

**Digital Trade Extracts from YouTube Transcript of House Ways and Means
Committee Hearing on the Biden Administration's 2024 Trade Agenda
with U.S. Trade Representative Katherine Tai**

16 April 2024

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[1:30:00] Let me begin by saying that it is precisely because of Congress that we are adjusting our approach and policies on what we call digital trade. Because we see what you are doing up here with respect to addressing the risks and harms that can come from PRC technology policies and how they impact the rights and the interests of Americans and for example their data.

We have paid attention to the fact that bills have advanced through the House and have passed with respect to Tik Tok and the concerns around onward transfers of Americans' data to China and access to the PRC government. As well as, more recently, the Data Brokers Bill that we saw passed on a 414 to zero basis.

These concerns around the security of Americans' data and where it ends up in the global technological economic ecosystem is what is animating our approaches to digital trade. The digital trade provisions that you've referenced go to data flows, data localization and source code as well.

They were developed as part of a trade policy that's really rooted in our recognition and our understanding 20 years ago that data is just about facilitating traditional trade transactions. What we have discovered today, and I think you probably know better than many being the head of the digital trade caucus, data is not just something that facilitates traditional trade. Data is the commodity and the thing that has value in and of itself. Data is what is fuelling technological advancements. ... fundamentally here in the US Congress the debates around what is the relationship between Americans and their data, what kind of rights do they have, what kind of rights to security do they have, and it's precisely because of this evolution in understanding what is at stake that we have indicated that these trade policies that treat data in a very straightforward way and an outdated way have to be updated to reflect the much, much more complex issues related to Americans' privacy rights, their intellectual property rights, and also their security and our collective national security.

[2:33:00] So I'm going to take this opportunity to explain the development of the NTE [National Trade Estimate Report] over time. When you look at the requirement for the NTE to be created, it is about listing and articulating significant trade barriers that US stakeholders face in our major export markets. It's about looking for opportunities to improve and to overcome export restrictions to our exporter opportunities. Over time the NTE has become a very, very large catalog of complaints that haven't actually gotten much scrutiny. What we did this year was begin a process asking our teams to look at the NTE entries and to first ask - the barrier that's being discussed, is it actually a barrier? Do we actually export the product that is of concern? And then also, with respect to digital, whether the measure that's being complained about is being erected

as a barrier or if it's a regulatory measure that frankly we see a lot of bills in Congress trying to address.

[2:35:00] The e-commerce moratorium was created in 1998. I talked a little bit earlier about how the US trade policy approach to data issues really began in 2000, when we thought about data as simply a facilitator for traditional trade transactions and how that's no longer true. Data has become actually where the action is itself. On the e-commerce moratorium there's a there's a similar stuck in time element. It was developed at a time when we talked about electronic transmissions because the relevant transmission was about fax transmission. The e-commerce transmission [sic] related to the technological world where we were still faxing information to each other.

What developed was a norm - a promise of WTO members to each other - to say we weren't going to try and impose duties on those transmissions, even though to this day we are not really sure how you would impose a duty on a transmission that you can't see or touch. But as it is, it is now 2024, almost 26 years later. Just the reality we are living in is so far advanced.

I would just say, we have extended the e-commerce moratorium for another two years. At the WTO, in terms of the project for WTO reform and modernization, part of it relates to this conversation - for those WTO Members that do not want to renew the moratorium I think we need to really challenge them to articulate what is it that they are trying to accomplish and how does it relate to the moratorium, because I'm not sure that it does.

But there is actually an evolution in ... policy debate, policy development at the WTO that is stuck in time that is reflected in this particular effort. This is one of the areas of WTO reform that we are very committed to ... [interrupted]

[3:00:00] It is precisely because we are absolutely concerned with US national security, the security of Americans' privacy rights, the security of their data, that we changed our position on these digital trade provisions. To be more specific, the provisions we're talking about deal with data flows, data localization, and source code.

American digital trade policy, first of all, is rooted in an outdated perception that issues of data only relate to facilitating traditional types of trade transactions. That's no longer true. Traditional US digital trade policy has also been relying on a proxy that what's good for an American digital and technology company is also good for American innovation, which we all care about, American workers, we all care about, the strength of the American economy. The challenge is that today it is primarily because of all of the developments in Congress that we've been following, bills that have passed out of the Congress - like the Data Brokers bill that came out 414 to zero - in this Congress in a time where those numbers really speak volumes. With respect to the Tik Tok legislation that also moved through the House very, very swiftly and with a strong voice. Those are animated by concern around the rights of Americans with respect to their data, their really sensitive data and where it's going to go, including whether or not it ends up in

places like China for surveillance purposes or other purposes that are against their interests.

Not changing our approach is what was going to put at risk all the work that you are doing here to assert the rights of Americans to their data. At the moment Americans have little to no privacy rights with respect to their data, that is something that I know that the Congress is working to change. Unless we change our approach to digital trade, unless we expand the stakeholder set to go beyond just our biggest companies, we close out the opportunity for those values to be reflected in how we approach these issues.

[4:06:00] I've made this point a couple times so I definitely want to make sure that I make it to you - which is actually the actions of the US Congress that were most powerful in indicating to us that our digital trade provisions related to data flows, data localization, to your point storage, and also with respect to source code are outdated they do not reflect the level of debate that is happening up here in the Congress. Not about national security -we're all on the same page there; not about Americans need to have rights to their data, rights to their privacy, but with respect to these digital provisions they don't take into account the interests of Americans, American citizens and a regulatory structure that is lagging behind where the technology is. So that's why, that's why, we have pulled back on those proposals. We will absolutely, we are absolutely interested in advancing new more modernized proposals that give Congress the space to actually ... [interrupted]