

# Congress of the United States

Washington, DC 20515

[[DATE]]

The Honorable Katherine Tai  
Ambassador  
Office of the United States Trade Representative  
600 17<sup>th</sup> Street NW  
Washington, DC 20508

The Honorable Lina Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

The Honorable Jonathan Kanter  
Assistant Attorney General  
Antitrust Division  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Ambassador Tai, Chair Khan and Assistant Attorney General Kanter:

We write to express concern and disappointment with the U.S. Trade Representative Ambassador Tai's recent decision to abandon support for proposed World Trade Organization (WTO) digital trade principles. It is shocking that USTR's political leadership has chosen to retract its backing for long-standing, bipartisan core trade values that safeguard against compelled technology transfers, data localization, source code disclosure and further discriminatory trade practices.

Digital trade is a cornerstone of American economic prosperity, fostering innovation, job creation, and global competitiveness. According to the United Nations Conference on Trade and Development, just over half of all U.S. service exports were attributed to digital trade in 2022.<sup>1</sup> Proposals focused on digital trade serve as a facilitator for international collaboration concerning cybersecurity and the detection of fraudulent activities. Furthermore, data movements augment the capacity of allies to collaborate effectively, ensuring that AI systems receive training from a wide range of demographic and geographic datasets.

Information movement and regulations in the digital realm also remain instrumental for small enterprises to utilize internet and cloud services in connecting with customers globally, conducting sales, and efficiently managing diversified supply chains. A document from USTR<sup>2</sup> highlighted numerous industries reliant on data flows, which encompass sectors like mining, automotive manufacturing, aviation, accounting, medical diagnostics, security services, healthcare, research, and agriculture. Strong digital service providers and rules to support them are critical to ensuring the strong and resilient supply chains the Biden Administration has stated are a priority.

Consequently, the decision to step back from negotiations not only undermines the competitive edge of U.S. companies and small businesses, but also relinquishes leadership to strategic competitors who remain actively engaged in ongoing digital trade discussions. Authoritarian states like China aim to wield control over the internet and its informational access, while stringent regulators in the European Union limit the free enterprise

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<sup>1</sup> <https://unctad.org/news/digitally-deliverable-services-boom-risks-leaving-least-developed-countries-behind>

<sup>2</sup> "Conference on the Economic Benefits of Cross-Border Data Flows" held June 17, 2019, and Communication by the United States, [SC/C/W/382](#).

of U.S. firms. The decision also establishes a troubling precedent that could extend well beyond digital trade priorities, impacting the enforcement of the United States-Mexico-Canada Agreement (USMCA) and potentially paving the way for the USTR to backtrack on advancing American trade interests in other domains.

This decision will have detrimental consequences for American businesses, workers, and consumers by allowing for the expansion of protectionist and authoritarian views on digital trade. We respectfully request transparency and consultation with Congress regarding the reasons behind this change in stance and appreciate further clarity about USTR's strategy moving forward. **We ask that each of you provide us with the following information by February 16, 2024:**

1. About 97 percent of the American companies that export are small and medium-sized businesses. Regardless of whether these exports are digital or physical goods and services, the vast majority have a digital footprint in the countries in which they do business. Thus, they rely heavily on pushing back against anti-competitive policies. Small businesses are sounding the alarm that withdrawal from digital trade priorities will harm them more than their larger counterpart market incumbents.
  - If the Biden Administration does not reconsider Ambassador Tai's decision to drop digital trade priorities in WTO talks, how will USTR and other participants in an interagency process account for American small businesses' interest in upholding long-standing digital trade priorities?
2. According to the Department of Commerce,<sup>3</sup> "data flows account for at least 2.4 million U.S. jobs."
  - How does Ambassador Tai's decision to reverse longstanding digital policy help to keep and create American jobs? How does allowing countries of concern to block data flows, demand proprietary source code, localize data, and discriminate against US-based technologies support job creation?
3. A wide range of groups across the political spectrum have condemned USTR's decision. Freedom House said that removing these digital trade rules will "fragment the internet, embolden authoritarian governments, and violate rights around the world."<sup>4</sup> Center for a New American Security said that the U.S. was "needlessly gutting its own position on key digital trade provisions."<sup>5</sup> New America said that you "just handed a victory to China on digital sovereignty."<sup>6</sup>
  - How did the Biden Administration consider the consequences of this decision on internet freedom and national security?
4. The National Security Council disagreed with Ambassador Tai's decision. The State Department said they were not informed and instead "read about USTR's decision in the press."<sup>7</sup>

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<sup>3</sup> Office of Digital Services Industries, International Trade Administration of U.S. Department of Commerce, <https://www.trade.gov/about-us/office-digital-services-industries>

<sup>4</sup> Brody, Jennifer, *Reversal of US Trade Policy Threatens the Free and Open Internet*. Tech Policy Press. 15, November 2023. <https://techpolicy.press/reversal-of-us-trade-policy-threatens-the-free-and-open-internet/>

<sup>5</sup> Emily Kilcrease & Jacob Stokes, "Senior Fellow responds: APEC summit." Center for a New American Security, <https://www.cnas.org/press/press-note/cnas-responds-apec-summit>

<sup>6</sup> Cory, Nigel. "China Gains as U.S. Abandons Digital Policy Negotiations." Lawfare, 15 Nov. 2023, [www.lawfaremedia.org/article/china-gains-as-u.s.-abandons-digital-policy-negotiations](http://www.lawfaremedia.org/article/china-gains-as-u.s.-abandons-digital-policy-negotiations).

<sup>7</sup> U.S. Leadership on Artificial Intelligence in an Era of Strategic Competition. 118<sup>th</sup> Cong. (2023) (Testimony of Dr. Matthew Graviss).

- Were foreign governments, including China, aware of this decision before other parts of the U.S. government or Congress?
  - Is it appropriate for USTR, DOJ, and FTC to conduct backroom deals on foreign policy without informing Congress?
  - Did other parts of the Department of Justice, including the National Security Division and the Criminal Division, agree with the Antitrust Division's efforts to deprioritize United States interests in digital trade?
5. Earlier this year, USTR considered issuing a federal register notice to investigate the impact of EU regulations on China, including areas where EU regulations could require American data and IP to be transferred to China.
- Given the detrimental and discriminatory impact of EU regulations of American economic growth and innovation, when will USTR issue this federal register notice?
  - Did DOJ or FTC communicate with USTR in any way about this federal register notice?
  - Did either FTC or DOJ encourage, or attempt to dissuade, USTR in issuing this federal register notice?

Further clarity and transparency on these critical issues hold significant implications for American jobs and national security. We look forward to your response.

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