digital Economy: An Update Incorporating Data from the 2018 (A 2019 BEA study estimated that the digital economy contributed roughly \$1.34 trillion to GDP in 2017.)

Comprehensive Update of the Industry Economic Accounts (2019), at: https://www.bea.gov/system/files/2019-04/digital-economy-report-update-april-2019_1.pdf.

⁵⁶ It is conservatively estimated that roughly 23% of global Internet capacity connects to the United States, and that roughly 30-40% of global data center capacity is in the United States. See Tim Stronge, Does 70% of the World's Internet Traffic Flow Through Northern Virginia? Teleography (2019), at: <https://blog.telegeography.com/does-70-of-the-worlds-internet-traffic-flow-through-virginia>

⁵⁷ OECD, *Measuring the Economic Value of Data and Cross-Border Data Flows*, 297 OECD Digital Economy Papers 24 (August 2020) (explaining that data transfers are estimated to contribute \$11 trillion to GDP by 2025.)

⁵⁸ The United States accounted for roughly 15.5% of global GDP in 2022. That percentage is expected to drop to 15% by 2025. See Statista Website, *United States' share of global gross domestic product (GDP) adjusted for purchasing power parity (PPP) from 2018 to 2028 (2024)*, at: <https://www.statista.com/statistics/270267/united-states-share-of-global-gross-domestic-product-gdp/#:~:text=In%202022%2C%20the%20United%20States%20accounted%20for%2015.54,%28GDP%29%20after%20adjustin,g%20for%20purchasing%20power%20parity%20%28PPP%29>.

⁵⁹ The lowest estimate of \$650 billion is over 3,000 times \$200 million. The highest estimate of \$1.65 trillion is over 8,000 times \$200 million.

⁶⁰ <https://www.mckinsey.com/featured-insights/artificial-intelligence/notes-from-the-AI-frontier-modeling-the-impact-of-ai-on-the-world-economy#/>

⁶¹ <https://www.aia-aerospace.org/wp-content/uploads/2021-Facts-and-Figures-U.S.-Aerospace-and-Defense.pdf>

⁶² <https://www.autosinnovate.org/resources/papers-reports/Driving%20Force%20Annual%20Report.pdf>

⁶³ <https://www.trade.gov/selectusa-financial-services-industry>

⁶⁴ https://www.motionpictures.org/wp-content/uploads/2024/03/MPA_Economic_contribution_US_infographic-1.pdf

⁶⁵ <https://phrma.org/Blog/US-biopharmaceutical-exports-support-jobs-innovation>; <https://www.advamed.org/medical-device-industry-facts/job-creation/>

⁶⁶ https://www.semiconductors.org/wp-content/uploads/2020/03/2021_SIA_Industry-Facts_5-19-2021.pdf

⁶⁷ Software.org – The BSA Foundation, *Software – Supporting US Through COVID* (2020), at: <https://software.org/wp-content/uploads/2021SoftwareJobs.pdf>;

⁶⁸ See *Cross-Border Data Policy Index*.