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SUBMISSION ON SUPPLY CHAIN RISK ASSESSMENT & IPEF SUPPLY CHAINS
US COMMERCE DEPARTMENT SUPPLY CHAIN INQUIRY

June 23, 2024

Ms. Sharon H. Yuan
Counselor and Chief Negotiator for
the Indo-Pacific Economic Framework

Mr. Kevin Doyle
Policy Advisor for IPEF
IPEFSCA@trade.gov

Mr. Ahmad Khalil
Managing Director
Risk Assessment & Advanced Analytics
Supply Cain Center
Industry and Analysis Unit
supplychaincenter@trade.gov

International Trade Administration
US Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Dear Ms. Yuan, Mr. Doyle, and Mr. Khalil:

The Global Data Alliance (GDA)[1] appreciates the opportunity to submit the following comments to the US Department of Commerce (Commerce Department) International Trade Administration (ITA) in relation to supply chain risk assessment and supply chains in the Indo-Pacific Economic Framework Agreement.[2] This submission is organized as follows: I. Introduction; II. Discussion; III. Recommendations for the Supply Chain Center; IV. Recommendations for the Commerce Department IPEF Team; and V. Appendices.

INTRODUCTION

The GDA is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. GDA member companies are active in all sectors of the economy and depend heavily on cross-border access to information and intelligence in order to make informed and effective decisions in multi-national supply chains for the production, sourcing, and delivery of critical inputs, services, and final products.

We focus our comments on steps that ITA can take to promote US supply chain visibility, analytics, resilience, and security through the Supply Chain Center, through the Indo-Pacific Economic Framework (IPEF), and through other initiatives. More specifically, we focus on how US cross-border access to knowledge and information are critical to the ITA's mission of overcoming 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.

DISCUSSION

The GDA welcomes the Biden-Harris White House's whole-of-government supply chain initiative under EO 14017 – an initiative that has produced supply chain resilience reports from various US departments and agencies that stressed how cross-border access to data helps US government agencies anticipate and "understand emerging supply chain threats, risks, vulnerabilities, and opportunities."[4]

The GDA also supports the recognition of the Departments of Agriculture, Commerce, Defense, Energy, Health & Human Services, Justice, State, Transportation, and Treasury that cross-border data access and information exchange with US allies are necessary to advance 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.[5] *See* Appendix I.

Congress has also emphasized that the US government can only secure its own international supply chain if it is able to secure reliable and predictable access to information about, and visibility into, that supply chain. For example, Congress has also noted the risk that foreign cross-border restrictions on data sharing and data access (including between the US and its allies) can "disrupt supply chains,"[6] necessitating better "coordination with allies on supply chains";[7] and highlighting that "strong [international] … rules are critical to ensuring strong and resilient supply chains" given that "numerous industries reliant on data flows, which encompass sectors like mining, automotive manufacturing, aviation, accounting, medical diagnostics, security services, healthcare, research, and agriculture."[8]

In the context of this Commerce Department *Request for Input*, the GDA strongly supports the efforts the Supply Chain Center and Commerce's IPEF team to build supply chain resilience and security through improved visibility and data analysis relating to the international supply chain. We welcome the Supply Chain Center's role as a nodal center with the US government to drive decision-making and policy action on efforts to strengthen supply chain resilience. We also recognize its sectoral expertise and its emphasis on quantitative and qualitative data analytics to help set strategic priorities based on data-driven evidentiary analysis.

There is urgency to the Commerce Department's goal of: (1) securing cross-border sources of data and information relating to the supply chain, and (2) developing state-of-the-art approaches to understanding, analyzing, and modeling that information to safeguard US supply chain resilience and security. Indeed, a particular threat to the Commerce Department's ability to fulfill this mission is found in foreign cross-border data restrictions that undermine US supply chain resilience and security.[9] As discussed in the GDA *Cross-Border Data Policy Index*, such barriers have risen by 600 percent in the Asia-Pacific region alone,[10] and they continue to rise in the European Union. A loss of visibility and situational awareness by the US government into supply chain-relevant data sources is a serious risk factor that should not be underestimated.

The case of China is a cause for particular concern. While the United States is currently in the process of "de-risking" its supply chain involving China, the United States imported nearly $500 billion from China in 2023 – underscoring China's important role in the US supply chain. Unfortunately, China is attempting to restrict foreign access to some the data that the Commerce Department needs to assess relevant supply chain risks. As also discussed in the *Cross-Border Data Policy Index*, China has the world's most restrictive cross-border data framework, blocking significant amounts of data from leaving the country.

Some data types that Chinese authorities have tried to prevent from being transferred out of the country are those that would be relevant to the Commerce Department's *Cross-Sector Risk Assessment Tool*, such as international trade data, agricultural market data, production data, financial transaction data, and economic statistics.[11] China has sought to persuade other economies in Africa, Southeast Asia, and other parts of the world to emulate its restrictive data policies. To the extent that it succeeds, the Commerce Department's job of analyzing US supply chain risk will only become more difficult.

To address the circumstances outlined above, the GDA offers two sets of recommendations below: One for the Supply Chain Center; and the other for the Commerce Department's IPEF team.

RECOMMENDATIONS FOR THE SUPPLY CHAIN CENTER

We urge the Supply Chain Center (and the Industry & Analysis Unit) to formally incorporate improved cross-border data visibility as a foundational pillar of the Center. We also encourage the Supply Chain Center to leverage both cross-border data from abroad and AI tools to better anticipate and plan for supply chain challenges. Global data sources and data analytics tools, if effectively incorporated into the *Cross-Sectoral Risk Assessment Tool,* can also allow for more effective US government detection, response, and recovery from supply chain challenges.

Cross-border access to information and data from abroad lies at the heart of the Supply Chain Center's efforts to:

- Improve the US government's ability to understand systemic supply chain risks through a cross-sectoral risk assessment tool[12];

- Accurately evaluate the national security implications of any sector- and product-level supply chain inquiries;

- Ensure that the 40+ data indicators used to assess current or prospective supply chain risks are comprehensive and properly contextualized, including from a cross-border perspective;

- Ensure the quality of data incorporated into these 40+ indicators, so that the Center can produce reliable analysis of – among other things:

  - A sector's criticality to the US government;
  - Its vulnerability to disruption (taking into account sources of supply in allied and non-allied states);
  - Its resilience in the face thereof (including factors such as levels of substitutability, unutilized capacity, and replacement of key inputs – whether in the United States or among allies).

- Identify supply chain vulnerabilities and pursue in-depth analysis for actionable and evidence-based policy recommendations (taking into account sources of supply among allied and non-allied states);

- Determine – at sectoral and product -level – where there are hidden vulnerabilities (including internationally) that could be addressed through policy action by the US government and/or public-private partnerships;

- Leverage Big Data and the qualitative insights from industry experts and economists – drawing on data sets from around the world;

- Expanding the ability to model US-Allied supply chain scenarios and evaluate the potential impacts of proposed policy actions, using advanced government enterprise software tools, including Enterprise Resource Planning (ERP) software, Digital Twins software, industrial and supply chain management solutions, various enterprise data analytics tools, and various types of AI-based modeling resources.[13]

BSA members are companies that develop a range of enterprise software solutions, including AI-based solutions, that are used to increase supply chain accountability, efficiency, predictability, productivity, redundancy, and visibility. GDA members are companies in every sector of the economy that have deep expertise in a variety of complex international supply chain activities, including financial modeling; actuarial analysis; political risk review; commercial and business partner qualification processes; and building and managing global design, manufacturing, and servicing operations.

Our collective expertise also draws upon our work with a range of supply chain-focused compliance programs that depend upon real-time cross-border access to data, including those under the Customs-Trade Partnership Against Terrorism (CTPAT) program, the Foreign Corrupt Practices Act (FCPA), the Uyghur Forced Labor Prevention Act (UFLPA), the Countering America's Adversaries Through Sanctions Act (CAATSA), and various other fraud prevention, anti-money laundering, financial reporting & transparency, export control, sanctions, and investment screening programs. All of these programs require supply chain visibility and oversight that depends on real-time cross-border access to information from overseas.

Upon request, we would be pleased to meet virtually discuss how this experience might inform the Commerce Department's efforts to build, test, and implement the *Cross-Sectoral Risk Assessment Tool*.

RECOMMENDATIONS FOR THE IPEF SUPPLY CHAIN TEAM

Given the importance of cross-border access to data from diverse international sources across the US-Allied supply chain, it is also of critical importance that the Commerce Department's IPEF team look to negotiate bilateral arrangements with US allies within the IPEF Framework to secure more predictable and reliable access to such data sources.

To that end, we recommend that the Commerce Department negotiate bilateral *Memoranda of Understanding* or other agreements (*hereinafter* "MOUs") with US IPEF allies, agreeing that both sides will not block or deny each other's' access to data relating to the supply chain, sourcing, production/manufacturing, inputs and outputs, commodities, micro- or macro-economic data, or other information elements that are necessary to make informed supply chain decisions. State differently, the Commerce Department should negotiate bilateral MOUs with US allies to ensure that the Commerce Department can secure all quantitative or qualitative informational inputs necessary to build and run the *Cross-Sectoral Risk Assessment Tool.*

To a significant degree, we expect that the Commerce Department will find US allies are ready and eager to enter into such MOUs. US allies – including Australia, Canada, Japan, Korea, and Singapore – have called for the United States to re-engage with them to reach agreements on how to protect each other's cross-border data access to information and data.

As a matter of substance, such MOUs should contain, at a minimum, legal comments not to improperly (*i.e.,* for reasons that are arbitrary, discriminatory, disguised, or unnecessary) restrict each other's cross-border access to information relevant to the international supply chain.

Entering into such understandings with US allies is an integral part of the Commerce Department's statutory obligations and the President's delegation of authority to Commerce to take steps to analyze and protect the US supply chain. Indeed, there is no perhaps 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, and our access to critical information and inputs, among many other core US national economic and security priorities.

GDA and BSA member company representatives have extensive experience drafting MOUs, side letters, contracts, or other legal agreement relating to cross-border information and data access, including in the supply chain context and in international agreements. Upon request, we would be pleased to consult with the Commerce Department on the drafting and negotiation of MOUs that would meet the needs of the Department in relation to supply chain visibility, analytics, resilience, and security.

CONCLUSION

We strongly support the Commerce Department's efforts to promote supply chain visibility, analytics, resilience, and security. We would welcome the opportunity to consult with the Supply Chain Center on relevant data analytics and AI-driven tools and methodologies to support the *Cross-Sector Risk Assessment Tool.* We would also welcome the opportunity to consult with the Commerce Department's IPEF Team regarding potential terms for *Memoranda of Understanding* with US allies to secure cross-border access to supply chain-related data that the Commerce Department requires to assess, analyze, and protect US supply chain resilience and US national security.

Appendix I: Supporting US Strategic Interests in a Resilient Allied Supply Chain

US supply chain resilience requires communicating, cooperating, and collaborating with allies. From a supply chain resilience perspective, a lack of predictable access to supply chain information from overseas undermines US national security, as well as 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 a lack of such cross-border data access 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."

- The reaffirmation in the Justice Department Advanced Notice of Proposed Rulemaking (ANPRM) (under the President's Executive Order on Americans' Sensitive Personal Data) that, "[t]he 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.'"[14]

To support US strategic interests in a resilient and secure supply chain in which the United States and its allies support one another, the Commerce Department's IPEF Team should engage with close allies through *Memoranda of Understanding* to agree on norms relating to cross-border access to information relevant to supply chain reviews.

Appendix II: Supporting 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)[15]:

- **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 wholistic and actionable picture of food and agriculture supply chains... "[16]

- **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."[17]

- **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."[18]

- **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.[19]

[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] US Department of Commerce, International Trade Administration, *Request for Comments on Commerce Supply Chain Risk Assessment and IPEF Supply Chains,* 89 Fed. Reg. 47536 (June 3, 2024), at https://www.federalregister.gov/documents/2024/06/03/2024-12240/request-for-comments-on-commerce-supply-chain-risk-assessment-and-ipef-supply-chains

[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 id.*
[5] *See e.g.*, The White House, US National Cybersecurity Strategy; The White House, US National Security Strategy; The White House, US Indo-Pacific Strategy; US Department of State, Declaration for the Future of the Internet; US Department of Commerce, US-EU Data Privacy Framework; US Department of Commerce, Global Cross-Border Privacy Rules Forum Overview; US Department of Treasury, Joint Statement on Financial Services Data Connectivity; US Department of State, US Cyberspace and Digital Policy Strategy

[6] *See* Bipartisan House Letter Raising Concerns re USTR Support for WTO E-Commerce Moratorium

[7] *See* New Democrat Coalition Letter Raising Concerns with USTR Trade Policy
[8] *See* Congressional Letter re Competition Concerns with USTR Digital Trade Policy Reversal
[9] *See* Global Data Alliance, *Cross-Border Data Policy Index* (2023), at: https://globaldataalliance.org/resource/cross-border-data-policy-index/
[10] *See generally*, Global Data Alliance, *Cross-Border Data Policy Index* (2023), at: https://globaldataalliance.org/resource/cross-border-data-policy-index/
[11] *See* Tianjin Free Trade Zone – Data Outbound Management List (May 2024), at: https://shangwuju.tj.gov.cn/tjsswjzz/zwgk/zcfg_48995/swjwj/202405/t20240509_6620796.html
[12] No supply chain initiative should be primarily grounded in political messaging. Rather, such initiatives must be based on substantial evidence; technical supply chain expertise; quantitative and qualitative data analysis; and knowledge of and respect for applicable legal frameworks. To the extent that such an initiative purports to effectuate policy or regulatory changes, it must meet the requirements of Biden Administration's EO 14094 and Circular A-4. (*See* GDA comments on USTR Supply Chain Initiative here: https://globaldataalliance.org/wp-content/uploads/2024/06/06012024gdasupplychainresil.pdf
[13] 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 supply chain resilience.

[14] *See* https://www.federalregister.gov/documents/2024/03/05/2024-04594/national-security-division-provisions-regarding-access-to-americans-bulk-sensitive-personal-data-and
[15] 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, <u>US Alliance and Partner Networks – A Network Analysis of their Health</u> <u>& Strength</u>. 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

[16] 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
[17] 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
[18] 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.
[19] *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