



## Statement of the U.S. Chamber of Commerce

---

**ON: The Need for U.S. Leadership on Digital Trade**

**TO: U.S. Congress Joint Economic Committee**

**BY: Sean Heather  
Vice President**

**Center for Global Regulatory Cooperation  
U.S. Chamber of Commerce**

**DATE: June 21, 2018**

---

1615 H Street NW | Washington, DC | 20062

The Chamber's mission is to advance human progress through an economic, political, and social system based on individual freedom, incentive, initiative, opportunity, and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Thank you for inviting the U.S. Chamber of Commerce to testify before this committee. Advancing America's interest in the global digital economy needs to be a top international priority and we need a *whole of government* approach to work with key trading partners to counteract trade and regulatory barriers that adversely impact trade in digital goods and services.

In previous testimony before this committee, I highlighted how the United States has positioned itself as a leader in the global digital economy; however, our advantage is not assured as certain governments are unnecessarily restricting digital commerce and seeking to undermine American technological innovation. Today, many countries are still pursuing a flawed approach to economic development. Restrictions on cross-border data flows via forced localization measures, new complex and burdensome regulatory regimes, irritants *de minimis* to e-commerce, investment measures that force technology transfers, and misuse of competition law are some of the most common challenges digital goods and services of American companies of all sizes, across all sectors, face in foreign markets.

The Chamber's desire is that our trading partners would recognize the economic potential of a liberalized approach to digital trade and join the United States in championing trade obligations that support digital trade and work across borders to resolve problematic regulatory frameworks. In order to make more progress, we need a robust agenda that deploys a strategy that takes a *whole of government* approach to our engagement abroad.

## **Identifying the Problem**

Every good strategy starts with understanding the problem. In recent years, we have done a good job of documenting the rising challenges to digital trade. The Office of the United States Trade Representative (USTR) has focused its National Trade Estimate on digitally related concerns in foreign markets.<sup>1</sup> The International Trade Commission is in the process of conducting three studies, the first of these studies released last year outlined some of the main restrictions to digital trade, including data localization, data protection and privacy, cybersecurity, censorship, market access, and investment.<sup>2</sup> The second and third studies will drill down and focus on foreign trade restrictions in the business-to-business and business-to-consumer markets. In May of this year, the Congressional Research Service made its contribution through its report entitled *Digital Trade and U.S. Trade Policy*.<sup>3</sup> Such research efforts should continue, but together these and other contributions have effectively shined a light on the barriers American companies face in delivering digital products and services.

---

<sup>1</sup> <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2018/march/2018-fact-sheet-key-barriers-digital>

<sup>2</sup> <https://www.usitc.gov/publications/332/pub4716.pdf>

<sup>3</sup> <https://fas.org/sgp/crs/misc/R44565.pdf>

## Importance of Services

We need to recognize the importance of services trade to our economy and to the digital economy. Consider:

- **Services Everywhere.** Services dominate the U.S. economy. Broadly speaking, services provide about 80% of all American jobs (approximately 125 million of 156 million American jobs, according to the Bureau of Labor Statistics).
- **More Jobs, Higher Pay.** Professional and business services employ 20.8 million Americans, making this sector a larger employer than manufacturing (66% larger, in fact). What's more, these are good jobs with average hourly earnings of \$32.
- **Increasingly Tradeable.** Many services can be exported, particularly those categorized broadly as professional and business services. These include fields such as audiovisual, software, architecture, accounting, engineering, project management, banking, insurance, waste management, and advertising. The Internet is making more of these services tradeable every day.
- **Competitive Advantage.** The United States has become the world's largest exporter of services. U.S. service exports reached \$777.9 billion in 2017, and the United States has a trade surplus in services of nearly \$250 billion. Services sales by foreign affiliates of U.S. multinational corporations top \$1.4 trillion.
- **Untapped Potential.** Despite these big numbers, the potential for service industries to engage in international trade is almost untapped. One in four U.S. factories export, but just one in every 20 providers of business services does so. Just 3% of U.S. services output is exported, according to the Peterson Institute for International Economics.

Without question, trade in manufactured products is very much a part of the digital economy. Whether simply sold through e-commerce channels or part of the growing numbers of products that make up the Internet of Things, American manufacturing is at the heart of the digital economy. However, we must not overlook our dominant position in trade in digital services. The United States enjoys a tremendous trade surplus in services and service jobs are some of the most well paid jobs in our economy. Therefore, our engagement abroad in support of digital trade must start with our support for our service industries that underpin all things digital.

## Developing Expertise and Capacity to Engage

Both the State Department and the Department of Commerce play an important leadership role in digital trade. Our foreign embassies are the first line of defense against impediments to digital trade and are important messengers for a liberalized approach to the digital economy. The Bureau of Economic and Business Affairs at State plays a central role in coordinating U.S. engagement internationally on ICT and cyber policy matters, but also serves as an active voice in support of digital trade.

The Department of Commerce plays a critical role in advancing U.S. digital exports, and advocating for the adoption of U.S.-friendly digital regulatory frameworks. It also has a core responsibility to internationally safeguard the voluntary-private sector approach to standards development that underpins many ICT products.

Since its inception in 2016, working with the State Department, the Commerce Department has operated a Digital Attaché Program that has proven to be a valuable resource through which U.S. stakeholders can identify, respond to, and avert policies that would otherwise have been harmful to the competitiveness of U.S. businesses. This program trains and embeds U.S. digital policy experts in the U.S. embassies of our key trading partners. Expanding this program, ensuring adequate resources, and giving digital attaches a clear mandate focused on digital trade is critical to ensuring American leadership in the digital economy. Foreign governments are deploying substantial resources to promote digital trade rules that benefit their own businesses and simultaneously erode U.S. digital competitiveness. This includes robust promotion of their privacy frameworks, overwhelming participation in standard setting bodies, and the use of cybersecurity laws to promote industrial policies. We strongly encourage the U.S. Department of Commerce to expand the number of Digital Attachés that are based around the world and ensure that they are adequately resourced to fulfill their role.

### **Data Flow Agreements**

The U.S. government should do more to support international privacy and cybersecurity frameworks that facilitate digital trade and the seamless movement of data across borders. The United States needs to maintain the EU-U.S. Privacy Shield. That agreement is important to data flows for both Europe and the United States. We applaud the Administration for its efforts last year that ensured the agreement successfully made it through its first annual review and the business community looks forward to supporting the review this year post Europe's GDPR implementation.

While Privacy Shield represents one framework for moving data across borders, it should not be viewed as the only model. The United States has importantly also advanced, within APEC, the Cross Border Privacy Rules (CBPRs) that promote the movement of data between borders to bridge national privacy regimes. The United States and other governments that have adopted the CBPRs should do more to encourage other APEC governments to join. Further, it is important that the United States develop similar mechanisms within other regions such as Latin America and other non-EU, non-APEC countries.

While difference between privacy regimes can be bridged through these mechanisms, increasingly cybersecurity regulatory frameworks are being developed that also threaten the movement of data. The United States has created the NIST Framework for Improving Critical Infrastructure Cybersecurity, an innovation-friendly framework encouraging technology-neutral approaches to managing cyber risks. However, approaches being developed in foreign jurisdictions often look much different. The United States needs to become more active in both shaping and aligning these emerging regulations, but also developing new mutual recognition agreements to address cross-border cybersecurity requirements, similar to what have been

achieved to ensure data movement in relationship to national privacy regimes. In doing so, improved coordination among cybersecurity regulations will not only facilitate digital trade, but will also increase levels of cybersecurity by enabling companies to scale best-in-class cyber solutions across borders.

## **Developing Digital Trade Rules**

The United States should continue to write global digital trade rules in our bilateral and multilateral agreements. The Chamber sees the need to seek commitments from our trading partners to support digital trade in goods and services and foster the cross-border movement of data. The U.S. government should prioritize digital issues in its trade agenda and ensure they receive sustained, high-level attention by the USTR and other relevant agencies.

We welcome USTR's efforts to modernize the North American Free Trade Agreement (NAFTA) to include important digital trade provisions. We also strongly support the United States playing a leading role within the World Trade Organization (WTO), which this year has undertaken important efforts among 70 countries to develop e-commerce rules that ensure an open and predictable marketplace for American businesses.

We would also encourage the Administration to consider relaunching negotiations around the Trade in Services Agreement (TiSA). TiSA has the potential to be more than just a "services" agreement as it could provide data flow commitments to the benefit of all industries across all sectors. It also, unlike the efforts underway within the WTO, is a negotiation that would extend digital trade commitments beyond e-commerce, and given the smaller number of countries involved in the negotiation, TiSA represents an opportunity to potentially reach a higher-standard agreement.

## **G7/G20 Engagement**

The G7 and G20 are important venues for shaping the agenda for several of the world's leading governments as they each seek to make policy decisions affecting the digital economy, which then directly impacts digital trade. In recent meetings, the G7 and G20 have placed an emphasis on the digital economy as part of its conversations. The United States has worked hard to ensure G7 and G20 digital communiqués carry the right messages on regulation, combating protectionism, and the benefits productive engagement with the digital economy holds for every nation.

However, behind the scenes it has been increasingly more difficult to maintain positive statements related to the digital economy as certain members seek to advance alternative agendas. We would recommend that the United States identify G7 and G20 partners across a range of digital policy matters and then work with these select partners well in advance of future meetings to develop strong common positions on these issues. Without more forward planning, we fear that the digital policy discussions in the G7 and the G20 may reach a stand still.

## **Role for Regulators**

While USTR, Commerce, and State play focal point roles in developing and advocating the U.S. digital trade strategy, U.S. regulators are very much needed for a *whole of government* approach to be effective. The Federal Trade Commission has been active with Department of Commerce to advance abroad an understanding of U.S. privacy protections, in shaping foreign privacy laws, and in being the enforcement behind data flow agreements like the EU-U.S. Privacy Shield.

Other U.S. regulators are also increasingly being relied upon to answer the call. U.S. financial regulators need to take on a leadership role to ensure regulatory frameworks abroad don't limit opportunities for U.S. fintech leadership. But to do so, the U.S. must overcome our fragmented banking regulatory structure, perhaps by turning to the Financial Stability Oversight Council as a convening body to ensure that U.S. regulators are on the same page. U.S. auto and aviation regulators also need to engage internationally to shape foreign counterparts' regulatory designs that will affect American competitiveness abroad for autonomous vehicles and drones. Further, regulators in foreign markets are beginning to contemplate regulatory questions about artificial intelligence, machine-based decision making, access to algorithms and big data, as well as a host of other issues. In short, a *whole of government* approach requires the entire U.S. government to be vigilant, coordinated, and better prepared to actively work to shape foreign regulatory environments that will deeply impact American companies' ability to innovate and compete in foreign markets.

## **Conclusion**

The Chamber is pleased to offer this testimony. The Chamber and its members look forward to engaging with the Congress and the Administration to enhance existing efforts to drive better policy outcomes in cooperation with our key trading partners to advance digital trade to the benefit of American companies, workers, and our economy, but also for the benefit of the partner economies our members serve.